

#1  
CIVIL RIGHTS ACT OF 1964 - Title VI

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Public Law 88-352  
88th Congress, H. R. 7152  
July 2, 1964



TITLE VI—NONDISCRIMINATION IN FEDERALLY  
ASSISTED PROGRAMS

Sec. 601. 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 receiving Federal financial assistance.

Rules governing  
grants, loans,  
and contracts.

Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal 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 non-compliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file 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. No such action shall become effective until thirty days have elapsed after the filing of such report.

Approval by  
President.

Termination.

Judicial  
review.

60 Stat. 243  
5 USC 1009.

Sec. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Sec. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

UNITED STATES DEPARTMENT OF AGRICULTURE  
FEDERAL EXTENSION SERVICE

*Cooperating with Land Grant  
Colleges and Universities*

July 2, 1965

SUPPLEMENTAL INSTRUCTIONS FOR ADMINISTRATION OF TITLE VI OF THE  
CIVIL RIGHTS ACT OF 1964, IN THE COOPERATIVE EXTENSION SERVICE

AMENDMENT NO. I

Note: New and revised statements enclosed by asterisks:

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SUMMARY OF CHANGES:

Section B. I, Subsection A, Page 3. Statement added to eliminate requirements for assurance statements to accompany each request for new or additional funds if initial State assurance statement was acceptable.

Section B. I, Subsection B, Beginning on Page 3. Requires ALL States and Puerto Rico to submit statement regarding methods of administration. Minimum requirements cover plans and procedures for: (1) informing clientele and public of policies and requirements, (2) staff training, and (3) program reviews and evaluation.

Section B. II, Beginning on Page 4. Requirements for State compliance plans revised primarily in relation to methods of administration. This section applies only to States that submitted compliance plans. Following is a summary of major changes:

1. Requires statement of plans for desegregating membership in home economics clubs, 4-H Clubs, and other groups organized by the Extension Service, in which there now exists racial exclusion.
2. Requires written notifications of Extension Service civil rights policies to all organizations served. Also requires written response from each organization notified.
3. Requires description of any staffing changes necessary to meet Title VI requirements.

Section B, V, Page 7. Statement added to require informing general public of complaint procedure.

Section C. I, B, Page 8. Items 6 and 7 added to incorporate provisions of Secretary's Memorandum of June 23, 1964, on participation in segregated meetings. Item 8 added to limit service to 4-H Clubs

organized in segregated school systems to schools operating under desegregation plans or other arrangements accepted by the Department of Health, Education, and Welfare. Note: FES will arrange for Directors in the 15 States that submitted compliance plans to receive lists of schools that have plans or arrangements accepted by HEW.

Section C. III, Page 9. Item A. added to include as an example of discrimination prohibited the limiting or assignment of staff of one race, color, or national origin to serve clientele of like race, color, or national origin.

U. S. DEPARTMENT OF AGRICULTURE  
FEDERAL EXTENSION SERVICE

SUPPLEMENTAL INSTRUCTIONS FOR ADMINISTRATION OF TITLE VI OF THE  
CIVIL RIGHTS ACT OF 1964, IN THE COOPERATIVE EXTENSION SERVICE

SECTION A - INTRODUCTION

I. Policy and Objectives

The purpose and objective of Title VI of the Civil Rights Act of 1964 is defined broadly in Sec. 601 as follows:

"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 receiving Federal financial assistance."

Recognizing that programs of Federal financial assistance are many and varied in purpose, the Congress did not specify detailed requirements and controls in the Act. Instead, each Federal agency responsible for administering programs of Federal assistance was directed in Sec. 602 to develop and issue regulations based on Agency programs and needs.

USDA regulations have been approved by the President and distributed to all Land-Grant University Presidents and State Extension Directors. The purpose of these instructions is to supplement USDA regulations as they apply in the Cooperative Extension Service, and to prescribe administrative procedures to be followed by State Extension Services under the Act.

Laws, regulations and instructions serve as a basis for controlling administrative decision and action. At best these instruments cannot anticipate and provide specific and unqualified answers to all questions that may arise. Our attitudes and sincerity of purpose in interpreting and applying the intent as well as the letter of the Civil Rights Act, the regulations and instructions will in large measure determine the success of our efforts.

Regulations that apply to continuing State programs (Sec. 15.4(b)) give special consideration to State Extension Service compliance, with an understanding that any noncompliance will be corrected. In establishing the need for this special treatment the Administrator has assured the Secretary of Agriculture that it would be used in good faith to accomplish the objectives of the Act.

July 1965--(Amend. I)

## II. Definitions:

- A. "Regulations" means USDA regulations.
- B. "FES" means the Federal Extension Service.
- C. "Administrator" means the Administrator of the Federal Extension Service.
- D. "Director" means Director of a State Extension Service.
- E. "Agency" when used in USDA regulations means the Federal Extension Service.
- F. "Recipient" as defined in regulations, Sec. 15.2 includes State Extension Services; and any public or private agency, institution, or organization, or other entity or any individual to which the State Extension Service furnishes services which are in turn provided by such groups to their membership.
- G. "Primary recipient" means a State Extension Service.
- H. "Ultimate beneficiary" means individuals whose educational interests and needs are served by or through direct participation in educational activities or events conducted by the Extension Service and receiving Federal financial assistance.
- I. "Application" includes cooperative agreements, project agreements, annual plans of work, budgets, and certification of offset funds required for continuing assistance under the Smith-Lever Act; and administrative documents required to obtain new or additional funds not included under fixed or formula distribution prescribed by the Smith-Lever Act.
- J. "Program" includes program areas in agriculture, youth (4-H), home economics, community or resource development and other programs or projects for which Federal financial assistance is provided.

## SECTION B - ADMINISTRATIVE PROCEDURES

### I. Assurances Required

Sec. 15.4 provides for assurances under two basic types of fiscal arrangements:

Subsection A - General. This subsection should be interpreted in Extension as relating to new or additional funds paid to State Extension Services under authorities other than fixed or population

July 1965-(Amend. I)

UNITED STATES DEPARTMENT OF AGRICULTURE  
FEDERAL EXTENSION SERVICE  
WASHINGTON D.C. 20250

*Cooperating with Land Grant  
Colleges and Universities*

October 6, 1965

AMENDMENT TO SECTION B, II, B, 2 OF SUPPLEMENTAL INSTRUCTIONS FOR  
ADMINISTRATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, DATED  
JULY 2, 1965

Traditionally, the Cooperative Extension Service has used group instruction as an effective means of reaching the largest number of clientele. The nature and scope of program relationships with organizations range from an occasional request to speak at a meeting, to continuing cooperative working relationships in promoting educational projects or activities of mutual interest and concern. While private organizations are used by the Extension Service as a means of conducting group educational programs, it must also be recognized that in these cooperative program relationships the Extension Service provides a benefit for members of the organization that is construed as providing Federal financial assistance under Title VI of the Civil Rights Act. For this reason, the Cooperative Extension Service cannot assist or conduct educational programs through any group or organization that follows discriminatory practices based on race, color, or national origin.

Section B, II, B, 2 of our instructions provides for methods of administering this requirement.

In light of the great variety of organizational relationships and local situations in which Extension is involved, Section B, II, B, 2 is hereby replaced by the following section, to reflect intended flexibility in administration:

- "2. Each State Extension Director shall be responsible for determining that extension personnel assist or conduct programs only through those private organizations that do not discriminate on the basis of race, color, or national origin with respect to participation in and benefits from activities of the organization. Written notification of this Extension Service policy must be made to appropriate officials of private organizations with which extension workers maintain continuing assistance or continuing cooperative relationships in conducting extension programs. This notification should make it clear that the Cooperative Extension Service cannot provide assistance to any organization that excludes any person from membership or participation

in any activities of the organization, or subjects any person to discrimination because of race, color, or national origin.

"State Extension Directors will be responsible for developing and maintaining policies and procedures under which extension staff members, before speaking to, conducting programs through, or otherwise assisting an organization, will determine that the group is not discriminatory on the basis of race, color, or national origin. It is, however, the responsibility of the State Director to assure himself and the Department of Agriculture that Extension Service staff members do not work through private organizations that discriminate. He should require such records and such reports by staff members as he deems necessary for this purpose."

Approved

/s/ Lloyd H. Davis  
Administrator

October 6, 1965  
Date

formula distribution provisions of the Smith-Lever Act. This would include: Smith-Lever funds distributed on basis of special needs, 7 USC 343(b); Smith-Lever special project funds, 7 USC 343(d); Agricultural Marketing Act matching project funds, 7 USC 1623(b), and Agricultural Marketing Act contract funds, 7 USC 1624(d).

Applications for Federal financial assistance under above arrangements must contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by or pursuant to USDA regulations, \*if the State is operating under a compliance plan. This does not apply to States that have submitted assurances that have been accepted by USDA.

Subsection B - Continuing State Programs. With the exception of programs enumerated in Subsection A above, all Cooperative Extension Service activities will be considered as continuing State programs subject to the requirements of USDA regulations 7 C.F.R. 15.4(b). In order for the Extension Service to continue its support to these activities, it will be necessary for the Land-Grant University President, or his designated authorized official, and the State Extension Director to certify that all Extension activities covered by this subsection are and will continue to be conducted in compliance with Title VI of the Civil Rights Act of 1964 and all appropriate USDA and agency regulations issued thereunder. (See Exhibit A for the specified form for the certification.) In addition to the certification of compliance, each State must provide FES with a statement setting forth specific methods of administration the State Extension Service will adopt to insure that compliance is continued. These methods must include as a minimum:

1. Specific procedures whereby all present and potential beneficiaries, and the public in general will be informed of the policies and requirements of the State Extension Service under the Civil Rights Act of 1964. This includes informing the public completely of the rights and procedures regarding the filing of complaints. Examples of informing the public include:
  - a. Personal visitations by Extension workers with present and potential clientele.
  - b. Group and community meetings for the specific purpose of interpreting and communicating Extension Service policy and for explaining the rights afforded under the Civil Rights Act.
  - c. Group workshops and training sessions to ascertain resources and to discuss and develop action programs for promoting positive compliance within the community.



Note: The word, "group," in items b. and c. above includes commodity associations, and church, civic, professional and social organizations within the community.

- d. Use of newsletters, pamphlets, bulletins, posters, journal and newspaper articles, radio and T.V. interviews, and displays of information materials at fairs, training sessions, and association meetings. Informational materials may be those prepared by FES, the State Extension Service or developed by individual workers, as well as information materials available through the U. S. Commission on Civil Rights and agricultural or civil rights organizations.
2. Specific plans and procedures for providing staff training and orientation of all Extension workers in the policies and requirements of the Civil Rights Act of 1964 and how these are to be implemented in accordance with regulations promulgated now and hereafter by USDA, FES, and the State Extension Service. This includes instructing all employees of procedures to be followed in forwarding promptly to FES any complaint received.
3. Specific plans and procedures, including assignment of responsibility, for periodic program review and evaluation in order to guarantee continuing compliance.

## II. Compliance Plans

If a State is unable to provide assurances as prescribed above, it will be necessary to submit a plan which will include the following:

- A. Statement of Noncompliance. Specific identification of the particular practices constituting noncompliance in the functional areas listed under Section C of these instructions. The statement must include information under each functional area. If a State is in full compliance in a particular area, a statement to this effect should be included. Practices which constitute noncompliance include unequal treatment in the following:
  1. Provision of services, financial aid or other benefit, either in quantity or quality.
  2. Manner of treatment in providing such services, financial aid or other benefit.
  3. Use of facilities.

4. Opportunities to participate.
5. Advantages, privileges, or accommodations.
6. Criteria or methods of administration which have the effect of discriminating against a person or class of persons because of race, color, or national origin or which may in any way impair the purpose of the Extension program.

Where applicable, the political subdivision where noncompliance exists, must be identified.

- B. Methods of Administration. Specific listing of those methods of administration which, in addition to the three general methods outlined in items 1, 2, and 3 under Section I, Subsection B., will be applied to each practice of noncompliance in order to eliminate it completely. Where applicable, include a realistic schedule for eliminating noncompliance to the end that the Extension Service may be fully in compliance not later than December 31, 1965. In listing the methods of administration, describe those procedures which will be followed in effecting compliance in each area of noncompliance. (For example, procedures used to eliminate segregated county offices might include meetings with county officials, space requests filed with General Services Administration or the Post Office Department, as well as other action planned or taken.) Where applicable, include copies of memorandums, letters, articles or other forms of communication used to effect these methods of administration. Include the FES among distribution of all materials of this order that are developed by and used at the State and county level in the future.

Forms of corrective action required by this paragraph include:

1. Setting forth plans and providing specific procedures and times whereby any 4-H Club, Home Economics Club, or other community group or organization which is organized and served by the Extension Service, in which there now exists racial exclusion, will desegregate its membership not later than December 31, 1965, as a condition for continued assistance.
2. Written notification on Extension Service civil rights policies to appropriate officials of adult organizations, and adult leaders of youth organizations other than those organized by the Extension Service as specified in item 1, above. Notification should include a statement that the Cooperative Extension Service cannot provide assistance to any organization that excludes any person from membership or participation in any activities of the organization, or subject any person to discrimination because of race,

color, or national origin. The plan should list the types of organizations such as commodity and livestock associations, marketing firms including cooperatives, and general farm organizations to which notifications will be sent. Notification to such organizations should also include the offer of technical assistance and guidance by the Extension Service staff in facilitating the desegregation process.

In addition, the plan should provide for obtaining written responses from all organizations indicating whether or not the organization has policies or practices that do not conform with conditions stated in the notification. These written responses become public documents and will be used by the Extension Service in notifying clientele and the general public.

3. Description of any staffing changes to meet compliance requirements of Title VI, including the elimination of any policies or restrictions that result in Extension staff members being limited or assigned by virtue of race, color, or national origin to serve clientele of like race, color, or national origin exclusively.
4. Specific assignments to staff members for implementing requirements under Title VI.
5. Reporting systems that will be established and records that will be maintained to provide data for administrative review and control.

Note: The emphasis of this section of the compliance plan lies in the detailing of not only the corrective action that is required to eliminate practices of noncompliance but how the methods are to be applied and administered. The adequacy of this section will in large measure determine the ability of the Extension Service to continue its support to State Extension activities.\*

- C. Approval of the University President or other authorized official and State Extension Director.

III. Review of State Plans: The Administrator will review State plans and when plans are determined to be inadequate, the Administrator or his designated representative will negotiate with the State Director in a joint effort to develop a satisfactory plan. The Administrator reserves the right to examine plans at any time. Any such examination will be discussed by the Administrator with Directors in full accord with the objectives stated in the Introduction Section.

IV. Compliance Reports: Sec. 15.5(b) USDA regulations requires that each recipient keep such records as the agency may determine to be necessary to ascertain whether the recipient has complied or is complying with regulations. In general, copies of State and county program plans, reports, and fiscal records required in the administration of the Smith-Lever Act will serve as basic records to determine compliance. In some instances it will be necessary to maintain records containing identification of race, color, or national origin of clientele served. The maintenance of such data for the sole purpose of establishing or determining compliance with the Civil Rights Act will not be construed as being inconsistent with the purpose of the Act.

The following quarterly reporting requirements will apply to all State Extension Services that submit plans for compliance in lieu of assurances that the State is in compliance with the provisions of Title VI of the Act:

On or before June 15, 1965, and on or before the 15th day prior to the first day of the month in which each subsequent quarterly payment of funds is due under the Smith-Lever Act, State Directors will submit to the Administrator, a report of developments and accomplishments under the State plan. Reports will include separate statements under each separate noncompliance area identified in the plan. The Administrator, FES, will review the reports and when the scope or rate of progress is determined to be unsatisfactory, the Administrator or his designated representative will negotiate with the State Director in a joint effort to develop a satisfactory solution.

V. Complaints: Any person who believes himself or any specific class of individuals to be subjected to discrimination may by himself or by an authorized representative file a written complaint with the Secretary or Administrator, FES. A written complaint must be filed not later than 90 days from the date of the alleged discrimination unless the time for filing is extended by the Administrator, FES, or the Secretary. Any complaint received by a State Extension Service shall be promptly forwarded to the Administrator, FES. Such complaint shall be promptly referred to the Office of the Inspector General for investigation and report. Further action required shall be taken by the Administrator, FES, or the Secretary as may be warranted. \*The procedure for filing complaints will be clearly and completely communicated to the general public. Actions whereby this is accomplished must be listed under methods of administration submitted by each State.\*

- VI. Effective Date: The Act does not apply to payments made prior to January 3, 1965, which is the effective date of regulations. The Act and regulations will apply to all payments made to State Extension Services on or after January 3, 1965, including quarterly payments made under fixed and formula funds under the Smith-Lever Act.
- VII. Compliance Reviews: State Extension Directors will establish necessary controls in their program evaluation and supervisory review process to insure that the Secretary's regulations are complied with and that no persons, on the ground of race, color, or national origin, are excluded from participation in, denied the benefits of, or subjected to discrimination under any Extension program or activity receiving Federal financial assistance.

### SECTION C - DISCRIMINATION PROHIBITED

The following list of examples is provided as a supplement to the examples of discriminatory actions prohibited in Cooperative Agricultural Extension programs as listed in sub-sec. (d) (1) of Sec. 15.3. It is recognized that examples are not exhaustive and cannot be given to uniformly cover all local situations. Whenever doubt exists the State Director should communicate with the Administrator, FES.

#### I. Programming Process

##### A. Program Planning

1. Separate planning committees and plans based on race, color, or national origin.
2. Individuals excluded from planning committees because of race, color, or national origin.

##### B. Program Execution

1. All persons do not have equal opportunities to participate in tours, field days, and other program activities on a non-segregated basis. This includes such activities planned and conducted by Extension and participation by Extension workers in planning and conducting such events sponsored and conducted by others.
2. Extension agents conducting educational programs for 4-H Clubs, home economics groups, and other organized groups which exclude individuals from participation because of race, color, or national origin.
3. Distributing publications, research reports, announcements regarding new or changed programs, newsletters, and other information needed in planning and conducting particular educational programs, on the basis of race, color, or national origin.

4. Providing program services based on race, color, or national origin.
5. Reference to race, color, or national origin in correspondence, office signs, directories, titles, or in any other way that could be construed as implying that any program activity or service is being provided for, or restricted to, persons of one race, color, or national origin.
- \*6. Participating in an official capacity as an employee of the Extension Service in conferences or speaking before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities or the conferences or from membership in the group.
7. Sponsoring, supporting, or financially assisting, directly, or indirectly, any conference, convention or meeting held under circumstances where participants are segregated, excluded, or are treated unequally because of race, color, or national origin.
8. Serving 4-H Clubs organized in segregated school systems receiving Federal financial assistance unless assurances of compliance, desegregation plans, or other arrangements have been accepted by the U. S. Department of Health, Education, and Welfare, under Regulations of that Department for Title VI of the Civil Rights Act of 1964.\*

## II. Staff Housing and Facilities

- A. Agents located in offices in separate buildings or in separate locations in same building, when race is the basis for maintaining separate offices.
- B. Offices with separate entrances for clientele based on race, color, or national origin.
- C. Separate restrooms, drinking facilities, etc., for employees and clientele based on race, color, or national origin.
- D. Discrimination on the basis of race, color, or national origin in providing supplies, equipment, office facilities, secretarial assistance, travel allowances, publications, or other staff facilities.

### III. Staff Assignment and Development

- \*A. Extension workers limited or assigned by virtue of race, color, or national origin to service clientele of like race, color, or national origin exclusively.\*
- B. Equal training opportunities not provided for all agents without regard to race, color, or national origin.
- C. Training and other professional improvement activities conducted on a segregated basis.
- D. State, district, or county staff conferences held on segregated basis.
- E. Staff participation on official time and/or expense for professional improvement purposes in conferences, seminars, conventions, or other events held on a discriminatory or segregated basis, whether conducted by the Extension Service or some other private or public organization.
- F. Publications, announcements, and other materials for professional improvement distributed on a basis of race, color, or national origin.

### IV. Special Events

- A. Equal opportunities not provided for all 4-H Club members and leaders to participate on a non-segregated basis in all national and regional programs and features including: National 4-H Club Congress, National 4-H Conference, National 4-H Dairy Conference, National youth conferences or youth sections of national conferences, and other national and regional 4-H programs or activities.
- B. Equal opportunity not provided for all 4-H Club members and leaders to participate on a non-segregated basis in State, district, or county program features including: fairs and shows, 4-H member training meetings, 4-H State or district conferences, short courses, club weeks, and other 4-H Club program meetings and events.
- C. Equal opportunity not provided all home economics club members and leaders to participate on a non-segregated basis in all women's short courses, county and State achievement days, leadership conferences, camps and tours, and other home economics programs and events.

- D. Equal opportunity not provided all farmers to participate on a non-segregated basis in field days, farm and home week or conferences, tours, contests, achievement and recognition programs, and other agricultural programs and activities.

SECTION D - AMENDMENTS

- I. These instructions may be supplemented at any time as the need arises.

Approved

/s/ Joe Robertson  
Assistant Secretary for Administration

July 2, 1965  
Date

July 1965-(Amend. I)



ASSURANCE OF COMPLIANCE WITH THE U. S. DEPARTMENT OF AGRICULTURE  
REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

\_\_\_\_\_  
(Name of Applicant--College or University) (hereinafter called the "Applicant")

HEREBY AGREES THAT The Cooperative Extension Service will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Agriculture (7 CFR Part 15) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, 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 for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure 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. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated \_\_\_\_\_

\_\_\_\_\_  
(Applicant)

BY \_\_\_\_\_

(President, Chairman of Board of Trustees  
or comparable authorized official)

Dated \_\_\_\_\_

\_\_\_\_\_  
Director, Cooperative Extension Service

\_\_\_\_\_  
(Applicant's mailing address)



Public Law 92-318  
92nd Congress, S. 659  
June 23, 1972

Education Amendments of 1972

TITLE IX--PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

Exceptions.

SEC. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine; and

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

Definition.

(c) For purposes of this title an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

FEDERAL ADMINISTRATIVE ENFORCEMENT

SEC. 902. Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal 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, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file 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. No such action shall become effective until thirty days have elapsed after the filing of such report.

Report to  
congressional  
committees.

JUDICIAL REVIEW

SEC. 903. Any department or agency action taken pursuant to section 902 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND

SEC. 904. No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

EFFECT ON OTHER LAWS

SEC. 905. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

AMENDMENTS TO OTHER LAWS

78 Stat. 246,  
266. SEC. 906. (a) Sections 401(b), 407(a) (2), 410, and 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b), 2000c-6(a) (2), 2000c-9, and 2000h-2) are each amended by inserting the word "sex" after the word "religion".

75 Stat. 71.  
77 Stat. 56.  
29 USC 206. (b) (1) Section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)) is amended by inserting after the words "the provisions of section 6" the following: "(except section 6(d) in the case of paragraph (1) of this subsection)".

80 Stat. 831. (2) Paragraph (1) of subsection 3(r) of such Act (29 U.S.C. 203(r) (1)) is amended by deleting "an elementary or secondary school" and inserting in lieu thereof "a preschool, elementary or secondary school".

(3) Section 3(s) (4) of such Act (29 U.S.C. 203(s) (4)) is amended by deleting "an elementary or secondary school" and inserting in lieu thereof "a preschool, elementary or secondary school".

INTERPRETATION WITH RESPECT TO LIVING FACILITIES

SEC. 907. Notwithstanding anything to the contrary contained in this title, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.



Public Law 92-261  
92nd Congress, H. R. 1746  
March 24, 1972

## An Act

86 STAT. 103

To further promote equal employment opportunities for American workers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Equal Employment Opportunity Act of 1972".

Equal Employment  
Opportunity Act  
of 1972.

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

Definitions.  
80 Stat. 662.

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

80 Stat. 408.

68A Stat. 163.  
26 USC 501.

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (e) strike out between "(A)" and "and such labor organization", and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, or (B) fifteen or more thereafter,".

(5) In subsection (f), insert before the period a comma and the following: "except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision."

(6) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

(7) After subsection (i) insert the following new subsection (j):

"Religion."

"(j) The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-1) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

Enforcement.

SEC. 4. (a) Subsections (a) through (g) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5(a)-(g)) are amended to read as follows:

42 USC 2000e-2,

2000e-3.

Charges.

"SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

Penalty.

State enforcement proceedings, deferral period.

"(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier termi-

nated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Filing.

"(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed

Civil action.

a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

28 USC app. “(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

Jurisdiction. “(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

62 Stat. 937;  
74 Stat. 912;  
76A Stat. 699.

Judge, designation.

“ (4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.



"(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

28 USC app.  
Relief.

"(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a)."

Back pay  
liability.

(b)(1) Subsection (i) of section 706 of such Act is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

78 Stat. 257.  
42 USC 2000e-3.  
78 Stat. 259.  
42 USC 2000e-5.

(2) Subsection (j) of such section is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

42 USC 2000e-6.

"(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of  
functions.

"(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

80 Stat. 394;  
85 Stat. 574.  
5 USC 901.

"(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act."

Authority.

SEC. 6. Subsections (b), (c), and (d) of section 709 of the Civil

Ante, p. 104.

State and local  
agencies,  
cooperation.

Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

Recordkeep-  
ing; reports.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

State and  
Federal  
agencies,  
coordination.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements

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Information,  
availability.

with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e-9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply."

61 Stat. 150;  
84 Stat. 930.

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c)(1) Section 704(a) of such Act is amended by inserting a comma and the following: "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency".

42 USC 2000e-3.

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs.", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) Section 705(a) of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e-4(a)) is amended to read as follows:

Equal Employ-  
ment Opportunity  
Commission.

"SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States

Term.

86 STAT. 110

5 USC 101  
et seq.

5 USC 5101,  
5331.  
5 USC 5332  
note.  
80 Stat. 415,  
425, 473, 528.  
78 Stat. 258.  
42 USC 2000e-4.  
General Counsel,  
appointment.

Ante, p. 104.  
Ante, p. 107.

Repeal.

42 USC 2000e-  
13.

62 Stat. 688;  
65 Stat. 721.

80 Stat. 460;  
84 Stat. 1604;  
85 Stat. 625.

Repeal.  
84 Stat. 968.

Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(e) (1) Section 705 of such Act is amended by inserting after subsection (a) the following new subsection (b):

"(b) (1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

"(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title."

(2) Subsections (e) and (h) of such section 705 are repealed.

(3) Subsections (b), (c), (d), (i), and (j) of such section 705, and all references thereto, are redesignated as subsections (c), (d), (e), (h), and (i), respectively.

(f) Section 705(g) (6) of such Act, is amended to read as follows:

"(6) to intervene in a civil action brought under section 706 by an aggrieved party against a respondent other than a government, governmental agency or political subdivision."

(g) Section 714 of such Act is amended to read as follows:

"FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

"SEC. 714. The provisions of sections 111 and 1114, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life."

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

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SEC. 10. Section 715 of the Civil Rights Act of 1964 is amended to read as follows:

78 Stat. 265.  
42 USC 2000e-14  
note.

**"EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL**

"SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section."

Report to  
President and  
Congress.

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

Ante, p. 103.

**"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT**

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

80 Stat. 378.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

Enforcement;  
rules and  
regulations.

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

National and  
regional plan,  
annual review.

86 STAT. 112

Progress reports,  
publication.

"(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and  
"(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

"(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

"(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

Librarian of  
Congress,  
authority.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

42 USC 2000e  
note.

"(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

Ante, p. 104.

78 Stat. 259.  
42 USC 2000e-  
5.

"(d) The provisions of section 706 (f) through (k), as applicable, shall govern civil actions brought hereunder.

USC prec.  
title 1.

"(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure non-discrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government."

80 Stat. 453;  
84 Stat. 1955.

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

- (1) striking out the word "and" at the end of paragraph (9);
- (2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and
- (3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

March 24, 1972

Pub. Law 92-261

86 STAT. 113

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS-16, GS-17, and GS-18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

SEC. 13. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is further amended by adding at the end thereof the following new section: Ante, p. 111.

"SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND  
SUSPENSION OF GOVERNMENT CONTRACTS

"SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan." 80 Stat. 384.

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter. Effective date.  
Ante, p. 104.

Approved March 24, 1972.

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LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-238 (Comm. on Education and Labor) and No. 92-899 (Comm. of Conference).

SENATE REPORTS: No. 92-415 accompanying S. 2515 (Comm. on Labor and Public Welfare) and No. 92-416 (Comm. on Labor and Public Welfare) and No. 92-681 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 117 (1971): Sept. 15, 16, considered and passed House.

Vol. 118 (1972): Jan. 19-21, 24-28, 31, Feb. 1-4, 7-9, 14-18, 21, 22, considered and passed Senate, amended, in lieu of S. 2515.

Mar. 6, Senate agreed to conference report.

Mar. 8, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 13:

Mar. 25, Presidential statement.

CIVIL RIGHTS ACT OF 1964  
TITLE VI—NONDISCRIMINATION IN FEDERALLY  
ASSISTED PROGRAMS

AND

RULES AND REGULATIONS AS AMENDED

TITLE 7—AGRICULTURE  
PART 15—NONDISCRIMINATION

Subpart A—Nondiscrimination in Federally—As-  
sisted Programs of the Department of Agriculture  
—Effectuation of Title VI of the Civil Rights Act  
of 1964

Subpart B—Nondiscrimination—Direct USDA Pro-  
grams and Activities

Subpart C—Rules of Practice and Procedure for  
Hearings, Decisions and Administrative Review  
Under the Civil Rights Act of 1964

As in Effect January 30, 1975



Public Law 88-352  
88th Congress, H. R. 7152  
July 2, 1964

**An Act**

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".*

**TITLE VI—NONDISCRIMINATION IN FEDERALLY  
ASSISTED PROGRAMS**

SEC. 601. 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 receiving Federal financial assistance.

*Rules governing  
grants, loans,  
and contracts.*

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal 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 non-compliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file 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.

*Approval by  
President.*

*Termination.*

*Judicial  
review.*

*60 Stat. 243.  
5 USC 1009.*

No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

## Title 7—Subtitle A

### PART 15—NONDISCRIMINATION

#### Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

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**Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964**

**AUTHORITY:** The provisions of this Subpart A are issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1; and the laws referred to in the Appendix.

**SOURCE:** The provisions of this Subpart A appear at 29 F.R. 16274, Dec. 4, 1964; 29 F.R. 16966, Dec. 11, 1964, unless otherwise noted.

**§ 15.1 Purpose and application of part.**

(a) The purpose of the regulations in this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter 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 of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof.

(b) The regulations in this part apply to any program or activity of an applicant or recipient for which Federal financial assistance is authorized under a law administered by the Department including, but not limited to, the Federal financial assistance listed in the appendix to this part. They apply to money paid, property transferred, or other Federal financial assistance extended to an applicant or recipients for its program or activity after the effective date of these regulations pursuant to an application approved or statutory or other provision made therefor prior to such effective date. The regulations in this part do not apply to (1) any Federal financial assistance by way of insurance or guaranty contract, (2) money paid, property transferred, or other assistance extended prior to the effective date of the regulations in this part, (3) any assistance to an applicant or recipient who is an

ultimate beneficiary under any such program, or (4) except as provided in § 15.3(c), any employment practice of any employer, employment agency or labor organization. The fact that a specific kind of Federal financial assistance is not listed in the appendix shall not mean, if Title VI of the Act is otherwise applicable, that such Federal financial assistance is not covered. Other Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice approved and issued by the Secretary and published in the FEDERAL REGISTER.

**§ 15.2 Definitions.**

(a) "Department" means the Department of Agriculture, and includes each of its operating agencies and other organizational units.

(b) "Agency" means any service, bureau, agency, office, administration, instrumentality of or corporation within the U.S. Department of Agriculture extending Federal financial assistance to any program or activity, or any officer or employee of the Department to whom the Secretary delegates authority to carry out any of the functions or responsibilities of an agency under this part. [29 F.R. 16274, Dec. 4, 1964, as amended at 36 F.R. 3411, Feb. 24, 1971]

(c) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act in his stead under the regulations in this part.

(d) "Hearing Officer" means a hearing examiner appointed pursuant to 5 U.S.C. 3105, and designated to hold hearings under the regulations in this part.

(e) "Recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof,

but such term does not include any ultimate beneficiary under any such program.

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

(g) "Federal financial assistance" or "financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or the furnishing of services 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, lease or furnishing of services to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(h) "Grant, loan or contract" includes any grant, loan agreement or commitment to loan, contract or agreement to provide financial assistance or any other arrangement between the Department or any Agency and a recipient of financial assistance.

(i) "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.

(j) "Applicant" means one who submits an application, request, or plan required to be approved by an Agency, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(k) "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, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(1) "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.

### § 15.3 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 of the applicant or recipient to which these regulations apply. These regulations apply, but are not restricted, to unequal treatment in priority, quality, quantity, methods or charges for service, use, occupancy or benefit, participation in the service or benefit available, or in the use, occupancy or benefit of any structure, facility, or improvement.

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

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

program;

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

(iii) 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;

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

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

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Discrimination in the selection of members of planning and advisory bodies is prohibited.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects

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

(3) In determining the site or location of 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 of its activities or programs to which the regulations in this part apply, 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 and the regulations in this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program or activity of an applicant or recipient receiving Federal financial assistance shall be deemed to include any and all services, financial aid, or other benefit provided in or through a facility provided or improved in whole or part with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in these regulations does not limit the applicability of the provisions of paragraph (a) of this section.

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

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) \* \* \* 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 regulations in this part, 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 of the applicant or recipient to which these regulations apply, the foregoing provisions of this

§ 15.3(c) shall apply to the employment practices of the recipient or other persons subject to these regulations, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries. The requirements applicable to construction employment under any program or activity of the applicant or recipient shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it.

(d) *Examples.* In order that all parties may have a clear understanding of the applicability of the regulations in this part to their activities, there are listed in this section programs and activities together with illustrations, by way of example only, of types of activity covered by the regulations in this part. These illustrations and examples, however, are not intended to be all inclusive. The fact that a particular program is not listed does not, of course, indicate that it is not covered by the regulations in this part. Moreover, the examples set forth with respect to any particular listed program are not limited to that program alone and the prohibited actions described may also be prohibited in other programs or activities whether or not listed below.

(1) *Cooperative agricultural extension program.* (i) Discrimination in making available or in the manner of making available instructions, demonstrations, information, and publications offered by or through the Cooperative Extension Service;

(ii) Discrimination in the use in any program or activity of the Cooperative Extension Service of any facility, including offices, training facilities, lecture halls, or other structures or improvements; or

(iii) Discrimination in training activities, admission to or participation in fairs, competitions, field days, and encampments, conducted or sponsored by, or in which the Cooperative Extension Service participates.

(2) *Rural electrification and rural telephone programs.* (i) Refusal or failure by a borrower to accept applications for membership or applications to purchase shares of stock, or discrimination by a borrower in the

terms and conditions of membership or stock ownership, where such membership or stock ownership is a condition pre-requisite to the furnishing of electric or telephone service by the borrower, or to the receipt of any benefits or advantages related to such service;

(ii) Refusal or failure by a borrower to extend, or discrimination by a borrower in the extension of, electric or telephone service to unserved persons;

(iii) Denial by a borrower to any person of the benefits of improvement, expansion or upgrading, or discrimination by a borrower among consumers or subscribers in improving, expanding or upgrading, of electric or telephone service;

(iv) Discrimination by a borrower in respect of rates, or terms or conditions of, service among consumers or subscribers;

(v) Exclusion by a borrower of any member or stockholder, if the borrower is a cooperative or mutual type of corporation, from participation in any meeting of members or stockholders of the borrower, discrimination among its members or stockholders in respect of the exercise of any of their rights as members or stockholders, or in the manner of the exercise of such rights; or

(vi) Exclusion by a borrower of any consumer or subscriber from, denial by a borrower to any consumer or subscriber of the use of, or discrimination by a borrower against any consumer or subscriber in his use of, any of the borrower's facilities.

(3) *Direct distribution program.* (i) Exclusion of an otherwise eligible recipient agency (school, summer camp for children, institution, welfare agency or disaster organization) or person from participation in the direct distribution program.

(ii) Discrimination in the allocation of food to eligible persons.

(iii) Discrimination in the manner in which or the place or times at which foods donated under the program are distributed by recipient agencies to eligible persons.

(iv) Segregation of persons served in



different meal periods or by different seating or serving of different food or different size portions by recipient agencies serving prepared meals containing donated foods.

(4) *National school lunch program.* (i) Discrimination by a State agency in the selection of schools to participate in the program or in the assignment to schools of rates of reimbursement.

(ii) Exclusion of any child from participation in the program.

(iii) Discrimination by school officials in the selection of children to receive free or reduced price lunches.

(iv) Segregation of participating children in different lunch periods or different seating, and discrimination by serving different food or different size portions.

(v) Failure to offer free and reduced-price lunches, on an equitable basis in schools of a school district in which children are assigned to schools on the basis of race, color, or national origin.

(5) *Food stamp program.* (i) Discrimination by a State agency in certifying households as eligible for the program.

(ii) Segregation or other discrimination in the manner in which or the times at which eligible households are issued food coupons.

(6) *Special milk program for children.* (i) Discrimination by a State agency in the selection of schools and child-care institutions to participate in the program.

(ii) Discrimination by a State agency in the selection of needy schools to receive reimbursement for milk served free.

(iii) Discrimination by a State agency in the assignment of reimbursement rates to schools and child-care institutions or in the adjustment of such rates, or in fixing allowable distribution costs.

(iv) Exclusion of any child from participation in the program and segregation of participating children in different serving periods or different places of service.

(v) Discrimination by school officials or child-care institutions in the selection of children to receive free milk.

(7) *Price support programs carried out through producer associations or coopera-*

*tives or through persons who are required to provide specified benefits to producers.* (i) Denial of the benefits of price support for a producers commodity.

(ii) Denial of membership or stock ownership to any producer by any association or cooperative.

(iii) Discrimination among producers in the manner of making or paying any price support advances, loans, or payments.

(iv) Discrimination in the fees or charges collected from or in the net gains distributed to producers.

(v) Discrimination in the use of facilities and services generally made available to members or patrons under the price support program.

(8) *Forest service programs.* (i) Refusal or failure by a recipient of a permit or lease to provide to any person the benefits from the use of land administered by the Forest Service, the resources therefrom, or improvements thereon.

(ii) Refusal or failure by any recipient to provide to any person the benefits from Federal payments based on a share of the receipts from lands administered by the Forest Service.

(iii) Refusal or failure by any recipient to provide to any person the benefits from Federal assistance in cooperative programs for the protection, development, management, and use of forest resources.

(iv) Refusal or failure by any cooperator or other recipient to provide to any person the benefits from Federal assistance through grants or advances of funds for research.

(9) *Farmers Home Administration programs—*(i) *Direct soil and water loans to association.* (a) A borrower's denial of, or discrimination in furnishing, services under a program or activity financed wholly or partially with the aid of the loan, as in the case of a water supply system.

(b) A borrower's denial of, or discrimination or segregation in permitting, the use of facilities which are part of a project financed wholly or partially with the aid of the loan, as in the case of a golf course, swimming pool, tennis courts, parking areas, lounges, dining rooms, and rest rooms of a recreation



association.

(c) Discrimination by a borrower in the terms and conditions of membership or stock ownership, or refusal or failure of a borrower to accept applications for membership or for purchase of shares of stock, or discrimination by a borrower in acting or failing to act upon such applications, where such membership or stock ownership is a pre-requisite to the participation in services furnished by, or the use of facilities of, the borrower which are financed wholly or partially with the aid of the loan or to the receipt of any benefits or advantages related to such services or the use of such facilities.

(d) Denial or impairment by a borrower of any person's rights as a member or stockholder of the borrower, or borrower's discrimination against or segregation of persons in the exercise of their rights as members or stockholders of the borrower.

(ii) *Direct senior citizens rental housing loans to private nonprofit corporations and consumer cooperatives.* (a) A borrower's exclusion of any person from, discrimination in the terms and conditions of eligibility for, or discrimination against or segregation of any person in, the use and occupancy of the housing and related facilities financed wholly or partially with the aid of the loan.

(b) Discrimination by a borrower in the terms and conditions of membership or stock ownership, or refusal or failure of a borrower to accept applications for membership or for purchase of shares of stock, or discrimination by a borrower in acting or failing to act upon such applications, where such membership or stock ownership is a condition of eligibility for use and occupancy of the housing and related facilities financed wholly or partially with the aid of the loan or to the receipt of any benefits or advantages related to such housing or facilities.

(c) Denial or impairment by a borrower of any person's rights as a member or stockholder of the borrower, or a borrower's discrimination against or segregation of persons in the exercise of their rights as members or stockholders of the borrower.

(10) *Cooperative State research programs.*

(i) Discrimination in making available information whether published or provided

through public or private statement, correspondence, demonstration or field day.

(ii) Discrimination in participation in any cooperative research program or project.

(iii) Discrimination in the use of any facility, including offices, laboratories, or other structures, or research plots or fields.

(iv) Discrimination in employment of graduate students to conduct research when such students receive substantial research training benefits as a result of such employment.

#### § 15.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which these regulations apply, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility, shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the applicant's program or activity will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to the Act and the regulations in this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein, or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The Agency shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, successors in interest and other participants. Any such assurance shall include provisions which give the United

States a right to seek its judicial enforcement.

(2) In the case of real property, structures, or improvements thereon, or interests therein, which was acquired through Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved through 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 Agency concerned, such a condition and right of reverter is appropriate to the purposes of the Federal financial assistance under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Agency 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.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

(b) Every application by a State or a State Agency, including a State Extension Service,

but not including an application for aid to an institution of higher education, to carry out its program or activity involving continuing Federal financial assistance to which the regulations in this part apply shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Agency to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to the regulations in this part: *Provided*, That where no application is required prior to payment, the State or State Agency, including a State Extension Service, shall, as a condition to the extension of any Federal financial assistance, submit an assurance complying with the requirements of paragraph (b) (1) and (2) of this section.

(c) *Assurances from institutions.* The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the Agency, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(d) *Recipients other than applicants.* Each recipient not required to submit an application for Federal financial assistance, shall furnish, as a condition to the extension of

any such assistance, an assurance or statement as is required of applicants under paragraphs (a), (b) (1) and (2) of this section.

(e) *Elementary and secondary schools.* The requirements of paragraphs (a), (b), or (d) 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, within the earliest practical time and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the said 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.

[29 F.R. 16274, Dec. 4, 1964, as amended at 32 F.R. 3967, Mar. 11, 1967]

#### § 15.5 Compliance.

(a) *Cooperation and assistance.* Each Agency shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with the regulations and this part and shall provide assistance and guidance to recipients to help them comply voluntarily with the regulations in this part. As a normal part of the administration of programs covered by the regulations in this part, designated personnel will in their program reviews and other activities or as specifically directed by the Agency, review the activities of recipients to determine whether they are

complying with the regulations in this part. Reports by such personnel shall include statements regarding compliance and instances, if any, of noncompliance. In the event of noncompliance, the Agency shall seek to secure voluntary compliance by all appropriate means.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Agency timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Agency may determine to be necessary to ascertain whether the recipient has complied or is complying with the regulations in 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 submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under the regulations in 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.

(c) *Access to sources of information.* Each recipient shall permit access by authorized employees of this Department 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 the regulations in this part. 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 the regulations in this part and their applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Department or its Agencies finds necessary to ap-

prise such persons of the protections against discrimination assured them by the Act and the regulations in this part.

#### § 15.6 Complaints.

Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by the regulations in this part may by himself or by an authorized representative file with the Secretary or any Agency 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 Agency or the Secretary. Such complaint shall be promptly referred to the Office of the Inspector General. The complaint shall be investigated in the manner determined by the Inspector General and such further action taken by the Agency or the Secretary as may be warranted.

#### § 15.7 Intimidatory or retaliatory acts prohibited.

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or the regulations in this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulations in this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of the regulations in this part, including the conduct of any hearing or judicial proceeding arising thereunder.

#### § 15.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with the regulations in this part, and if the non-compliance or threatened noncompliance cannot be corrected by informal means, compliance with the regulations in this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, upon a finding, in accordance with the procedure hereinafter prescribed, 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 § 15.4.* If an applicant fails or refuses to furnish an assurance required under § 15.4 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 an application therefor approved prior to the effective date of the regulations in this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or to continue Federal financial assistance shall become effective until (1) the Agency 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 the requirement imposed by or pursuant to the regulations in this part, (3) the action has been approved by the Secretary pursuant to § 15.10(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate, having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other ap-

plicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Secretary 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 ten days from the mailing of such notice to the recipient or other person. During this period of at least ten days, additional efforts shall be made to persuade the recipient or other person to comply with the regulations in this part and to take such corrective action as may be appropriate.

#### § 15.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required under the regulations in this part, 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 Secretary or the Agency that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of 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 subsection 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 hear-

ing under section 602 of the Act and the regulations in this part 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 hearing officer or by the Secretary unless it is determined that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer.

(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 sections 5 U.S.C. 554-557, and in accordance with such rules of procedure promulgated by the Secretary as 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 hearing 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 these regulations in this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon



the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these regulations with respect to two or more programs to which the regulations in this part apply, or noncompliance with the regulations in this part 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 the regulations in this part. Final decisions in such cases, insofar as the regulations in this part are concerned, shall be made in accordance with § 15.10.

#### § 15.10 Decisions and notices.

(a) *Decision by hearing officer or Secretary.* (1) The hearing officer shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings, and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. The applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Secretary his exceptions to the initial decision, with his reasons therefor.

(2) In the absence of exceptions, the Secretary 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 Secretary 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 Secretary.

(b) *Decisions on record or review.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing officer pursuant to paragraph (a), 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 Secretary shall be given in writing to the applicant or recipient, and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 15.9(a), a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

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

(e) *Decision by Secretary.* The Secretary shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under the regulations in this part of the Act.

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

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for

such eligibility or if it brings itself into compliance with the Act and the regulations in this part and provides reasonable assurance that it will fully comply therewith. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 15.4 (a), (b), or (d) shall be restored to full eligibility to receive Federal financial assistance if it complies with the requirements of a § 15.4(e) and is otherwise in compliance with the Act and the regulations in this part.

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

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the denial 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 set forth in Subpart C of this part. The applicant or recipient will be restored to such eligibility if it proves at such a hearing, that it has satisfied the requirements of paragraph (g) (1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

#### § 15.11 Judicial review.

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

#### § 15.12 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 individuals on the

ground of race, color, or national origin under any program to which the regulations in this part apply, and which authorize the suspension or termination of or refusal to grant or continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by the regulations in this part, except that nothing in the regulations 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 the regulations in this part. Nothing in these regulations, however, shall be deemed to supersede any of the following including future amendments thereof: (1) Executive Order 11246 and regulations issued thereunder; or (2) Executive Order 11063 and regulations issued thereunder or 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 the regulations in this part are inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each Agency shall issue and promptly make available forms and such implementing instructions and procedures consistent with the regulations in this part as may be necessary. Each Agency in making available Federal financial assistance to any program or activity may utilize contractual commitments in obtaining compliance with the regulations in this part, including obtaining compliance by recipients other than the contracting recipient.

(c) *Supervision and coordination.* The Secretary may from time to time assign 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 the regulations in this part (other than responsibility for final decision as provided in § 15.10) 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 these regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting under this paragraph shall have the same effect as though such action had been taken by the Secretary or an Agency of this Department.

#### Appendix

##### Federal Financial Assistance of the Department of Agriculture Covered by Title VI of the Civil Rights Act of 1964

PROGRAMS ADMINISTERED BY THE FARMERS  
HOME ADMINISTRATION IN WHICH FEDERAL  
ASSISTANCE IS RENDERED, INCLUDING BUT  
NOT LIMITED TO THE FOLLOWING ACTIVITIES:

1. Labor Housing Loans; section 514 of the Housing Act of 1949, 42 U.S.C. 1484.
2. Rural Rental Housing; section 515 of the Housing Act of 1949, 42 U.S.C. 1485.
3. Rural Cooperative Housing; section 515 of the Housing Act of 1949, 42 U.S.C. 1485.
4. Labor Housing Grants; section 516 of the Housing Act of 1949, as amended, 42 U.S.C. 1486.
5. Technical Assistance Grants; section 523(b) (1) (A) of the Housing Act of 1949, as amended, 42 U.S.C. 149c.
6. Rural Housing Self Help Site Loans; section 523(b) (1) (B) of the Housing Act of 1949, as amended, 42 U.S.C. 1490c.
7. Rural Housing Site Loans; section 524 of the Housing Act of 1949, 42 U.S.C. 1490d.
8. Economic Opportunity Cooperative Association Loans; 42 U.S.C. 2852.
9. Farm Ownership Loans to install or improve recreational facilities or other non-farm enterprises; 7 U.S.C. 1923 (2) and (3).
10. Individual Recreation Loans, 7 U.S.C. 1924(a).
11. Operating Loans to install or improve recreational facilities or other nonfarm enterprises, 7 U.S.C. 1942(a) (5) and (6).
12. Community Facilities Programs, including shift in land use projects, planning advances, recreation, association loans for irrigation; section 306(a) (1) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a) (1).

13. Community Facilities Programs, grants for water and waste; section 306(a) (2) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a) (2).

14. Loans for Rural Industrialization Assistance under section 310(B) (a) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1932(a).

15. Private Business Enterprises, grants under section 310(B) (c) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1932(c).

16. Pollution Abatement Projects, grants under Section 310(B) (b) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1932(b).

17. Loans for Timber Development, section 204, Title II, Appalachian Regional Development Act, 40 U.S.C. App. 204.

18. Loans under the Resource Conservation and Development loan program pursuant to section 32(e) of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011(e).

19. Financial and other assistance to landowners, operators, or occupiers to carry out land uses and conservation, Appalachian Regional Development Act, 40 U.S.C. App. 203.

20. Financial assistance to States and their political subdivisions to provide housing and related facilities for rural trainees under section 522 of the Housing Act of 1949, as amended, 42 U.S.C. 1490b.

21. Loans, technical assistance, and preliminary advances under the Rural Renewal loan program pursuant to section 32(e) of the Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1011(e).

ADMINISTRATION AND MANAGEMENT OF NATIONAL FORESTS AND NATIONAL GRASSLANDS, AND OTHER LANDS ADMINISTERED BY THE FOREST SERVICE IN WHICH FEDERAL ASSISTANCE IS RENDERED, INCLUDING BUT NOT LIMITED TO THE FOLLOWING ACTIVITIES:

22. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge, Act of June 4, 1897, as amended, 16 U.S.C. 551. Term Permit Act of March 4, 1915, as amended, 16 U.S.C. 497. American Antiquities Act of June



8, 1906, 16 U.S.C. 432. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1011(c), (d).

23. Permits for use of Government-owned improvements and land used therewith by other than individuals at a nominal charge, section 7 of Granger-Thye Act of April 24, 1950, 16 U.S.C. 580d.

24. Easements for use of National Forests and National Grasslands by other than individuals at a nominal or no charge, Act of March 4, 1911, as amended, 16 U.S.C. 523; Act of May 13, 1946, as amended, 49 U.S.C. 1723. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1011(d).

25. Permits for disposal of common varieties of mineral materials from lands under Forest Service jurisdiction for use by other than individuals at a nominal or no charge, Act of July 31, 1947, as amended, 30 U.S.C. 601-603, 611, Act of June 11, 1960, 7 U.S.C. 2201 note.

26. Timber granted free or at nominal charge to any group, Act of June 4, 1897, as amended, 16 U.S.C. 477. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1011.

27. Road rights-of-way, Federal Highway Act of August 27, 1958, 23 U.S.C. 107, 317.

28. Rights-of-way for wagon roads or railroads, Act of March 3, 1899, 16 U.S.C. 525.

29. Permits for use of fire improvements and land by States and political subdivisions, corporations, firms, associations, and individuals, section 7 of the Act of April 24, 1950, 16 U.S.C. 580d.

30. Conveyance of land to States or political subdivisions for widening highways, streets, and alleys, Act of July 7, 1960, 40 U.S.C. 345c.

31. Transfer of fire-lookout towers, improvements, and land to States and political subdivisions; section 5 of Act of June 20, 1958 (16 U.S.C. 565b).

32. Easements for road rights-of-way over lands administered by the Forest Service, section 2 of the Act of October 13, 1964 (16 U.S.C. 533).

33. Revenue sharing payment to States: (a) Payment of 25 percent of National Forest receipts to States for schools and roads, Act of May 23, 1908, as amended, 16 U.S.C.

500. (b) Payment to Minnesota from National Forest receipts of a sum based on a formula, section 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577g-1. (c) Payment to New Mexico and Arizona of proportion of National Forest receipts for common-school fund, sections 6 and 24, Act of June 20, 1910, 36 Stat. 557, 562, 573. (d) Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act, lands to counties for school and road purposes or both, section 33, Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1012.

COOPERATION IN THE PROTECTION, DEVELOPMENT, MANAGEMENT, AND UTILIZATION OF FOREST RESOURCES ADMINISTERED BY THE FOREST SERVICE IN WHICH FEDERAL ASSISTANCE IS RENDERED, INCLUDING BUT NOT LIMITED TO THE FOLLOWING ACTIVITIES:

34. Fire prevention and suppression, section 2 of Clarke-McNary Act of June 7, 1924, as amended, 16 U.S.C. 565.

35. Forest seedling production and distribution, section 4 of Clarke-McNary Act of June 7, 1924, as amended, 16 U.S.C. 567.

36. Assistance to States for tree planting, Title VI, section 401 of Agricultural Act of 1956, as amended, 16 U.S.C. 568e-g.

37. Technical assistance in forest management, Cooperative Forest Management Act of August 25, 1950, 16 U.S.C. 568c, d.

38. General forestry assistance, Annual Appropriation Acts commencing with the Department Appropriation Act of 1905; Organic Act of 1862, 7 U.S.C. 2201.

39. Control of white pine blister rust, White Pine Blister Rust Protection Act of April 26, 1940, 16 U.S.C. 594a.

40. Protection of forest resources from insects, pests and disease, Forest Pest Control Act of June 25, 1947, 16 U.S.C. 594-1-5.

41. Financial assistance to private timber organizations to carry out timber development programs, section 204 of the Appalachian Regional Development Act, 40 U.S.C. App. 204.

RESEARCH PROGRAMS OF THE FOREST SERVICE  
IN WHICH FEDERAL ASSISTANCE IS RENDERED, INCLUDING BUT NOT LIMITED TO THE FOLLOWING ACTIVITIES:

42. Advance of funds for cooperative research, section 20 of Granger-Thye Act of April 24, 1950, added April 6, 1956, 16 U.S.C. 581i-1.

43. Grants for support of scientific research, Act of September 6, 1958, 42 U.S.C. 1891-1893.

44. Research cooperation, McSweeney-McNary Act of May 22, 1928, as amended, 16 U.S.C. 581 et seq.

45. Grants for research; section 2, Act of August 4, 1965, 7 U.S.C. 450i.

#### OTHER PROGRAMS OF THE DEPARTMENT

46. Food Distribution Program, section 416 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431. Section 32 of the Act of August 24, 1935, as amended, 7 U.S.C. 612c. Sections 6, 9 and 13 of the National School Lunch Act, as amended, 42 U.S.C. 1755, 1758, 1761. Section 8 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1777.

47. National School Lunch Program, National School Lunch Act, as amended, 42 U.S.C. 1751 et seq.

48. Special Milk Program, Child Nutrition Act of 1966, as amended, 42 U.S.C. 1772.

49. School Breakfast Program, Child Nutrition Act of 1966, as amended, 42 U.S.C. 1773.

50. Special Food Service Program for Children, National School Lunch Act, as amended, 42 U.S.C. 1761.

51. Supplemental Food Program, section 32 of the Act of August 24, 1935, as amended, 7 U.S.C. 612c. Section 416 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431.

52. Special Supplemental Food Program for Women, Infants, and Children, Child Nutrition Act of 1966, as amended, 42 U.S.C. 1786.

53. Food Stamp Program, Food Stamp Act of 1964, as amended, 7 U.S.C. 2011 et seq.

54. Food Certificate Program section 32 of the Act of August 24, 1935, as amended, 7 U.S.C. 612c.

55. Advisory service studies for Farmer Cooperatives, 7 U.S.C. 451-457.

56. Cropland Adjustment Program, Title VI of the Food and Agriculture Act of 1965, as amended, 7 U.S.C. 1838.

57. Cropland Conversion Program, 16 U.S.C. 590p(e).

58. Price support programs operating

through producer associations, cooperatives, and other recipients in which the recipient is required to furnish specified benefits to producers (e.g., tobacco, peanuts, cotton, rice, honey, dry edible beans, tung oil, naval stores and soybeans price support programs). Agricultural Act of 1949, as amended, 7 U.S.C. 1421 et seq., Commodity Credit Corporation Charter Act, 15 U.S.C. 714 et seq.

59. Surplus removal program operated through purchase or diversion payments in which the recipient under the program is required to provide specified benefits to producers, section 32 of the Act of August 24, 1935, 7 U.S.C. 612c.

60. Cooperative Agricultural Extension Work, 7 U.S.C. 341-349.

61. Cooperative Extension Work in the District of Columbia, section 109 of District of Columbia Public Education Act, as amended, D.C. Code 31-1609.

62. Assistance under the Federal Meat Inspection Act, 21 U.S.C. 601 et seq.

63. Assistance under the Poultry Products

64. Watershed Protection Program, Watershed Protection and Flood Prevention Act of August 4, 1954, 16 U.S.C. 1001-1008.

65. Flood Prevention Program, Flood Control Act of December 22, 1944, 33 U.S.C. 701, see 16 U.S.C. 460d, 825s.

66. Resource Conservation and Development Program, Title III of the Bankhead-Jones Farm Tenant Act, as amended by section 102 of the Food and Agriculture Act of 1962, 7 U.S.C. 1010-1012. Soil Conservation Act of April 27, 1935, 16 U.S.C. 590a-f.

67. Technical Assistance to Conservation Districts including Grants of Equipment, Material, and Plant Materials, Soil Conservation Act of April 27, 1935, 16 U.S.C. 590a-f.

68. Rural Electrification and Rural Telephone Programs, Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 et seq., Pub. L. 93-32.

69. Payments for Marketing Service Work Under Section 204(b) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1623(b).

70. Educational Aspects of Agricultural Marketing Act, 7 U.S.C. 1623-1624.

71. Hatch Act research programs, 7 U.S.C. 361a-1.

72. Experiment Station Research Facilities, 7 U.S.C. 390-390k.

73. McIntire-Stennis Cooperative Forestry Research Program, 16 U.S.C. 582a-582a-7.

74. Specific Grants for Scientific Research, 7 U.S.C. 450i.

75. Rural Development Act of 1972, Title V, 7 U.S.C. 2661 et seq.

76. Disaster and distress assistance through State and other agencies, 7 U.S.C. 1427.

JOSEPH R. WRIGHT, JR.,  
*Acting Assistant Secretary for  
Administration, Office of the  
Secretary.*

OCTOBER 18, 1974.

[FR Doc. 74-24856 Filed 10-23-74; 8:45 am]

#### Subpart B—Nondiscrimination—Direct USDA Programs and Activities

AUTHORITY: 5 U.S.C. 301.

##### § 15.50 Applicability.

The regulations in this subpart complement Subpart A of this part and cover those programs and activities of the Department not subject thereto in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

[29 F.R. 16966, Dec. 11, 1964]

##### § 15.51 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture, shall exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, or national origin under any program or activity administered by such agency, officer, or employee.

(b) No agency, officer, or employee of the Department shall on the ground of race, color, religion, sex, or national origin deny to any person in the United States (1) equal access to buildings, facilities, structures, or lands under the control of any agency of this Department or (2) under any program or activity of the Department, equal opportunity for employment, for participation in meetings, demonstrations, training activities or

programs, fairs, awards, field days, encampments, for receipt of information disseminated by publication, news, radio and other media, for obtaining contracts, grants, loans, or other financial assistance or for selection to assist in the administration of programs or activities of this Department.

[FR Doc. 73-17372 Filed 8-20-73]

##### § 15.52 Complaints.

(a) Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by the regulations in this subpart may by himself or by an authorized representative file a written complaint based on the ground of such discrimination. No particular form of complaint shall be required. The complaint must be filed within 90 days from the date of the alleged discrimination unless the Secretary extends the time for filing. Any person who complains of discrimination shall be advised of his right to file a complaint as herein provided and each agency of the Department dealing with the public shall post in a conspicuous place in its office notice of the right to file a complaint under this subpart.

(b) Notwithstanding the foregoing provisions of this section, any complaint filed hereunder, to the extent that it involves a determination, decision or action under a program or activity covered by this subpart, shall be handled in accordance with the procedures established by law or regulation of the Department or any of its agencies for the handling of complaints or appeals under such program or activity which are not based on grounds of discrimination prohibited by this subpart: *Provided*, That the officer, committee or other employee receiving a complaint based on discrimination shall immediately furnish a notice and a factual report thereof to the Secretary in accordance with procedures established by each agency. Each action taken on any such complaint shall likewise be reported to the Secretary.

(c) Any complaint authorized by paragraph (a) of this section involving matters within the responsibility of an agency which has no complaint or appeal procedure established by law or regulations, may be filed directly with the Secretary of Agriculture.

Any such complaint filed with any agency of the Department not having responsibility therefor shall be forwarded to the appropriate agency or to the Secretary.

(d) The investigative function with respect to complaints authorized by paragraph (a) of this section shall be discharged by the Office of the Inspector General in the manner determined by the Inspector General.

[31 F.R. 8175, June 10, 1966]

#### **Subpart C—Rules of Practice and Procedure for Hearings, Decisions and Administrative Review Under the Civil Rights Act of 1964**

**AUTHORITY:** The provisions of this Subpart C issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1 sec. 15.9(d) of Subpart A to 7 CFR, Part 15, and laws referred to in the Appendix to Subpart A, Part 15, Title 7 CFR.

**Source:** The provisions of this Subpart C appear at 30 F.R. 14355, Nov. 17, 1965, unless otherwise noted.

#### **GENERAL INFORMATION**

##### **§ 15.60 Scope of rules.**

The rules of practice and procedure in this subpart supplement §§ 15.9–15.10 of Subpart A of this part and govern the practice for hearings, decisions, and administrative review conducted by the Department of Agriculture, pursuant to Title VI of the Civil Rights Act of 1964, section 602 (78 Stat. 252) and this part, Title 7, CFR, except these rules shall not apply to any stage of a proceeding which has occurred prior to the effective date hereof.

##### **§ 15.61 Records to be public.**

All documents and papers filed in any proceeding under this part may be inspected and copied in the Office of the Department Hearing Clerk.

##### **§ 15.62 Definitions.**

All terms used in this subpart shall, unless the context otherwise requires, have the same meaning as defined in Subpart A of this part.

##### **§ 15.63 Computation of time.**

A period of time begins with the day following the act or event and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which case it shall be the following workday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

##### **§ 15.64 Parties.**

The term "party" shall include an applicant or recipient with respect to whom the agency has issued a notice of hearing or opportunity to request a hearing in accordance with Subpart A of this part and § 1581. The agency shall be deemed a party to all proceedings.

##### **§ 15.65 Appearance.**

Any party may appear in person or by counsel or authorized representative and participate fully in any proceeding.

##### **§ 15.66 Complainants not parties.**

A person submitting a complaint pursuant to § 15.6 is not a party to the proceedings governed by this subpart, but may petition, after proceedings have been commenced, to become an intervenor.

##### **§ 15.67 Intervenor.**

Any interested person or organization may file a petition to intervene which will include a statement of what petitioner expects to contribute to the hearing, and a copy of the petition will be served on all parties. Such petition should be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The hearing officer may grant the petition if he believes that such participation will not unduly delay a hearing and will contribute materially to the proceeding. An intervenor is not a party and may not introduce evidence at a hearing, or propound questions to a witness, unless the hearing officer determines that the proposed additional evi-

dence is relevant and will clarify the facts. The intervener may submit and serve on all parties a brief in support or opposition to any brief of a party. All service and notice required by and upon a party shall apply to an intervener.

#### § 15.68 Ex parte communications.

(a) *General.* After proceedings have been commenced, any communication or discussion ex parte, as regards the merits of the proceeding or a factually related proceeding, between an employee of the Department involved in the decisional process and a person not employed by the Department, and any such communication or discussion between any employee of the Department, who is or has been engaged in any way in the investigation or prosecution of the proceeding or a factually related proceeding, and an employee of the Department who is involved or may be involved in the decisional process of a proceeding, except at a conference, hearing or review proceeding under these rules is improper and prohibited.

(b) *Request for information.* A request for information about the status of a proceeding without discussing issues or expressing points of view and inquiries with respect to procedural matters or an emergency request for an extension of time are not deemed ex parte communications. When practical all parties should be notified of any request for an extension of time. Communication between an applicant or recipient and the agency or the Secretary with respect to securing voluntary compliance with any requirement of Subpart A of this part is not prohibited.

(c) *Unsponsored written material.* Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a proceeding will be placed in the correspondence section of the docket of the proceeding. Such are not deemed part of the evidence or record.

#### FORM, EXECUTION, FILING AND SERVICE DOCUMENTS

#### § 15.71 Form of documents to be filed.

All copies of documents filed in a proceeding shall be dated, signed in ink, shall show

the address and position or title of the signatory, and shall show the docket number and title of the proceeding on the front page.

#### § 15.72 Filing.

All documents relating to a proceeding under this subpart shall be filed in an original and two copies of such document with the Office of the Hearing Clerk at Room 112, Administration Building, Department of Agriculture, Washington, D.C., 20250, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 9 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time.

#### § 15.73 Service.

Service shall be made by the Hearing Clerk by personal delivery of one copy to each person to be served or by mailing by first-class mail, or air mail if more than 300 miles, properly addressed with postage prepaid. When a party or intervener has appeared by attorney or representative, service upon such attorney or representative will be deemed proper service. The initial notice of hearing, opportunity to request a hearing, or notice setting a date for a hearing shall be by certified mail, return receipt requested.

#### § 15.74 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice a hearing or notice of opportunity to request a hearing or notice setting a date for a hearing shall be the date of its delivery, or of its attempted delivery if delivery is refused.

#### INITIAL NOTICE AND RESPONSE

#### § 15.81 How proceedings are commenced.

Proceedings are commenced by mailing a notice to an applicant or recipient of alleged noncompliance with the Act and the Secretary's regulations thereunder. The notice will be signed by the interested agency head or by the Secretary and shall be filed with the

hearing clerk for proper service by the hearing clerk according to the rules of this subpart. The notice shall include either a notice of hearing or notice of opportunity to request a hearing as determined by the Secretary and shall comply with the requirements of § 15.9(a).

**§ 15.82 Notice of hearing and response thereto.**

A notice of hearing shall fix a date not less than 30 days from the date of service of the notice of a hearing on matters alleged in the notice. If the applicant or recipient does not desire a hearing, he should so state in writing, in which case the applicant or recipient shall have the right to submit written information and argument for the record, and the additional right to further participate in the proceeding. Failure to appear at the time set for a hearing, without good cause, shall be deemed a waiver of the right to a hearing under section 602 of the Act and the regulations in this part and consent to the making of a decision on such information as is available which may be presented for the record.

**§ 15.83 Notice of opportunity to request a hearing and response thereto.**

A notice of opportunity to request a hearing shall set a date not less than 20 days from service of said notice within which the applicant or recipient may file a request for a hearing, or may waive a hearing and submit written information and argument for the record, in which case, the applicant or recipient shall have the right to further participate in the proceeding. When the applicant or recipient elects to file a request for a hearing, a time shall be set for the hearing at a date not less than 20 days from the date applicant or recipient is notified of the date set for the hearing. Failure of the applicant or recipient to request a hearing or to appear at the date set shall be deemed a waiver of the right to a hearing, under section 602 of the Act and the regulations in this part and consent to the making of a decision on such information as is available which may be presented for the record.

**§ 15.84 Answer.**

In any case covered by § 15.82 or § 15.83 the applicant or recipient shall file an answer. Said answer shall admit or deny each allegation of the notice, unless the applicant or recipient is without knowledge, in which case the answer shall so state, and the statement will be considered a denial. Failure to file an answer shall be deemed an admission of all allegations of fact in the notice. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters intended to be offered as affirmative defenses must be stated as a separate part of the answer. The answer under § 15.82 shall be filed within 20 days from the date of service of the notice of hearing. The answer under § 15.83 shall be filed within 20 days of service of the notice of opportunity to request a hearing.

**§ 15.85 Amendment of notice or answer.**

The notice of hearing or notice of opportunity to request a hearing may be amended once as a matter of course before an answer thereto is served, and each applicant or recipient may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be amended only by leave of the hearing officer. An applicant or recipient shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the hearing officer otherwise orders.

**§ 15.86 Consolidated or joint hearings.**

Two or more proceedings against the same respondent, or against different respondents in which the same or related facts are asserted to constitute noncompliance, may be consolidated for hearing or decision or both by the agency head, if he has the principal responsibility within the Department for the administration of all the laws extending the Federal financial assistance involved. If laws administered by more than one agency head



are involved, such officials may by agreement order consolidation for hearing. The Secretary may order proceedings in the Department consolidated for hearing with proceedings in other Federal Departments or Agencies, by agreement with such other Departments or Agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or notice of opportunity to request a hearing shall be promptly served with notice of such consolidation.

#### HEARING OFFICER

##### § 15.91 Who presides.

A hearing officer shall preside over all proceedings held under this part. The hearing officer shall be a hearing examiner qualified under section 11 of the Administrative Procedure Act (5 U.S.C. 1001 et seq.), and designated to hold hearings under the regulations in this subpart or any person authorized to hold a hearing and make a final decision. The hearing officer will serve until he has made an initial decision, certified the record to the Secretary, or made a final decision if so authorized.

##### § 15.92 Designation of hearing officer.

Unless otherwise provided by an order of the Secretary at the time the notice of alleged noncompliance provided in § 15.81 is filed with the Office of the Hearing Clerk, the hearing shall be held before a hearing examiner, who shall be appointed by the Chief Hearing Examiner, Office of Hearing Examiners within five days after the filing of such notice. Unless otherwise provided, the hearing examiner shall certify the entire record with his recommended findings and proposed decision to the Secretary for final decision.

##### § 15.93 Time and place of hearing.

When a notice of hearing is sent to an applicant or recipient, the time and place of hearing shall be fixed by the Secretary, and when the applicant or recipient requests a hearing, the time and place shall be set by the hearing officer and in either case in conformity with § 15.9(b). The complainant, if any, shall be advised of the time and place of the hearing.

##### § 15.94 Disability of hearing officer.

In the case of death, illness, disqualification, or unavailability of the designated hearing officer, another hearing officer may be designated by the Secretary to take his place. If such death, illness, disqualification or unavailability occurs during the course of a hearing, the hearing will be either continued under a substitute hearing officer, or terminated and tried de novo in the discretion of the Secretary. In the absence of the designated hearing officer any hearing examiner may rule on motions and other interlocutory papers.

##### § 15.95 Responsibilities and duties of hearing officer.

The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time and place of hearings, or, upon due notice to the parties, to change the date, time and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and interveners to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of parties therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) In accordance with his authority issue an initial decision, or recommended findings and proposed decision, or final decision.

(k) Take any other action a hearing officer is authorized to take under these rules or Subpart A of this part.

#### MOTIONS

##### § 15.101 Form and content.

(a) *General.* Motions shall state the relief sought and the authority relied upon. If made before or after the hearing, the motion shall be in writing and filed with the hearing clerk with a copy to all parties. If made at the hearing, they should be stated orally but the hearing officer may require that any motion be reduced to writing and filed and served on all parties in the same manner as a formal motion.

(b) *Extension of time or postponement.* A request for an extension of time should be filed and served on all parties and should set forth the reasons for the request and may be granted upon a showing of good cause. Answers to such requests are permitted, if made promptly.

##### § 15.102 Responses to motions.

Within 8 days or such reasonable time as may be fixed by the hearing officer, or Secretary, if the motion is properly addressed to him, any party may file a response to the motion, unless the motion is made at a hearing in which case an immediate response may be required. The hearing officer may dispose of motions at a prehearing conference.

##### § 15.103 Disposition of motions.

The hearing officer may not sustain or grant a motion prior to expiration of the time for filing responses thereto, but may overrule or deny such motion without waiting on a response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions. Oral motions may be ruled on immediately. Motions submitted to the hearing officer not disposed of in separate rulings or in his decision will be deemed denied. Oral argument shall not be held on written motions unless expressly ordered. Interlocutory appeals from rulings on motions shall be governed by § 15.123.

#### HEARING PROCEDURES

##### § 15.110 Prehearing conferences.

(a) In any case in which it appears that such procedure will expedite the proceeding, the hearing officer may, prior to the commencement of the hearing, request the parties to meet with him or to correspond with him regarding any of the following:

(1) Simplification and clarification of the issues;

(2) Necessity or desirability of amendments to the pleadings;

(3) Stipulations, admissions of fact and of the contents and authenticity of documents;

(4) Matters of which official notice will be taken;

(5) Limitation of the number of experts or other witnesses;

(6) Disposal of all motions; and

(7) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) The hearing officer shall enter in the record a written summary of the results of the conference or correspondence with the parties.

##### § 15.111 Purpose of hearing.

(a) The hearing is directed to receive factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda or briefs, as determined by the hearing officer. Brief opening statements, which shall be limited to a statement of the party's position and what he intends to prove, may also be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Subpart A of this part. In any case where it appears from the answer of the applicant or recipient to the notice of hearing or notice of opportunity to request a hearing, from his failure timely to answer, or from his Admissions or stipulations in the record, that there are no matters of material fact in dispute, the hearing officer may enter an order so finding, and fixing the time for the submis-



sion of evidence by the Government for the record. Thereafter, the proceedings shall go to conclusion in accordance with Subpart A of this part and the rules of this subpart. An appeal from such order may be allowed in accordance with the rules for interlocutory appeal in § 15.123.

#### § 15.112 Statement of position and brief.

The hearing officer may require all parties and any intervenor to file a written statement of position or brief prior to the beginning of a hearing.

#### § 15.113 Testimony.

(a) Testimony shall be given orally under oath or affirmation by witnesses at the hearing, but the hearing officer, in his discretion, may require or permit that the testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record thereof. Unless authorized by the hearing officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 15.115 and 15.116, witnesses shall be available at the hearing for cross-examination.

(b) Proposed exhibits shall be exchanged either at a prehearing conference, or otherwise prior to the hearing. Proposed exhibits not so exchanged may be denied admission as evidence unless good cause is shown why they were not exchanged. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

#### § 15.115 Affidavits.

An affidavit, intended to be used as evidence without cross-examination of the affiant, will be filed and served on the parties at least 15 days prior to the hearing; and not less than seven days prior to hearing a party may file and serve written objections to any affidavit on the ground that he believes it necessary to test the truth of assertions therein by cross-examination. In such event,

the affidavit objected to will not be received in evidence unless the affiant is made available for cross-examination at the hearing or otherwise as prescribed by the hearing officer. In absence of an objection being filed within the time specified, such affidavit will be received in evidence.

#### § 15.116 Depositions.

Upon such terms as may be just, the hearing officer, in his discretion, may authorize the testimony of any witness to be taken by deposition.

#### § 15.117 Evidence.

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded, and technical rules of evidence shall not apply but rules or principles designed to assure the most credible evidence available and to subject testimony to test by cross-examination shall apply.

#### § 15.118 Cross-examination.

Cross-examination will be limited to the scope of direct examination and matters at issue in the hearing.

#### § 15.119 Objections.

Objections to evidence shall be timely and briefly state the ground relied upon. The ruling of the hearing officer will be part of the record. Argument in support of the objection will not be part of the record.

#### § 15.120 Exceptions to rulings of hearing officer unnecessary.

Exceptions to rulings of the hearing officer are unnecessary. It is sufficient that a party, at the time the ruling of the hearing officer is sought, makes known the action which he desires the hearing officer to take, or his objection to an action taken, and his grounds therefor.

#### § 15.121 Official notice.

A public document, or part thereof, such as an official report decision, opinion, or published scientific or economic statistical data issued by any branch of the Federal or a State Government which has been shown to be reasonably available to the public, may be

offered for official notice and accepted in the record without further proof of authenticity. Where official notice is to be taken, any party, on timely request, shall have an opportunity to show the contrary.

#### § 15.122 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing officer rejecting or excluding proposed oral testimony shall consist of a statement for the record of the substance of the evidence which counsel contends would be adduced by such testimony, and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as an offer of proof.

#### § 15.123 Appeals from ruling of hearing officer

A ruling of the hearing officer may not be appealed to the Secretary prior to consideration of the entire proceeding by the hearing officer except with the consent of the hearing officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any part or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the Secretary within such period as the hearing officer directs. Oral argument will be heard in the discretion of the Secretary.

#### § 15.124 Admissions as to facts and documents.

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the hearing officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is

requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the hearing officer may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny, such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

[31 F.R. 8586, June 21, 1966]

### THE RECORD

#### § 15.131 Official transcript.

The hearing clerk will designate the official reporter for all hearings. The official transcript of testimony taken, together with any affidavits, exhibits, depositions, briefs, or memoranda of law shall be filed with the hearing clerk. Transcripts of testimony in hearings will be supplied by the official reporter to the parties and to the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties the hearing officer may authorize corrections to the transcript which involve matters of substance.

#### § 15.132 Record for decision.

The transcript of testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, except the correspondence section of the docket, including rulings, and any recommended findings and proposed decision, or initial decision shall

constitute the exclusive record for final decision.

#### POSTHEARING PROCEDURES

##### § 15.135 Posthearing briefs.

The hearing officer shall fix a reasonable time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs. Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon. Briefs shall be filed in the Office of the Hearing Clerk with a copy to all parties.

##### § 15.136 Decisions and notices.

When the time for submission of posthearing briefs has expired the hearing officer shall either make an initial decision or final decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision and a copy of such initial, or final decision or certification shall be mailed to the applicant or recipient and other parties by the hearing clerk.

##### § 15.137 Exceptions to initial or proposed decision.

Within 30 days of the mailing of such notice of initial or recommended findings and proposed decision, the applicant or recipient and other parties may file with the hearing clerk for consideration by the Secretary exceptions to the initial or recommended findings and proposed decision, with reasons therefor. Each party will be given reasonable opportunity to file briefs or other written statements of contentions in which the party may request that the decision be modified, reversed, affirmed or adopted.

##### § 15.138 Review of initial decision.

In the absence of exceptions to an initial decision, the Secretary may on his own motion within 45 days after an initial decision serve upon the parties a notice that he will review the decision and will give the parties reasonable opportunity to file briefs or other

written statements of contentions. At the expiration of said time for filing briefs, the Secretary will review the initial decision and issue a final decision thereon. In the absence of either exceptions to an initial decision or a notice or review, the initial decision shall constitute the final decision, of the Secretary.

##### § 15.139 Oral argument.

If any party desires to argue orally before the Secretary on the review of recommended findings and proposed decision, or an initial decision, he shall so state at the time he files his exceptions or brief. The Secretary may grant such request in his discretion. If granted, he will serve notice of oral argument on all parties and will set forth the order of presentation and the amount of time allotted, and the time and place of argument.

##### § 15.140 Service of decisions.

All final decisions shall be promptly served on all parties and the complainant.

##### § 15.141 Contents of decision.

Each decision of a hearing officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to the regulations in this part with which it is found that the applicant or recipient has failed to comply.

##### § 15.142 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, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and the regulations in this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to the regulations in this part, or to have otherwise failed to comply with the regulations in this part, unless and until it

corrects its noncompliance and satisfies the Agency that it will fully comply with the regulations in this part.

§ 15.143 Decision where financial assistance affected.

The Secretary shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under the regulations in this part or the Act.

# Rules and Regulations

## Title 7—AGRICULTURE

### Subtitle A—Office of the Secretary of Agriculture

#### PART 18—EQUAL EMPLOYMENT OPPORTUNITY IN THE STATE COOPERATIVE EXTENSION SERVICES

Notice was given at 33 F.R. 7455 (May 18, 1968) that the Secretary of Agriculture planned the addition of a new Part 18 to Title 7, Subtitle A, of the Code of Federal Regulations.

Interested persons were invited to submit suggestions for improvement of the proposed new part for consideration prior to its issuance. All suggestions received having been considered, and certain changes made, Part 18 of Title 7, Subtitle A, is hereby issued, reading as follows:

- Sec.
- 18.1 Definitions.
  - 18.2 Purpose, applicability, and coverage.
  - 18.3 Development and adoption of equal employment opportunity programs.
  - 18.4 Elements of program.
  - 18.5 Formal complaint procedure.
  - 18.6 Review and decision.
  - 18.7 Reports.
  - 18.8 Noncompliance.
  - 18.9 Sanctions.

**AUTHORITY.** The provisions of this Part 18 issued under 5 U.S.C. 301, and Sec. 1-10, 38 Stat. 372, as amended, 7 U.S.C. 341-349.

#### § 18.1 Definitions.

For the purpose of this part:

- (a) "Secretary" means the Secretary of Agriculture of the United States or his designee.
- (b) "Cooperative Extension Service" means the Cooperative Extension Service of each Land-Grant University.
- (c) "President" means the President or chief executive of each Land-Grant University or his designee.
- (d) "Discrimination" includes discrimination on the basis of race, color, national origin, sex, or religion.
- (e) "Employment" includes hiring, assignment, transfer, promotion, compensation, discipline, and discharge and all other conditions, terms and privileges of employment.
- (f) "Program" means a comprehensive Equal Employment Opportunity plan submitted by a President in satisfaction of the requirements of § 18.3.

#### § 18.2 Purpose, applicability and coverage.

- (a) **Purpose.** This part provides a cooperative procedure involving the President and Secretary to assure that the Cooperative Extension Service provides equal opportunity in employment to each individual without regard to race, color, national origin, sex, or religion.
- (b) **Applicability.** The regulations in this part apply to every Land-Grant Uni-

versity operating a Cooperative Extension Service.

(c) **Coverage.** This part applies to all positions in all units of the Cooperative Extension Service, and to employees provided by county and other political subdivisions in support of Cooperative Extension Service programs.

#### § 18.3 Development and adoption of equal employment opportunity programs.

(a) **Submission.** Within 90 days after the effective date of this part, the President shall furnish to the Secretary a positive continuing program to assure that employment is provided without discrimination.

(b) **Development.** The President and the Secretary may consult with each other at any time regarding the development and evaluation of the program in order to better effectuate the purpose of this part. The program may be a part of a general program establishing employment procedures for employees of the university and may cover other rights and privileges of employees.

(c) **Concurrence.** The Secretary may concur with the program proposed by the President. If the Secretary does not concur with the proposed program, he shall inform the President and make suggestions for improvement. The President will have 30 days thereafter to furnish a satisfactory proposal.

(d) **Amendment.** After concurrence has been obtained on the program, the President may make recommendations to amend the program to improve its effectiveness and furnish them to the Secretary for concurrence. If the Secretary, at any time finds that a program, as implemented, does not achieve the purposes described in § 18.2, he shall confer with the President concerning needed improvements and changes. The President will furnish a satisfactory amendment to the Secretary within 30 days for concurrence.

(e) **Effective date.** The program or amendments to it shall be made effective by the President not later than 30 days from the date of concurrence.

#### § 18.4 Elements of program.

A satisfactory program shall include:

- (a) A statement of policy prohibiting discrimination in employment;
- (b) An administrative procedure enforcing that policy;
- (c) A positive affirmative action plan designed to assure equal opportunity in employment;
- (d) A procedure for identifying and eliminating employment practices tending to create or continue discrimination in employment;
- (e) A procedure for evaluating the success of the program;
- (f) Adequate provision for publicizing the program including dissemination of

information to all those covered by these regulations;

(g) A procedure for prompt processing of complaints assuring no less than minimum rights prescribed in § 18.5;

(h) Adequate provisions for the protection of complainants, employees, witnesses, and representatives from interference, harassment, intimidation and reprisal;

(i) A procedure for the informal resolution of complaints; and,

(j) A procedure for recording receipt and disposition of all complaints. A report of the receipt and a report of the disposition of all formal complaints will be sent promptly to the Secretary.

#### § 18.5 Formal complaint procedure.

A procedure shall be provided for the filing of a formal written complaint if a complainant is not satisfied with the result of informal procedure or if the complainant does not desire to follow the informal procedure. A complaint procedure shall contain the following minimum provisions for the processing of formal complaints.

(a) **Elements of the formal complaint.** The formal complaint shall be in writing and state the name and address of the complainant; the basis of the claim; and indicate whether the alleged discrimination was based on race, color, national origin, sex, or religion.

(b) **Time limits for processing.** The procedure will include time limits for the orderly processing of complaints.

(c) **Who may file.** A complaint may be filed by an employee, a former employee, or an applicant for employment who believes that discrimination in employment has been practiced against him or that an employment practice in the Cooperative Extension Service has or will result in discrimination in employment against him. An employee, a former employee, or an applicant for employment, or an organization may file a complaint of general discriminatory practices: *Provided, however,* That upon request of the President, the complainant shall furnish to him names of individuals who are adversely affected by those practices.

(d) **Right of representation.** A complainant may designate in writing, an individual or an organization to represent him in the processing of his complaint, and is entitled to the advice of counsel at his expense at all stages of the proceeding. If the representative designated by the complainant is an employee of the U.S. Department of Agriculture, or of a Cooperative Extension Service, such employee, as well as an employee-complainant, shall have a reasonable amount of official time with pay, if he is in a pay status, for the purpose of appearing at any hearing on the complaint or conciliation effort. The rights and privileges set forth in this paragraph shall also be

available to any person whose alleged conduct is the cause of the complaint.

(e) *Where filed.* The procedure shall clearly state the persons, and their locations, with whom complaints may be filed. It shall also state that complaints may be filed with the Secretary. Complaints filed with the Secretary shall be promptly forwarded to the President or his designee for processing.

(f) *When filed.* A complaint shall be submitted within 90 days of the conduct giving rise to the complaint. The President or the Secretary may extend the prescribed time limit for good cause shown by the complainant.

(g) *Hearing.* A complainant or the President may request a hearing which shall be transcribed or recorded. The hearing shall be conducted promptly during regular working hours in the county where the alleged discrimination occurred or at a time and place agreed to by the President and the complainant. The President, the complainant and any person whose alleged conduct is the cause of the complaint shall have the right to call and cross-examine witnesses under oath. The hearing shall be provided by the President, and shall be conducted by an impartial board or hearing officer who shall promptly submit a proposed decision including findings of fact, conclusions, and recommendations for action to the President.

(h) *Decision by the President.* The President shall review the entire file on the complaint, including the record of the hearing if a hearing was held, and shall promptly:

- (1) Remand to the hearing board or officer for further action; or
- (2) Make a decision on the complaint; or
- (3) Otherwise dispose of the complaint.

The President shall notify the complainant of his decision or disposition and of his right to request in writing a review by the Secretary and the time limit in which such request for review must be made.

#### § 18.6 Review and decision.

(a) *Review.* The complainant may request a review of his complaint by the Secretary:

- (1) Within 30 days of notification of disposition of his complaint by the President;
- (2) Within 30 days of notification of refusal by the President to accept his complaint; or
- (3) Upon failure of the President to act on the complaint in accordance with the program.

The Secretary may extend the prescribed time limit for good cause.

Any request shall be in writing. The President upon request by the Secretary, shall furnish to the Secretary the complete file, including the transcript of any hearing together with whatever other information the Secretary requests. The Secretary may request supplemental information from the President, order further investigation by the Office of the

Inspector General, U.S. Department of Agriculture, remand the complaint to the President for further action, and if circumstances warrant, hold a hearing under such procedure and on such issues as he determines appropriate to obtain information which would assist him in making a decision as provided under § 18.6(b).

(b) *Decision.* After the Secretary completes his review of the President's disposition of the complaint, he shall make a decision as to whether the President's decision or disposition of the complaint is proper. The decision of the Secretary shall be in writing and shall be sent to the President for appropriate action. A copy of the decision shall also be furnished to the complainant.

#### § 18.7 Reports.

Within 6 months of the program going into effect and thereafter at least annually, the President shall submit a summary report to the Secretary on implementation and operation of the program. The Secretary may request additional reports as he deems advisable.

#### § 18.8 Noncompliance.

A university conducting a Cooperative Extension Service will be in violation of this part:

- (a) If the President fails to file a program in which the Secretary concurs under § 18.3, or fails to file an appropriate amendment in accordance with § 18.3 (d);
- (b) If after concurrence in the President's program the Secretary finds that a university has failed to administer such program according to its terms;
- (c) If the university or the President does not take appropriate action on the decision under § 18.6(b) which is satisfactory to the Secretary; or
- (d) If the Secretary finds that any officer of the university has intimidated, coerced, or improperly pressured a complainant, employee, representative, or witness exercising the rights given him by this part or any program adopted pursuant thereto, and that corrective action has not been taken.

#### § 18.9 Sanctions.

(a) When the Secretary finds that any noncompliance with this part has occurred, he may initiate action to refuse to authorize payment of funds for the Cooperative Extension Service, or take other appropriate action provided by law.

(b) The remedies available to the Secretary under this part, and remedies made available to any person under a program adopted pursuant to this part do not exclude any others which may be available under law.

*Effective date.* These regulations shall be effective 30 days after publication in the *FEDERAL REGISTER*.

Done at Washington, D.C., this 23d day of August, 1968.

ORVILLE L. FREEMAN,  
Secretary of Agriculture.

[P.R. Doc. 68-10439; Filed, Aug. 23, 1968; 8:48 a.m.]

## RULES AND REGULATIONS

### Title 7—Agriculture

#### SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

#### PART 18—EQUAL EMPLOYMENT OPPOR- TUNITY IN THE STATE COOPERATIVE EXTENSION SERVICES

##### Coverage Provisions

Part 18 is amended to withdraw coverage as it applied to employees provided by county and other political subdivisions in support of Cooperative Extension Service programs and to eliminate review by the Secretary of Agriculture of final decisions by the President or chief executive of land-grant universities under this part.

Section 18.2(c) is revised to read as follows:

##### § 18.2 Purpose, applicability and coverage.

(c) *Coverage.*—This part applies to all positions in all units of the Cooperative Extension Service but does not apply to employees provided by county and other political subdivisions in support of Cooperative Extension Service programs.

##### § 18.5 [Amended]

1. In § 18.5(f) the words "or the Secretary" are deleted.

2. In § 18.5(h) the following words are deleted from the final sentence "and of his right to request in writing a review by the Secretary and the time limit in which such request for review must be made".

##### § 18.6 [Revoked]

Section 18.6 is revoked.

##### § 18.8 [Amended]

1. Section 18.8(c) is deleted.

2. Section 18.8(d) is redesignated § 18.8(c).

Dated May 24, 1973.

EARL L. BUTZ,  
Secretary.

[FR Doc.73-10731 Filed 5-29-73; 8:45 am]



# 7

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

September 23, 1969

SECRETARY'S MEMORANDUM NO. 1662

USDA Policy on Civil Rights

It is imperative that we renew and strengthen our efforts to insure equal access and opportunity in all aspects of our programs without regard to race, color, or national origin to the full extent of the law.

In the day-to-day carrying out of these responsibilities, the Assistant Secretary for Administration, under my direction, is assigned staff responsibility, working with my Special Assistant for Civil Rights, for the general direction, coordination, and implementation of all aspects of the Civil Rights program at the Department level.

Each program Assistant Secretary and Director, together with his respective line administrators, is assigned line responsibility for developing and implementing a comprehensive civil rights program to insure that the intent of the law and President Nixon's equal opportunity policy is effectively carried out in all our programs and activities.

I am, therefore, asking each program Assistant Secretary and Director, together with his agency heads, to take the following steps after appropriate consultation.

Training

To assist in fulfilling the intent of the law and in carrying out the President's policy, it is important that my staff, agency heads, and supervisory officers of the Department at all levels be given appropriate training in this important area.

The Director of Personnel will be responsible for developing adequate and appropriate training in the civil rights area for my staff, the agency heads, and their deputies.

Each agency head, after consultation with the Director of Personnel, will be responsible for developing and conducting training courses in this area for his division heads and regional, State, and major field office heads.



All of the training at this level of management is to be completed by June 30, 1970.

At the close of Fiscal Year 1970, a report will be submitted by each agency head through the Director of Personnel to the Assistant Secretary for Administration, indicating that this training for top management has been completed, together with a proposed program of civil rights training, to reach all other personnel during Fiscal Year 1971.

This report will be submitted no later than July 15, 1970.

#### Evaluation

It is crucial that we develop a system for establishing base data and for measuring progress from that base in all our important and sensitive program areas to the end that we will know the quantity and quality of our services being delivered to minority groups.

Again, this effort will be the responsibility of the program Assistant Secretaries and Directors and the responsible agency head after adequate consultation with appropriate representatives of my staff so as to insure the highest degree of adequacy, consistency and uniformity possible in the data developed.

The Assistant Secretary for Administration will report to me on September 30, 1969, and each quarter thereafter on the work planned, underway, and accomplished in this area.

#### Compliance

All employees of this Department are charged by law and regulation to conduct official business in such a manner that the Department does not directly or by implication:

- (1) Support, encourage, or condone the practice of segregation or other forms of discrimination.
- (2) Conduct programs in ways that permit economic barriers or social inhibitions to limit participation; or
- (3) Provide separate services for reasons of race, color, or national origin.

To assure this, I ask that you:

(1) Correct programs in which practices bar integration and thus allow or lead to participation only on a segregated basis. Each agency will review the activities of all offices for the existence of any practices that are or might lead to segregation and take immediate action for their elimination. Complete elimination of segregation and discrimination with regard to meetings, office space, and related facilities must be achieved now.

(2) Correct programs that have been conducted in ways that permit economic barriers or social inhibitions to limit participation of certain racial, color, or nationality groups, even though such programs are announced as available to all persons. Each agency head shall review every program of his agency to (a) identify those programs in which participation by members of minority groups is restricted because of economic barriers or social inhibitions; (b) develop and implement plans for changing existing programs or for creating new programs to remove or overcome these barriers and inhibitions.

(3) Correct programs in which service to specific racial, color, or nationality groups is inferior because of the failure of Department employees or cooperators to work across racial lines regardless of their own race, color, or nationality. Each agency head will immediately review the activities of all personnel to determine whether or not there are conditions preventing any employee from fully carrying out his assignment because of his own race, color, or nationality. Where these conditions exist the agency head will be responsible for: (a) identifying specific personnel and the circumstances involved, and (b) taking action to develop plans to overcome the conditions. The individual concerned must participate in identifying the barriers and in developing the plan of action to overcome them. The extent of this participation should be reported.

Each agency head will assign necessary staff to accomplish these reviews, and the agency head will submit a report to me through my Special Assistant for Civil Rights and the Assistant Secretary for Administration not later than March 31, 1970, stating that the three steps outlined above have been accomplished in his agency.

Similar reports will be submitted thereafter on June 30 and December 30 - showing that these standards are continuing to be met and if not, why.

### Employment

It is the policy of this Department to provide equal opportunity for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

Special efforts must be made to assure that job opportunities in the Department are made known to men and women of all races, religions, and ethnic backgrounds.

Equal employment opportunity must become an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of employees of the Department.

Provide for the prompt, fair, and impartial consideration of all complaints of discrimination on the basis of race, color, religion, sex, or national origin. Agencies shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include an impartial review within the agency and shall provide for appeal to the Civil Service Commission.

### Audits

The Inspector General will continue concerted efforts in the audit of significant program activities that have civil rights implications involving the various agencies. Audit efforts will encompass an evaluation of equal opportunity in both employment and program activities. Follow-up audits will verify the adequacy of corrective action directed by appropriate line officials.

### Investigations

The Inspector General will investigate complaints or other information which warrant such action.

Law

Each agency head will use the appropriate legal resources of this Department whenever necessary to reach the goals as outlined in this policy.

Organization

Each agency head will organize to accomplish the objectives outlined above most effectively, and review the current Civil Rights procedures for his agency to insure conformance with this policy. In any case, however, each administrator will assume personal responsibility to insure that the intent of the law and the President's policy are carried out.

The following Secretary's Memorandums are hereby superseded:

Memorandum of May 3, 1961 signed by J. M. R.

"Federal Participation in Segregated Meetings" of  
June 23, 1964.

Secretary's Memorandum No. 1560 of July 10, 1964.

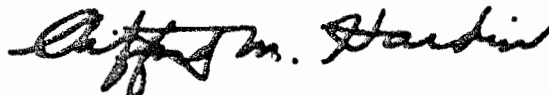
Secretary's Memorandum No. 1572 of April 22, 1965.

"Use of Racial Data" of May 18, 1965.

Secretary's Memorandum No. 1560, Supplement 4 of  
January 17, 1966.

"Federal Participation in Segregated Meetings" of  
September 28, 1967.

Secretary's Memorandum No. 1574, Revised of  
February 8, 1968.



Secretary of Agriculture

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

June 28, 1971

SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 3

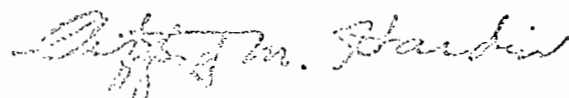
USDA Policy on Civil Rights

My Memorandum No. 1662, September 23, 1969, asked that each Agency Head, after consultation with the Director of Personnel, develop and conduct training courses in civil rights for division heads and regional, State, and major field office heads. Training for top management was to have been completed at the close of FY 1970. Training for all other supervisory personnel was to be completed by June 30, 1971.

The Department's training effort in civil rights has been beneficial in increasing awareness by supervisors of minority group problems and in improving the delivery of benefits and services of the Department of Agriculture without regard to race, color, religion, or national origin. The U.S. Commission on Civil Rights recently noted the Department's civil rights training programs as an example of those Federal Agencies which were "making good faith efforts to improve aspects of their civil rights performance."

The Department of Agriculture must continue in this effort. I urge each Agency Head to be mindful of his responsibility to continue to promote the civil rights objectives outlined in my Memorandum No. 1662. Civil rights training will be continued. Those supervisors who did not receive this training, either because they were absent when such training was offered or because they became employees after formal training ended, must be trained. It is important that civil rights training be made a part of on-going Agency training programs, particularly those involving managerial or executive development.

Each Agency shall develop a plan of action for continuing civil rights training. The report on civil rights training due on July 15, 1971, as requested by Personnel Bulletin 713-21, December 10, 1970, should include your action plan.



Secretary of Agriculture

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

July 27, 1973

SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 3, REVISED

USDA Civil Rights Training Course


Secretary's Memorandum No. 1662 provides for civil rights training for Agency Heads and supervisory officers of the Department at all levels. Agencies, in accordance with this memo, have developed and conducted civil rights training programs. However, an audit of the Agency courses indicated that training varied greatly in quality, quantity, and methodology. For this reason, it was decided that the Department should develop and implement a standard civil rights training program.

A task force of Agency Training Officers was formed to identify the curriculum for this training program. Based on the subject matter content, as recommended by the task force, the Office of Personnel designed and developed the USDA Civil Rights Training Course.

Agencies are instructed to begin utilizing the USDA Civil Rights Training Course as their primary source for civil rights training. All Agency courses will be supplemental courses and will be considered as "in addition" to the Department course. Also, Agencies are instructed to implement the training course as designed and without modification. The Department course contains built-in options which allow for differences in Agency functions and geographical locations.

As a minimum, beginning with this date, all USDA executives, managers, and supervisors, at all grade levels, who have not previously received civil rights training will attend this course. In addition, those employees, who have received civil rights training through Agency resources and have not received training in the required subject matter areas contained in the Department program will be required to receive such training.

I have instructed the Director of Personnel to report to me on the progress of Agency efforts in carrying out this training program.

  
Secretary of Agriculture

#8

DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

February 6, 1976

SECRETARY'S MEMORANDUM NO. 1894

Establishment of Employment Goals and Potential  
Recipients of Extension Programs

PURPOSE

In November 1974 a Task Force was appointed by the Secretary of Agriculture in consultation with the Chairman of the Extension Committee on Organization and Policy (ECOP) of the National Association of State Universities and Land-Grant Colleges. The Task Force was comprised of USDA officials and State Extension Directors. At the Secretary's direction, the Task Force examined civil rights compliance problems in the State Extension Services, and made its report to the Secretary on September 30, 1975. This Memorandum serves to acknowledge and accept all Task Force recommendations and shall serve as the authority for their full implementation.

The USDA-ECOP Task Force urged the adoption of employment goals based on minority labor force availability; and the identification of eligible program participants based upon State Cooperative Extension Services' program missions consistent with enabling legislation, funding requirements, and applicable Departmental missions. The recommendations of the Task Force are being accepted to provide additional means of effectively administering and implementing civil rights requirements.

The changes recommended, which are implemented in this Memorandum, will expedite closer coordination between Departmental agencies having delegated authorities for civil rights and representatives of Land-Grant Colleges and State Cooperative Extension Services, will have a long-term beneficial effect upon the implementation of civil rights laws, and will hopefully lead to greater minority participation in both Extension programs and employment.

## PROCEDURE

1. Goals for employment of minorities shall be established by each State Cooperative Extension Service for each major category of staff through the following process:

### A. Clerical, Support, and Paraprofessional Staffs

The percentage distribution of racial minorities between ages 18 and 64 in the normal commuting area surrounding each employing office shall be applied to the number of positions in such office. The employing office's employment goal shall equal any disparity between such sum and the number of minorities currently employed.

Recruitment shall be from the same areas.

### B. County and Area Professional Staffs

Employment goals for professional positions shall be determined separately for metropolitan and non-metropolitan positions on a statewide basis. The percentage distribution of minorities between ages 21 and 64 in each category shall be applied to the number of positions in each category. A state employment goal for metropolitan and nonmetropolitan positions shall equal any disparity between the total of such sums and the number of minorities currently employed.

### C. Statewide Professional Positions

The aggregation of percentage distribution of minorities, by race, as represented in the goals for county and area professional staffs, in item B above, applied to the number of professional State level positions shall be used to determine the employment goal for such positions.

The sum of the numbers obtained separately for items B and C above represents the employment goal for professional positions throughout the State Extension System.



Recruitment shall as a minimum be in the employing State and contiguous States for county and area professional staffs and nationally for State professional staffs.

The Extension Service shall issue general guidelines for determining employment pools as set forth in Appendix C to the Task Force report and criteria for determining compliance in meeting employment goals and in equal employment opportunity as set forth in Appendix D.

2. Eligible participants in programs offered by each State Cooperative Extension Service shall be identified in accordance with its program missions consistent with the Smith-Lever Act, the Memorandum of Understanding, and funding requirements. All special designations of eligible participants to be served shall be accomplished without regard to race, color, or national origin and in keeping with Secretary's Memorandum No. 1662, as amended.

The Extension Service shall issue general guidelines to be followed by State Cooperative Extension Services in the identification of eligible program participants. It is recognized affirmative action may be needed to ensure eligible minorities are advised of and given opportunity to participate in available programs.

3. Teaching methods used by State Cooperative Extension Services in conducting educational programs are selected according to subject matter content, knowledge of participants including minorities, and the ability of staff to use them. The selection of teaching methods shall be accomplished without regard to race, color, or national origin.

In evaluating State Extension Services' compliance with Title VI, the United States Department of Agriculture will review and consider all outreach methods utilized by Extension in conducting its educational programs, including efforts made to inform members of minority communities of educational opportunities.

4. In order to promote and strengthen the cooperative relationships between State Cooperative Extension Services and this Department, periodic conferences shall be held to achieve greater understanding of and improvements in the overall administration of civil rights matters. Additionally, subsequent to completion and submission of audit reports, and prior to Departmental adoption or implementation of any analyses based thereon, the State Extension Directors concerned will be given the opportunity to discuss such analyses and evaluation with the United States Department of Agriculture officials responsible therefor.

5. In order to provide overall leadership for this Memorandum, the Extension Service shall coordinate supporting efforts with the Office of the General Counsel, the Office of Audit, and the Office of Equal Opportunity in the implementation of this Memorandum.

*Earl S. Butz*  
Secretary of Agriculture

JSDA'S  
OFFICE OF  
EQUAL  
OPPORTUNITY



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### **Purpose**

The Office of Equal Opportunity, U.S. Department of Agriculture (USDA) wants to inform recipients of and applicants for Federal assistance administered by the agencies of USDA, and Federal contractors about civil rights compliance responsibilities.



## INTRODUCTION

The Office of Equal Opportunity (OEO) provides assistance in the development and enforcement of equal opportunity responsibilities established by the Civil Rights Act of 1964 and Executive orders. This office provides assistance and guidance in eliminating discrimination in USDA programs and in employment practices of Federal contractors. OEO accomplishes this through evaluations and onsite reviews of agency programs and contractors to determine compliance with the civil rights laws, executive orders, and USDA's rules and regulations.

The Office of Equal Opportunity is divided into four divisions:

- Compliance and Enforcement Division
- Contract Compliance Division
- Program Planning and Evaluation Division
- Rural Minority Business Assistance Division

### Compliance and Enforcement Division

The purpose of the Compliance and Enforcement Division is to assure that there is equal opportunity for all citizens participating in Title VI federally assisted and direct assistance programs operated by the U.S. Department of Agriculture. Equal opportunity is guaranteed by the Constitution of the United States and civil rights legislation.

The Compliance and Enforcement Division reviews civil rights compliance activities for over 40 Title VI assistance programs among 12 USDA agencies. The agencies have primary responsibility to achieve civil rights compliance in their programs.

The division's major responsibilities are:

- Conducting selected compliance reviews of USDA programs.
- Evaluating agencies' compliance with civil rights rules, regulations, policies, and procedures.
- Assisting agencies in developing and revising compliance review procedures.
- Providing research data and other assistance to the Office of the General

Counsel (OGC) and the Department of Justice for enforcement action in cases where voluntary compliance cannot be achieved.  
Handling and resolving complaints of discrimination.

Title VI of the Civil Rights Act of 1964 clearly provides for the right of all persons to participate in, and receive the benefits of, any federally assisted program or activity without discrimination based on race, color, or national origin.

## PROHIBITED DISCRIMINATORY PRACTICES INCLUDE:

- Any difference in quality, quantity, or the manner in which the benefit is provided.
- Segregation or separate treatment in any part of the program.
- Restriction in the enjoyment of any advantages, privileges, or other benefits provided to others.
- Different standards or requirements for participation.
- Discrimination in any activity or program conducted in a facility built in whole or in part with Federal funds.
- Restriction in the method and/or means used to advise persons of benefits and services provided to others.

Title VI applies to many programs that affect the lives of millions of Americans. Some of the programs are the Food Stamp Program, the School Lunch Program, Rural Housing Program, Rural Electrification Program, and many farm programs.

The programs are carried out by the following USDA agencies:

- Agricultural Marketing Service (AMS)
- Animal and Plant Health Inspection Service (APHIS)
- Agricultural Research Service (ARS)
- Agricultural Stabilization and Conservation Service (ASCS)
- Cooperative State Research Service (CSRS)
- Extension Service (ES)

Farmers Home Administration (FmHA)  
Food and Nutrition Service (FNS)  
Forest Service (FS)  
Rural Electrification Administration (REA)  
Soil Conservation Service (SCS)

#### **PUBLIC NOTIFICATION**

The Office of Equal Opportunity monitors public notification guidelines to assure that all USDA agencies are in compliance with the Civil Rights Act of 1964 and the Departmental rules and regulations. These guidelines require agencies to:

- Advise all eligible people, particularly minority and underprivileged, of all USDA program benefits.
- Prominently display the nondiscrimination poster, "And Justice for All," which states that discrimination in any USDA program is prohibited.
- Include, as appropriate, a nondiscrimination statement on all informational material that is released to the public.
- The statement should indicate that standards for participation are the same for everyone without regard to race, color, or national origin.

#### **INDIAN DESK**

The Office of Equal Opportunity is responsible for coordinating all USDA activities involving assistance to American Indians. Also, OEO is responsible for informing American Indians about USDA program benefits. A Special Task Force for American Indians Affairs has been established to help the Indians obtain USDA assistance. Surveys of Indian communities are conducted for the purpose of studying the needs of the Indians and assistance available from USDA agencies.

#### **REQUIREMENTS OF RECIPIENTS**

Recipients of Federal financial assistance are required by regulations to submit written assurances that they will comply with the law and the regulations the Department has issued.

Some of USDA recipients are schools, colleges, universities, day-care centers,

corporations, cooperatives, community organizations, and various state and local agencies.

If recipients violate the written assurances by not complying with Title VI rules and regulations, Federal assistance may be cut off. Before funds are terminated every effort is made to achieve compliance by voluntary means.

#### **CONTRACT COMPLIANCE DIVISION**

The Contract Compliance Division, Office of Equal Opportunity, USDA, is responsible for ensuring that equality of opportunity is a reality at Government contractor establishments within the industries under its jurisdiction.

Business establishments which hold contracts or subcontracts awarded by agencies of the Federal Government are subject to Executive Order 11246, as amended by Executive Order 11375. The Executive orders, which have the force of law, obligate Government contractors to avoid employment discrimination based on race, color, religion, sex, or national origin.

Such contractors are also required to take affirmative action to ensure that applicants are employed and that employees are treated without regard to race, color, religion, sex, or national origin.

A basic premise of the Contract Compliance Program under Executive Order 11246, as amended, is that it is the responsibility of the Government to determine under what conditions it will do business with private parties for the procurement of goods and services. That the procurement procedure may be used to further important national social policies, such as equal employment opportunity, has long been fundamental to the Government.

USDA has contract compliance responsibility for Government supply contractors in the following industries:

Commercial and noncommercial farming-  
Food and kindred products  
Tobacco manufacturing  
Wholesale groceries and related products  
Wholesale farm product raw materials  
Wholesale miscellaneous nondurable  
goods  
Retail nurseries, lawn and garden supply  
stores  
Retail food stores  
Regulation of agricultural marketing

The total estimated number of contractor establishments in these industries is over 21,200. They range in size from small family-owned businesses to corporate giants employing 15,000 people in a single plant.

In addition to the supply contractors, the Contract Compliance Division has a major responsibility for the compliance activities of construction contractors performing work financed in whole or in part by USDA. The Department has more than 2,200 separate construction contracts worth some 400 million dollars.

The Contract Compliance Division is also the compliance agency for the nearly 2,000 rural electric and telephone systems financed by loans from the Rural Electrification Administration.

In order to carry out its mission, the Contract Compliance Division maintains an extensive ongoing field program of onsite compliance reviews at Government contractor establishments throughout the country. An onsite contract compliance review consists of a comprehensive examination and analysis of employment policies, practices, and procedures to make certain that contractors meet the requirements of the equal employment opportunity clause in their Government contracts.

Beside maintaining its ongoing field review program, the Division has among its responsibilities:

Receiving discrimination complaints and conducting compliance reviews based on such complaints.

Conducting preaward compliance reviews upon request of other Federal agencies when a contract award may exceed 1 million dollars.

Maintaining liaison with the Office of Federal Contract Compliance, Equal Opportunity Commission, other agencies, and public and private organizations with an interest in equal employment matters.

Providing Government contractors with technical assistance in the development of affirmative action programs and other compliance matters.

#### **PROGRAM PLANNING AND EVALUATION DIVISION**

The Program Planning and Evaluation Division examines problems that stand in the way of equal opportunity in USDA programs and develops ways of overcoming those problems. It also assists the agencies of USDA to set up reporting systems to obtain information about how well minority group persons are participating in USDA programs. Finally, it evaluates this information and reports it to the agencies so that they can make improvements in their programs.

In program planning, the Division develops better ways of dealing with equal opportunity problems in agriculture programs and presents them to the agencies. For example, the Division has recently proposed civil rights impact assessments in overall agency decisionmaking procedures, establishing an equal housing opportunity program, increasing participation by minorities and women in USDA committees, and prohibiting sex discrimination in USDA programs.

In program evaluation, the Division helps USDA agencies to set up the kind of information gathering system about their programs that will show how minority group participation in USDA programs compares

with eligibility for participation and with participation by other groups. It also assists the agencies to establish targets for increasing minority group participation where improvement is needed.

Throughout the year the Division receives statistical information about minority group participation in USDA programs. It prepares reports evaluating this participation for the agencies administering the programs. Each year, an annual report which combines this information is prepared for use in the Department.

#### **RURAL MINORITY BUSINESS ASSISTANCE DIVISION**

This unit was established to perform a liaison and advocate role for all Departmental activities involving procurement, grant, and loan assistance to minority business enterprises. These activities are reviewed by the Rural Minority Business Assistance Division to insure that the participation of minority business is increased to the maximum extent possible. Specifically, the functions of the Division are:

To act as the USDA liaison with the Office of Minority Business Enterprise and the Small Business Administration on matters relating to the Minority Business Enterprise Program.

To encourage and work with USDA agencies to identify and offer requirements to qualified business concerns under Section 8(a) of the Small Business Act and the provisions of Federal and Departmental procurement regulations.

To monitor Departmental activities which relate to contracts, grants, and similar funding activities to the extent that they impact on rural minority enterprises.

Any disadvantaged firm wishing to do business with the Department of Agriculture should contact the Rural Minority Business Assistance Division, Office of Equal Opportunity, Washington, D.C. 20250.

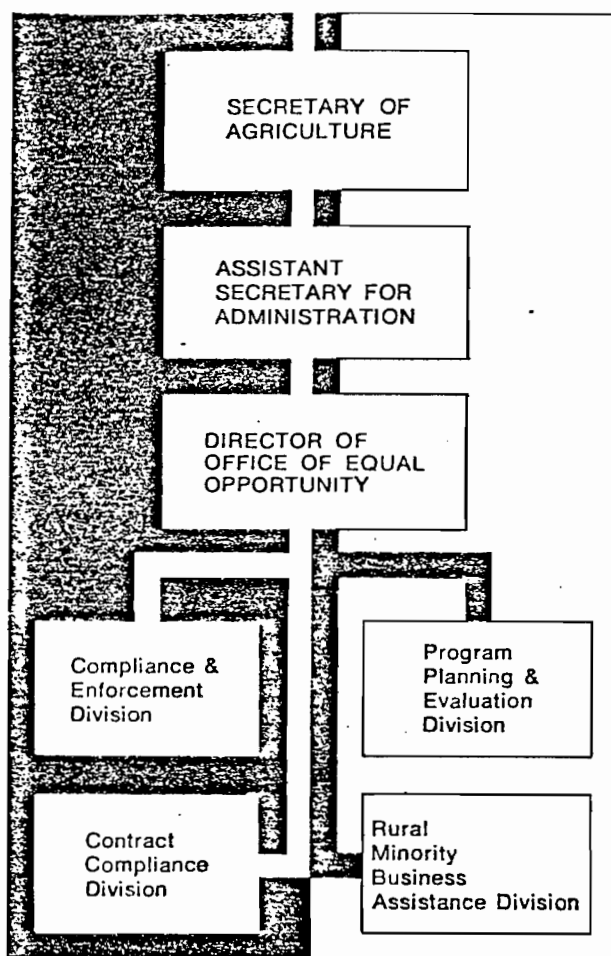
## **U.S. DEPARTMENT OF AGRICULTURE OFFICE OF EQUAL OPPORTUNITY**

The Secretary of Agriculture directs all programs and activities of the Department.

The Assistant Secretary for Administration serves as principal adviser to the Secretary on all civil rights matters, and is the chief officer of the Department on such matters.

The Director of the Office of Equal Opportunity reports directly to the Secretary on major policy issues. In matters not involving major policy issues, the Director reports to the Assistant Secretary for Administration.

Four divisions serve the Director of the Office of Equal Opportunity.





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... AND JUSTICE FOR ALL

U.S. Department of Agriculture policy  
does not permit discrimination  
because of race, color, national origin,  
sex or religion.

Any person who believes that he or  
she has been discriminated against in  
any USDA-related activity should  
write immediately to the Secretary of  
Agriculture, Washington, D.C. 20250

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DECEMBER 1975

**TITLE  
9**

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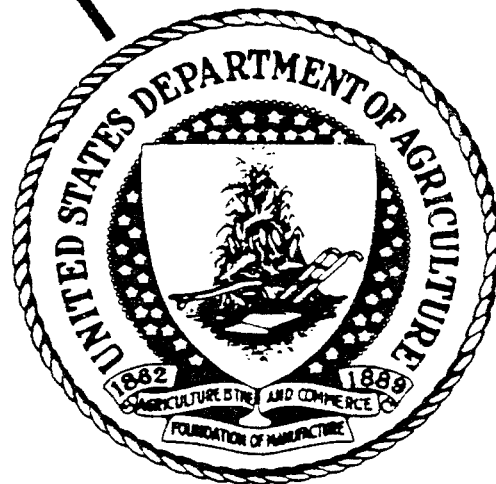
UNITED STATES  
DEPARTMENT OF AGRICULTURE

**EQUAL OPPORTUNITY**

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ADMINISTRATIVE REGULATIONS

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UNITED STATES DEPARTMENT OF AGRICULTURE  
WASHINGTON  
**ADMINISTRATIVE REGULATIONS**

November 18, 1976 **TITLE** 9

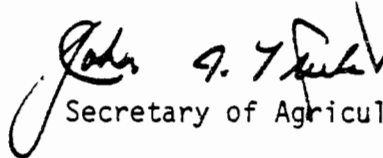
**SUBJECT:** New Title 9 - Equal Opportunity

CHAPTER 1 - AUTHORITIES, RESPONSIBILITIES  
AND ORGANIZATION

CHAPTER 2 - CIVIL RIGHTS POLICY IN USDA  
PROGRAMS AND ACTIVITIES

CHAPTER 3 - USDA POLICY ON ASSISTANCE TO  
MINORITY BUSINESS ENTERPRISE

These regulations provide a functional statement and operational procedures for the Office of Equal Opportunity. They are a general statement of function and procedure previously contained in various Secretary's Memoranda going back to 1966.

  
Secretary of Agriculture

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i			11-18-76
1-16			11-18-76

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## TITLE 9 - OFFICE OF EQUAL OPPORTUNITY

CHAPTER 1 - AUTHORITIES, RESPONSIBILITIES AND  
ORGANIZATION

## SECTION 1 - AUTHORITIES AND RESPONSIBILITIES

1. ESTABLISHMENT. The Office of Equal Opportunity was established by Secretary's Memorandum 1756 (November 16, 1971).

2. AUTHORITY. The Office of Equal Opportunity is a staff arm of the Secretary reporting to the Assistant Secretary for Administration. Authority delegated to the Director, Office of Equal Opportunity, is contained in 7 CFR 2.80. The Director, Office of Equal Opportunity, has authority to develop and administer on behalf of the Assistant Secretary for Administration a comprehensive program to assure equal opportunity for all persons in all aspects of USDA programs without regard to race, color, national origin, sex or religion to the full extent of the law except those functions involving Federal equal employment opportunity for Department employees which are delegated to the Director, Office of Personnel.

3. RESPONSIBILITY. The Director, Office of Equal Opportunity:

A. Is designated as the Department's (1) Deputy Contract Compliance Officer; (2) Indian Desk Coordinator; and (3) Equal Housing Opportunity Officer.

B. Administers, in the name of the Assistant Secretary for Administration, who is the Department's Contract Compliance Officer, the Department's contract compliance program. This includes the formulation, in consultation with the Office of Operations, for issuance by the Assistant Secretary for Administration, of Department contract compliance policy, standards, rules and regulations pursuant to Executive Order 11246, Executive Order 11375, and Department of Labor rules and regulations.

C. Convenes informal hearings pursuant to 41 CFR 60-1.26(a) for the purpose of inquiring into the status of compliance of Federal contractors or subcontractors for which contract compliance review responsibility has been assigned to the Department of Agriculture by the Department of Labor under Executive Order 11246.

- D. Arranges for the appointment of administrative law judges to preside at informal hearings pursuant to 41 CFR 60-1.26(a)(3).
- E. Convenes formal hearings pursuant to 41 CFR 60-1.26(b).
- F. Arranges for the appointment of administrative law judges to preside at formal hearings pursuant to 41 CFR 60-1.26(b).
- G. Issues notice of proposed cancellation or termination of contracts or subcontracts, in whole or in part, pursuant to 41 CFR 60-1.26(b)(2)(i).
- H. Issues notice of proposed ineligibility for further contracts or subcontracts pursuant to 41 CFR 60-1.26(b)(2)(ii).
- I. Issues orders of suspension during pendency of hearing pursuant to 41 CFR 60-1.26(b)(2)(iv).
- J. Imposes sanctions without a hearing pursuant to 41 CFR 60-1.26(b)(2)(v) and makes the Department's decision pursuant to 41 CFR 60-1.26(b)(2)(vi).
- K. Orders proceedings and hearings in the Department of Agriculture pursuant to 7 CFR 15.9(e) and 15.68 consolidated for hearing with proceedings of other Federal departments and agencies.
- L. Makes determinations required by 7 CFR 15.8(d) that compliance cannot be secured by voluntary means.
- M. Issues orders to give a notice of hearing or opportunity to request a hearing pursuant to 7 CFR 15; arranges for the designation of an administrative law judge to preside over any such hearing; and determines whether the administrative law judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his recommended findings and proposed decision.
- N. Authorizes the taking of action pursuant to 7 CFR 15.8(a) relating to compliance by "other means authorized by law."
- O. Takes action pursuant to 7 CFR 5.8(d) relating to compliance by "other means authorized by law."

P. Sets standards for agency compliance review procedures, including approval of proposed procedures and review guidelines.

Q. Sets standards for agency public notification and outreach procedures and methods as these pertain to equal opportunity.

R. Sets procedures for handling complaints alleging discrimination in USDA programs and activities, except Federal employment, and approves corrective action.

S. Coordinates Department activities involving assistance to American Indians.

T. Establishes standards for agency statistical reporting and evaluation activities measuring minority program participation.

U. Establishes standards for agency performance targets regarding minority program participation.

V. Administers the Department's minority business assistance program pursuant to Executive Order 11625, regulations issued by the General Services Administration and Departmental regulations.

W. Sets procedures for convening the Secretary's Citizens Advisory Committee on Civil Rights. This includes establishing rules and procedures for Committee activities, and the preparation of final reports.

# CHAPTER 1 - AUTHORITIES, RESPONSIBILITIES AND ORGANIZATION

## SECTION 2 - ORGANIZATION

10. PURPOSE. This section sets forth the organization of the Office of Equal Opportunity (OEO) and the functions of its staff units.

11. ORGANIZATION. The central and only office of OEO is located at Washington, D.C., and consists of the following staff units:

A. OFFICE OF THE DIRECTOR. Provides leadership and coordination for the Department's program of equal opportunity, contract compliance, civil rights, minority business assistance, and the Indian Desk.

1. COMPLIANCE AND ENFORCEMENT DIVISION. Coordinates civil rights compliance activities for USDA programs. Evaluates agency compliance operations to determine if the applicable laws, policies, rules and regulations of the Federal Government and the Department are being fully implemented. Conducts civil rights compliance reviews. Assists agencies to develop and implement compliance procedures. Processes complaints alleging program discrimination.

2. CONTRACT COMPLIANCE DIVISION. Conducts contract compliance activity at establishments within the Standard Industrial Classifications designated by the Office of Federal Contract Compliance Programs, U.S. Department of Labor, and assigned to USDA, to ensure that Federal contractors afford equal employment opportunities to their employees and applicants for employment. Also conducts contract compliance activity for USDA-financed or assisted construction projects and for REA-financed or assisted electric and telephone borrowers.

3. PROGRAM PLANNING AND EVALUATION DIVISION. Coordinates and evaluates statistical reporting systems in the Department that measure the extent to which USDA program services are being delivered on an equal basis. Coordinates Department efforts to establish performance targets for minority program participation. Conducts research on ways to eliminate discriminatory treatment in the operation of USDA programs. Develops and recommends basic policies and program approaches for implementing the Department's responsibilities in equal opportunity.



4. MINORITY BUSINESS AND INDIAN AFFAIRS DIVISION. Performs a liaison and advocate role for all Departmental activities involving procurement, minority-owned bank deposits, and grant and loan assistance to minority business enterprises. Develops policy, coordinates and reviews these activities to insure that the participation of minority business is increased to the maximum extent possible. Accomplishes the functions of the Indian Desk to coordinate all aspects of Department activities involving assistance to American Indians.

B. DEPUTY DIRECTOR. The Deputy Director is delegated authority to perform all duties and exercise all functions and powers vested in the Director. The Deputy Director is authorized to act for the Director whenever the Director is absent or temporarily unavailable.

CHAPTER 2 - CIVIL RIGHTS POLICY IN USDA  
PROGRAMS AND ACTIVITIES

SECTION 1 - AGENCY RESPONSIBILITIES

20. GENERAL. The policy of the Department of Agriculture is to insure equal opportunity in all aspects of its programs and services without regard to race, color, national origin, sex or religion to the full extent of the law. In the day-to-day carrying out of this policy, the Director, Office of Equal Opportunity, operating under the general supervision of the Assistant Secretary for Administration, is assigned staff responsibility for the development, implementation and coordination of all aspects of the Department's civil rights program, except those functions involving Federal equal employment opportunity for Department employees which are delegated to the Director, Office of Personnel.

Each program Assistant Secretary and Director, together with his respective line administrators, is assigned line responsibility for implementing a comprehensive civil rights program to insure that the intent of the law and that the Department's rules and regulations are effectively carried out in all programs and activities.

21. EVALUATION. Each Agency administering benefit programs subject to the USDA nondiscrimination policy in 7 CFR 15 is responsible for collecting and evaluating program participation data and for setting targets for the delivery of program benefits to minorities.

A. PROGRAM PARTICIPATION DATA. Each Agency that administers programs subject to 7 CFR 15, Subparts A or B, will develop a system for establishing base data that identifies eligible populations and measures delivery of program benefits in order that the quantity and quality of benefits and services delivered to minority individuals can be documented and compared to benefits delivered to nonminority individuals. In developing these systems each Agency should consult in advance with the Program Planning and Evaluation Division, Office of Equal Opportunity, in order to insure the highest possible degree of adequacy, consistency and uniformity in the data developed.

Minority group participation data should be evaluated within each Agency by program managers to assess Agency progress toward civil rights objectives.

1. PROCEDURE. Under the direction of the Assistant Secretaries and Directors, and with the counsel of the Program Planning and Evaluation Division, Office of Equal Opportunity, agencies will:

a. Establish measures of the numbers of minority groups in the population eligible to participate in each program, using the best available data. These measures may be derived from standard statistical sources such as the Censuses of Agriculture, Population and Housing, and Agency records.

b. Establish and maintain a system for collecting and reporting data on minority participation in USDA programs. The system should obtain racial data on all significant aspects of program participation including participation on local committees of persons intended to ultimately benefit from USDA-assisted programs and services. Data should be based on reviewable records. The system should provide for identification of White, Negro or Black, American Indian, Spanish surname, Oriental or Other. Data should be maintained under safeguards that will prevent any misuse for discriminatory purposes. Such safeguards include restricting access to records to authorized personnel, coding racial identification of office records, and using only aggregated data in reports to the public. The system should be designed to obtain data for all counties in which the program operates, though county data may be retained in the Federal agency office for reference as needed.

c. Review each program within the reporting year to evaluate minority group participation and the extent of conformance to equal opportunity objectives and measurable targets (see B. below). It is recognized that the programs of some agencies are less susceptible than others to statistical measurement of minority program participation. All agencies are expected to exercise ingenuity in developing effective statistical measures of minority participation in agency programs.

d. Submit annually to the Program Planning and Evaluation Division, Office of Equal Opportunity, data reflecting participation in programs compared to those eligible to participate along with the agency's evaluation.

The report should include explanations of apparent inequities in the delivery of benefits and information on specific actions taken to insure that the opportunity to participate in Department programs is made available to all members of minority groups who are eligible to participate. The report should be submitted at the end of each fiscal year or calendar year depending on each Agency's reporting year.

B. PROGRAM TARGET SETTING. In addition to data measuring past delivery of program benefits, a system is needed whereby parity of participation is defined and participation targets are established in advance of the program year.

Each Agency will incorporate targets for the delivery of program benefits to minority groups into their advance program planning procedures. The systematic inclusion of minority considerations in formal planning efforts serves two purposes: (1) to promote parity of participation by minorities and women in the benefits of USDA programs and (2) to provide approved targets against which performance can be measured. The Office of Equal Opportunity is responsible for developing and issuing procedural instructions for accomplishing this program. The following steps will be followed:

1. Under the direction of the Assistant Secretaries and Directors, and with the counsel of the Program Planning and Evaluation Division, Office of Equal Opportunity, each Agency will define parity of participation for minority groups in each of their programs, develop specific participation targets for each program and submit them to their Assistant Secretary or Director for approval in advance of the program year.
2. The Program Planning and Evaluation Division, Office of Equal Opportunity, will review all agency proposals and make recommendations to each Assistant Secretary or Director.
3. Agencies will adjust their reporting systems to the extent necessary so as to provide status reports or performance and progress measured against approved targets. Note: Agencies are expected to comply with the reporting requirements of 9 AR 21(a) as well.
4. The Office of Equal Opportunity will provide evaluation reports to the Secretary, Assistant Secretaries and Directors, on Agency performance.

22. COMPLIANCE. All employees of this Department are responsible for conducting official business in such a manner that the Department does not directly or by implication:

Support, encourage, or condone the practice of segregation or other forms of discrimination.

Conduct programs in ways that permit economic barriers or social inhibitions to limit participation; or

Permit discrimination in services for reason of race, color, sex,

religion, or national origin.

A. PROCEDURE. Each Agency administering benefit or service programs to the public, with the counsel and assistance of the Compliance and Enforcement Division, Office of Equal Opportunity, is responsible for:

1. Correcting programs which bar full participation by minority and women beneficiaries or which lead to participation on a segregated basis. This includes meetings, office space and use of related facilities.
2. Correcting programs which permit economic barriers or social inhibitions to limit participation by minority and women beneficiaries.
3. Correcting programs wherein benefits or services to minority or female beneficiaries are unequal because employees of agriculture programs fail to work across lines based on race or sex.
4. Assigning sufficient full time staff resources for the development and implementation of a comprehensive civil rights compliance program within the agency.
5. Developing a comprehensive compliance review program to be approved by the Director, Office of Equal Opportunity (the training of reviewers, frequency of reviews, and reporting forms should be specified in the review program). Compliance reviews should:
  - a. Examine employment practices of recipients to determine whether such practices are resulting in discriminatory provision of services or benefits.
  - b. Examine each recipient's program to determine whether the recipients should take affirmative action to overcome the effects of past discrimination.

All agency review reports should be maintained at the Regional or National Office, as appropriate, for a minimum of one year, and will be made available, on request, to Office of Equal Opportunity reviewers for analysis and evaluation.

6. Establishing time limits and the extent of efforts to be expended in seeking voluntary compliance by recipients of Federal assistance under Title VI of the Civil Rights Act of 1964. Procedures for attempting to achieve voluntary

compliance must be documented so that evidence to support administrative termination proceedings or other means authorized by law to achieve compliance will be available failing such efforts.

7. Notifying recipients when the Agency has exhausted all means of achieving voluntary compliance. The recipient will be notified in writing and advised that the case is being referred to OEO for further enforcement action. The agency will then send OEO a complete file including:

- a. Copies of all correspondence with the recipient relevant to compliance.
- b. Copies of compliance reviews.
- c. List of available witnesses, their addresses and their official titles, with a brief statement of the matters about which they can testify.
- d. Eight copies each of relevant contracts and agreements with USDA and, where appropriate, between the State and Agency and the recipient. These should include current and past agreements, eight copies of recipients civil rights assurances are required.
- e. List of names, titles, mailing addresses and telephone numbers of parties involved, including the chief official in charge of the recipient and the State administrative official responsible for the program.
- f. A report of the specific amount of assistance provided and the programs under which the assistance is extended, citing such program authority and fiscal year.
- g. Documentation that the Agency has met the requirements of 7 CFR 15.8(c), by advising the recipient that he has failed to comply, that compliance cannot be secured by voluntary means and that the case has been referred to OEO for enforcement action.
- h. Relevant agency regulations.
- i. A brief statement of the affirmative allegations of discrimination which can be factually supported by the record.

j. A statement of all actions taken to achieve voluntary compliance.

k. A statement of the defenses the institution may be expected to raise.

B. AUDITS. The performance of compliance reviews by agencies and the Office of Equal Opportunity in no way lessens the authority and responsibility of the Office of Audit for including in its audits of agency programs, measures of civil rights performance and effectiveness.

C. REPORTING REQUIREMENTS. No periodic compliance reports will be required from the agencies; however, OEO may request information from time to time to determine the agencies' compliance posture.

23. EMPLOYMENT. Title VI of the Civil Rights Act of 1964 and the USDA Nondiscrimination Regulations, 7 CFR 15.3(c), recognize that employment discrimination may effect or be related to discrimination in benefits and services. To the extent that employment practices of recipients relate to the assurance of equal opportunity in program benefits and services, such practices are an appropriate area of concern to the Office of Equal Opportunity.

24. PUBLIC NOTIFICATION. Each Agency Head is responsible for making sure that all eligible persons, particularly minorities and women, are adequately informed of and encouraged to participate fully in USDA programs, the USDA policy of nondiscrimination and the procedure for filing a complaint.

A. PROCEDURE. Each Agency Head is responsible for developing a public notification program which will assure the following:

1. Each USDA office and recipient which distributes program benefits will take specific action to advise minorities of program availability and the requirement for nondiscrimination.
2. Each USDA and cooperating office serving the public will prominently display the nondiscrimination poster, "And Justice for All." A notice of nondiscrimination will also be posted at all public outdoor recreation areas administered or otherwise assisted by USDA.
3. Each Agency will inform minorities of new programs and program changes by mailing information to "grass roots" organization.

4. Each Agency will promptly notify the Office of Communication of any new programs or program changes. The Office of Communication will maintain master lists of minority group media and will disseminate to them the information provided by the agencies.

5. Each Agency will submit civil rights "success stories" to the Office of Communication for dissemination to the media.

6. All informational materials released to the public will, as appropriate, contain a statement that the program or activity will be conducted on a nondiscriminatory basis. Where appropriate, photos and other graphics will be used to convey the message of equal opportunity. This requirement will apply to materials published and distributed by either the Agency or its non-Federal cooperators.

B. REPORTING REQUIREMENT. No periodic reports will be required by the agencies; however, OEO may request information from time to time to determine the agencies compliance posture.



CHAPTER 2 - CIVIL RIGHTS POLICY IN USDA  
PROGRAMS AND ACTIVITIES

## SECTION 2 - COMPLAINTS

50. FEDERAL EMPLOYMENT COMPLAINTS will be handled by the Office of Personnel in accordance with procedures in the Federal Personnel Manual 713 and USDA Departmental Personnel Manual 713.

51. TITLE VI COMPLAINTS will be handled in accordance with 7 CFR 15.6. Within five days of receipt, agencies receiving complaints must send copies to the Office of Investigation (OI) for a determination as to whether the complaint will be investigated and, if so, the manner in which it is to be investigated. A copy of both the agency's request and the complaint letter will be sent simultaneously to OEO. OEO will prepare and acknowledgement letter to the complainant informing the complainant that the complaint has been referred to OI for a determination as to the need for an OI investigation.

In certain cases, OI may, upon receipt of a complaint, request the Agency to conduct a preliminary inquiry into the matter. In such cases, within 30 days of the request, the Agency will submit a report to OI, with a copy to OEO. OI will determine whether an OI investigation is warranted based on the preliminary inquiry.

Copies of OI investigation reports will be distributed to the Head of the Agency concerned and to OEO. Final determination as to whether the OI report established a proper basis for a finding of discrimination rests with the Director, OEO. Agency heads will advise OEO within 30 days of their recommendations and proposed actions. In cases where corrective action cannot be completed within 30 days, the agency will submit a timetable of planned actions and a progress report every 30 days to OEO. The adequacy of corrective action in cases where discrimination is established will be determined by the Director, OEO. When there is a difference between the Director, OEO, and agency administrators as to the adequacy of corrective action, the matter will be referred to the Assistant Secretary for Administration for resolution. To close out any Title VI complaint, the Agency must obtain the formal concurrence of OEO. This concurrence will be shown on the closing memorandum sent to OI.

Copies of all correspondence and materials on Title VI complaints will be sent to the Agency concerned and OEO. Copies of those prepared after OI has scheduled an investigation will also be sent to OI.

52. DIRECT PROGRAM COMPLAINTS will be handled in accordance with 7 CFR 15.52. Complaints should be sent within five days of receipt to the Director, OEO. The Director, OEO, will prepare and send the letter of acknowledgement to the complainant and will determine how the complaint is to be handled. If there appears to be a need for investigation, OEO will refer the complaint to OI for a determination as to whether OI will investigate and for any necessary investigation. A final letter to the complainant will also be sent by OEO. Copies of all material prepared in OEO will be sent to the agency concerned. OI will be furnished copies of all correspondence and material prepared after OI has scheduled an investigation.

53. EXCEPTION: Where there exists a formalized (required by law or regulation) procedure for handling general complaints or appeals, discrimination complaints will be handled by the Agency in accordance with such procedure. However, such a procedure must first be evaluated by OEO to assure that the procedure affords the complainant the same rights and protections afforded in 7 CFR 15.52 and paragraph 52 above.

CHAPTER 3 - USDA POLICY ON ASSISTANCE TO  
MINORITY BUSINESS ENTERPRISE

SECTION 1 - AGRICULTURE AGENCY RESPONSIBILITIES

70. GENERAL. The policy of the Department of Agriculture is to insure that its procurement, grant and loan activities are being utilized to the fullest extent to assist minority businessmen. This also includes deposits in minority-owned banks.

Responsibility for carrying out policies for delivery of program assistance to minority businessmen is assigned to the Assistant Secretary for Administration, working with the Director of Equal Opportunity.

Each program Assistant Secretary and Director, together with his respective line administrator, is assigned line responsibility for support of activities that may have an effect on minority enterprises.

71. PROGRAM DELIVERY. Each Agency will be responsible for evaluating procurement, minority-owned bank deposits, and grant and loan activities to assess the potential benefits to minorities. The Minority Business Assistance Division, OEO, will be consulted concerning those programs which agencies determine have potential for deposit of funds in minority-owned banks.

Agencies should make these assessments in compliance with Departmental regulations and directives, 41 CFR 1-1.713, 41 CFR Subpart 1-1.13, 41 CFR 1-3.601, and 4 AR 465 and 476.

A. GOAL SETTING. Each Agency having procurement responsibility shall establish Section 8(a) goals. Prior to the beginning of each fiscal year agencies shall assess total procurement needs and determine those requirements that have potential for the 8(a) program. These goals shall reflect a representative share of the total procurement of products and services, including construction and commodities.

B. PROGRAM PARTICIPATION DATA. Each Agency is to be responsible for analyzing its procurement and grant and loan programs to assess their potential for impact on minority businesses and business development. A system for establishing base data to identify eligible populations and measure delivery of program benefits will be developed.

The development of these systems is the responsibility of the program Assistant Secretaries and Agency Heads. In the development or modification of systems to measure delivery of assistance to

minorities through contracts, minority-owned bank deposits, and grants and loans, each Agency Head should consult in advance with the Minority Business Assistance Division, Office of Equal Opportunity.

# Rules and Regulations

Federal Register

Vol. 44, No. 71

Wednesday, April 11, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 15a

#### Education Programs or Activities Receiving or Benefitting From Federal Financial Assistance; Nondiscrimination on the Basis of Sex

**AGENCY:** Department of Agriculture.

**CTION:** Final rule.

**SUMMARY:** The Department of Agriculture issues these regulations implementing Title IX of the Education Amendments of 1972, as amended, which prohibits (with certain exceptions) sex discrimination in federally-assisted education programs and activities.

**EFFECTIVE DATE:** These regulations are effective on April 11, 1979.

**FOR FURTHER INFORMATION CONTACT:** William C. Payne, Deputy Chief, Civil Rights Division, Office of Equal Opportunity, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: (202) 447-7328 or Lonnie C. Rich, Attorney, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: (202) 447-7350.

**SUPPLEMENTARY INFORMATION:** On May 10, 1978, this Department issued proposed rules to implement Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.* Approximately 25 comments were submitted by various government entities, universities, educational organizations, and individuals. All of the comments have been considered and will be discussed below. Some of the comments have produced changes. In our discussion, we will explain why we are accepting or rejecting a recommended change.

In issuing these regulations, we have two overriding concerns: (1) To effectuate the purpose of Title IX by prohibiting sex discrimination in federally-assisted education programs and activities and (2) To avoid unnecessary burdens on the public that can result from inconsistent or duplicative requirements from the regulations of more than one Department or agency.

As a result of the first concern, the general rule against sex discrimination is being applied as broadly as possible. The exceptions to the rule are being applied narrowly. As a result of the second concern, these rules are intended to be consistent with the Title IX rules issued by the Department of Health, Education, and Welfare (HEW), which has many recipients in common with this Department.

Our discussion is divided into three groups. The first group contains our responses to general comments. The second group involves comments addressed to specific sections. The third group contains separate responses to the many comments and questions from various State Cooperative Extension Services.

### I. General Comments

A. One comment recommended that USDA withdraw its Title IX regulations and simply announce that USDA will defer to HEW regarding the enforcement of Title IX. When the proposed regulations were being drafted, consideration was given to simply incorporating HEW's regulations into USDA's by reference. It was decided, however, that incorporation by reference would be confusing because affected parties (recipients, beneficiaries, and government officials) would be required to make continued reference to two documents to determine the extent of their differences. Looking to a single document should be easier. Furthermore, USDA is not able to simply defer to HEW enforcement since all USDA-funded, education activities are not covered by HEW's regulations. However, it should be noted that USDA is willing to enter into an agreement with HEW concerning compliance reviews of our common recipients. (Several comments strongly recommended the need for inter-agency cooperation.)

B. It was recommended that USDA extend the deadline for public comment and send the proposed rules to the Title IX coordinator at each school for comment. Since these regulations are almost identical to HEW's and since presumably the formal educational community was able to participate fully in responding to those regulations, we see no compelling reason to single that community out for special commenting opportunities. Furthermore, since final regulations can be amended, comments may be sent to appropriate officials who will consider any recommended changes.

C. Several comments suggested that we provide a list of Department programs which are covered by Title IX. The appendix to these rules contains a list of covered programs. It should be noted that if a particular recipient under one of these programs is not an "educational recipient" or if a significant purpose of the assistance is not education, then the recipient will not be covered. See § 15a.2(q).

D. Several comments stated that the Department should commit sufficient resources and personnel for a successful enforcement program; that we should develop technical assistance and training materials for recipients and beneficiaries; and that we should provide training on sex bias to all Department education program staff. It is our intention to implement these suggestions to the extent feasible.

E. It was recommended that the words "or sexual preference" be inserted in each instance after the word "sex." Since the Title IX statute deals only with sex discrimination, we have no authority to expand the categories of prohibited discrimination in these Title IX regulations.

F. Several comments strongly suggested that recipients be required to collect sex-based data. Section 15a.71 incorporates by reference 7 CFR 15.5 which requires agencies within USDA to make compliance reviews. Recipients will be required to submit compliance reports which should include sex-based data.

### II. Comments and Changes Regarding Specific Sections

A. *Section 15a.2.* One comment noted that there was no definition of "education program or activity." Although the proposed rules contained

no such definition (the HEW rules do not), we now believe that a definition is necessary for establishing the scope of the applicability of these rules.

An "education program or activity" is one having education as a significant purpose. While education need not be the sole purpose of the program or activity, it must be more than an incidental effect of a program in order to be covered by these regulations. In this regard, we note that some recipients have education as a significant reason for their existence. Under our definition any financial assistance to such a recipient, regardless of the purpose of the assistance, will be deemed assistance to an "education program or activity." Other recipients may have little or no educational purposes. In those situations, assistance to them will be deemed an "education program or activity" only if a significant purpose of the assistance is education.

In connection with our definition of "education program or activity," we are adding a new term, "educational recipient," which includes an education institution as defined in § 15a.2(g) and every other recipient which has education as a significant purpose. This broader term includes not only the formal education community, but also informal educational programs (Cooperative State Extension Service; Youth Conservation Corps) and other educational organizations and associations that receive Federal assistance.

We note that no definition is being provided for the term "education." We will rely on accepted community attitudes, commonsense, dictionary definitions, and whether and to what extent a recipient claims or has claimed to have educational purposes.

We are adding a definition for the term "United States." The definition is the same as in our regulations under Title VI of the Civil Rights Act of 1964. See 7 CFR 15.2(i).

Thus, we are adding the following new paragraphs:

"§ 15a.2.

\* \* \* \* \*

(p) "Educational recipient" means an educational institution as defined in § 15a.2(g) and every other recipient which has education as a significant purpose.

(q) "Education program or activity" means:

(1) Every program or activity operated by an educational recipient; and

(2) Every program or activity operated by other recipients where a significant purpose of the financial assistance is education.

(r) "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.

B. *Section 15a.3.* Several comments have questioned how the Department will know whether the self-evaluation requirement (§ 15a.3(c)) has been complied with by recipients. Some comments recommended the imposition of periodic reporting and prior approval to the funding or refunding of any recipient.

Under § 15a.71, which incorporates 7 CFR 15.5, agencies within the Department are expected to review the activities of recipients to determine compliance. Recipients will be required to keep records and to submit compliance reports. The Department should know whether a recipient is meeting the self-evaluation requirement and other requirements—e.g., §§ 15a.4(a), 15a.7 (a) and (b), and 15a.8 (a) and (b)—through periodic agency reviews or through complaint-generated reviews.

As to the suggestion that the Department require approval of the recipient's self-evaluation prior to any funding, we have two objections. First, the inconsistency with HEW's regulations would cause confusion and be burdensome on those recipients dealing with both Departments. Second, a prior approval requirement would cause lengthy interruptions in ongoing programs. As a practical matter, some programs could be delayed for an extended period of time while recipients conduct self-evaluations and the agencies reviewed them. Such action by the Department would be tantamount to a grant termination or a refusal to continue assistance which Title IX permits only after certain procedures have been completed. 20 U.S.C. 1682.

As proposed, § 15a.3(c) requires only "recipient education institution(s)" to make a self-evaluation. The term "educational institution" covers generally what is regarded as the formal education community, not all education programs or activities receiving federal assistance. Since all recipients must comply with Title IX and since compliance requires self-analysis, we are amending § 15a.3(c) by deleting the words "education institution."

After completion of the self-evaluation, descriptions of any modifications or remedial steps must be maintained for three years. Section 15a.3(d). In view of the added paragraph, § 15a.5(d), discussed *infra*, we are amending § 15a.3(d) to read as follows:

"Recipients shall maintain on file for at least three years following the *effective date of this Part or completion of the evaluation required under paragraph (c) of this section, whichever is longer*, and shall provide to the Secretary upon request, a description of any modifications made pursuant to sub-paragraph (c)(ii) and of any remedial steps taken pursuant to sub-paragraph (c)(iii)."  
(The amended portion is italicized.)

Those recipients, who have grants from both HEW and USDA and who have already completed their self-evaluation under HEW's regulations, will not have to begin a new evaluation process to satisfy USDA requirements. § 15a.5(d). However, those recipients are required to maintain the required information for three years from the effective date of this part. The Department will need the information for compliance reviews, and it is unlikely that all recipients can be reviewed in less than three years. Some recipients will therefore have to maintain records longer for USDA than they would for HEW. This requirement is necessary for this Department to perform its review responsibilities.

C. *Section 15a.4.* A question has been raised as to the applicability of the assurance requirement to existing programs. The assurance requirement of § 15a.4 applies to new applications or reapplications for funding. The giving of an assurance is a condition of granting the funds. However, even existing programs, which have been funded since the enactment of Title IX, are covered by the general statutory prohibition against sex discrimination. If statutory violations have occurred prior to the effective date of these regulations, appropriate action will be taken in accordance with 20 U.S.C. 1682. In determining whether a preregulation violation has occurred, the substantive rules in these regulations will serve as guidelines.

D. *Section 15a.5.* Several comments pointed out that our Title IX regulations will result in duplication of those requirements already performed as part of compliance with HEW's regulations. See §§ 15a.3(c), 15a.4(a), 15a.7 (a) and (b), and 15a.8 (a) and (b). Since the requirements are intended to apply only where not otherwise covered by HEW regulations, we are adding a clarifying paragraph. It should be noted, however, that those requirements must have been applied to any of the programs which this Department funds. If not, they must be met as to our programs. Therefore, we are adding the following paragraph:

"§ 15a.5(d). *Effect of Compliance with HEW Regulations.* If a recipient is covered by the Title IX regulations issued by HEW, 45 CFR Part 86, and has already complied with the

HEW requirements corresponding to §§ 15a.3(c), 15a.4(a), 15a.7 (a) and (b), and 15a.8 (a) and (b), then the requirements of those sections need not be duplicated in order to comply with this Part. However, if the requirements have not been applied to all programs funded by this Department, then the requirements will have to be met as to those programs."

**E. Section 15a.7.** One comment concerned the adequacy of a recipient's complaint system. The implication of the comment was that USDA should require a specific set of complaint procedures by all recipients. We see no particular need for uniformity in this area. Most recipients, particularly large institutions, have existing complaint systems which can be modified to incorporate complaints of sex discrimination. If the recipient's procedures provide for a prompt, fair resolution of complaints, then the system is adequate.

**F. Section 15a.8.** One suggestion was that public notices of applicability of Title IX be prominently displayed and be of a specified size so as to attract the reader's attention. It has also been recommended that recipients be required to give advance public notice of their events. We believe that the need for consistency with HEW's regulations overrides the need for imposing these requirements on recipients. If every Department issuing Title IX regulations specifies this level of detail, recipients will be in constant quandary about which requirements have to be met for compliance with such regulations. We add, however, that deception and bad faith may be evidenced by the lack of prominent display and that the failure to give adequate public notice of events may indicate an intent to discriminate. These matters will be determined in compliance review on a case-by-case basis.

**G. Sections 15a.51–15a.61 (Subpart E).** It has been pointed out that three district courts have held that Subpart E (covering employment practices of recipients) is inconsistent with Title IX and therefore invalid. *Brunswick School Board v. Califano*, 17 FEP 475 (D. Maine 1978); *Seattle University v. HEW*, 16 FEP 719 (W.D. Wash. 1978); *Romeo Community Schools v. HEW*, 14 FEP 1177 (E.D. Mich. 1977). It was therefore recommended that we suspend action on Subpart E pending resolution by the Courts. Until there is a final judicial resolution or until the Justice Department and HEW accept as final the cited decisions, we are not suspending action on Subpart E. Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, which expressly does not cover the employment

practices of recipients of federal assistance, the courts have held that employment practices could be challenged where there is a sufficient nexus between a recipient's employment practices and the delivery of services to intended beneficiaries. *Lee v. Macon County Board of Education*, 267 F. Supp. 458, 472 (M.D. Ala. 1967), *aff'd sub nom, Wallace v. U.S.*, 389 U.S. 215 (1967); *U.S. v. Jefferson County Board of Education*, 372 F. 2d 836, 882–83, 893 (5th Cir. 1966), *aff'd en banc*, 380 F. 2d 385, *cert. denied*, 389 U.S. 840 (1967); *Board of Education of Taylor County v. Finch*, 414 F. 2d 1068, 1078 (5th Cir. 1969); *Marable v. Alabama Mental Health Board*, 297 F. Supp. 291, 297 (M.D. Ala. 1969). In our opinion, there is no area where there is a greater connection between employment practices and delivery of services than in the area of education. Where students are to be learning and developing their interests and abilities without regard to their sex and where this development is influenced greatly by the example of teachers, administrators, and other personnel, discriminatory employment practices cannot help but have an adverse impact on educational and career benefits intended for the students. Furthermore, even if it is assumed that HEW's regulations are too broad and eventually have to be redrafted, we still have a responsibility to maintain uniformity by following HEW's present policy position.

H. Clerical errors in §§ 15a.5(a), 15a.31(b), 15a.34(b), 15a.37(a) and 15a.53(a) have been corrected.

### III. Comments and questions from the Cooperative Extension Service (CES) of various States

A. A major concern was that the regulations as drafted are not "tailored" to fit clientele groups served by CES. Those comments recommended that terminology other than "student" or "admission" be used in order to make clear how the rules applied to CES.

When drafting the proposed rules, we considered using different terminology. However, it is virtually impossible to find terms which are perfectly suitable for each USDA-funded recipient. Because we fund a variety of recipients, including schools and universities as well as the CES, and because of the need for uniformity, we decided to adopt HEW's term, "student," which includes every intended beneficiary of an education program or activity.

As noted in the Supplementary Information with our proposed rules, 43 FR 20012, it is intended that informal education programs, such as 4-H and

other CES activities, be covered. The simplest way to achieve this is to define broadly the terms, "student" and "admission" to include "participants." This latter term is clearly sufficient to cover CES clientele.

A similar comment stated that the term "admissions policy" is confusing since CES does not have an admissions policy as do institutions of higher education. Actually the term is not used, although "policy or criterion for admission" is used in § 15a.21(b)(1). In our view, this latter term denotes any criterion or requirement for participating in or receiving the benefits or CES programs and activities. Certainly, the 4-H Clubs have criteria (e.g., age limits) for participating in its activities. The Title IX regulations simply prohibit using sex as a factor in determining who or how one can participate in CES programs.

B. One comment recommended that 4-H programs be exempted from the Title IX regulations, because the elimination of boy and girl divisions will cause the participation in some programs to dwindle. Congress, in enacting Title IX, provided certain statutory exemptions, none of which apply generally to 4-H. This Department has no authority to create additional exemptions. Moreover, even if we had such authority, we would not exempt 4-H because, as a matter of policy, this Department is opposed to sex discrimination. Concerning the anticipated loss of participation, it may be recalled that similar arguments were made in the 1960's regarding the racial integration of 4-H programs. For similar reasons the argument is rejected today. The fact that some members may be opposed to participating in a program that allows members of the other sex to participate is not sufficient reason for excluding or segregating the latter group.

C. What guidelines are to be established for 4-H and Youth and Homemaker Clubs that currently have membership of all one sex? Guidelines are contained in these regulations. *First*, the situation must be examined closely to determine the cause. See §§ 15a.3(c), 15a.36(c). We do not say categorically that the existence of a club with members of only one sex is violative of Title IX. Such clubs may be the result of individual choice, although statistically it is improbable. It is more likely that there are or have been policies and practices which are prohibited by Title IX. There could be intentional exclusion of one sex, §§ 15a.21, 15a.34; disparate outreach practices, § 15a.23; discriminatory counseling, § 15a.36; or employment discrimination, § 15a.51. *Second*, any discriminatory practices



must be modified. Section 15a.3(c)(ii). *Third*, remedial steps must be taken to correct the effects of the prior practices. Section 15a.3(c)(iii). Remedial action could include special outreach and counseling efforts, program changes, or club mergers.

D. Are there to be specific steps for bringing males into Homemaker Clubs? See the self-evaluation provisions, § 15a.3(c), and the discussion in C above.

E. What guidelines are being considered for the 4-H camping program? See the provisions regarding admissions, §§ 15a.21, 15a.34; housing, § 15a.32; and other facilities, § 15a.33. These sections offer substantial guidance.

F. Where are complaints to be filed? Each recipient must have or establish an internal complaint procedure. Section 15a.7(b). Furthermore, complaints may be filed with this Department. Section 15a.71, incorporating by reference 7 CFR 15.6.

G. What guidelines are being developed to insure the use of program materials that avoid sex role stereotyping? This Department will assist in every way possible. However, the review of program materials is largely a recipient's responsibility. See §§ 15a.3(c), 15a.42. To the extent that your materials are prepared by the Federal Extension Program, there is an on-going process for reviewing those materials for sex bias. As to the materials prepared for CES, we suggest that you consult any interested community organization and/or establish a task force for reviewing your materials for sex bias.

H. One comment concerned the "overlap" of Title IX with other Civil Rights rules and suggested combining the Title IX regulations with regulations published under Title VI of the Civil Rights Act of 1964. Consideration was given to this approach. However, because of the many exceptions in both Title IX and the HEW regulations and because of the additional requirements (e.g., self-evaluation, § 15a.3) on Title IX recipients not required under the Title VI regulations, it was not feasible to amend the Title VI regulations to cover sex discrimination in federally-assisted education programs.

I. It was observed that the notification requirements, §§ 15a.7, 15a.8, may "result in a very negative reaction toward the recipient agency and to the USDA." Unfortunately, this may result from any type of civil rights effort. However, notification is necessary and it is hoped that CES clientele will accept the need for this requirement.

J. One comment requested CES examples of exempt activities under § 15a.15. Paragraph 15a.15(a) concerns only Girls State and Nation Conference and Boys State and Nation Conferences as sponsored by the American Legion. There is a specific statutory exemption for these Conferences. Since these exemptions are to be interpreted narrowly, it is our opinion that CES cannot sponsor similar events and be exempt. Paragraph 15a.15(b) authorizes father-son and mother-daughter activities at an educational institution. It is our interpretation that this exemption (also provided for specifically by statute) applies only to activities sponsored by and at an educational institution. Since CES is not an educational institution, as defined in § 15a.2(g), there is no basis for its programs or activities being exempt. Paragraph 15a.15(c) authorizes scholarships for sex-exclusive "beauty" pageants. Although we doubt that CES sponsors such activities, if it did, then presumably the exemption would apply.

K. One comment questioned whether the regulations require or prohibit competitions offering separate awards for boys and girls. Clearly separate awards are not required, 20 U.S.C. 1681(b), and it is our opinion that sex-segregated contests are inconsistent with Title IX. See §§ 15a.31 (a) and (b). When a person is not allowed to compete in a particular group because of his or her sex, that person is "excluded from participation in" that activity. To segregate boys and girls for contest purposes is to subject those individuals to discrimination. When boys are not permitted to compete with girls, and vice versa, the individuals are "denied the benefits of" competing for and possibly winning an award that has been reserved for the other sex. It should be noted, however, that individuals may be grouped for contest purposes, "by ability as assessed by objective standards of individual performance developed and applied without regard to sex." § 15a.34(b).

L. One comment urged that the collection of sex-based data not be required, because the participation data would not prove either compliance or discrimination. As we indicated in III. C. above, statistics may not be conclusive proof, but they are indicators and can aid in the analysis of a particular situation. See 20 U.S.C. 1681(b).

Dated: April 5, 1979.

Bob Bergland,  
Secretary of Agriculture.

Part 15a is added to read as set forth below:

## PART 15a—EDUCATION PROGRAMS OR ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

### Subpart A—Introduction

#### Sec.

- 15a.1 Purpose and effective date.
- 15a.2 Definitions.
- 15a.3 Remedial and affirmative action and self-evaluation.
- 15a.4 Assurance required.
- 15a.5 Effect of other requirements.
- 15a.6 Effect of employment opportunities.
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### Subpart B—Coverage

- 15a.11 Application.
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- 15a.14 Membership practices of certain organizations.
- 15a.15 Exempt activities.
- 15a.16 Admission.
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- 15a.18 Transition plans.

### Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

#### Sec.

- 15a.21 Admission.
- 15a.22 Preference in admission.
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- 15a.31 Education programs and activities.
- 15a.32 Housing.
- 15a.33 Comparable facilities.
- 15a.34 Access to course offerings.
- 15a.35 Access to schools operated by L.E.A.s.
- 15a.36 Counseling and use of appraisal and counseling materials.
- 15a.37 Financial assistance.
- 15a.38 Employment assistance to students.
- 15a.39 Health and insurance benefits and services.
- 15a.40 Marital or parental status.
- 15a.41 Athletics.
- 15a.42 Textbooks and curricular material.

### Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

- 15a.51 Employment.
  - 15a.52 Employment criteria.
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  - 15a.54 Compensation.
  - 15a.55 Job classification and structure.
  - 15a.56 Fringe benefits.
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  - 15a.58 Effect of State or local law or other requirements.
  - 15a.59 Advertising.
  - 15a.60 Pre-employment inquiries.
  - 15a.61 Sex as a bona-fide occupational qualification.
  - 15a.71 Interim procedures
- Appendix.



**Authority.**—Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855 and section 412 of Pub. L. 94-482, 90 Stat. 2234 (except sections 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

## Subpart A—Introduction

### § 15a.1 Purpose and effective date.

The purpose of this part is to effectuate Title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 and Pub. L. 94-482, 90 Stat. 2234 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part.

### § 15a.2 Definitions.

As used in this part, the term:

(a) "Title IX" means Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855 and section 412 of Pub. L. 94-482, 90 Stat. 2234 (except sections 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) "Department" means the Department of Agriculture, and includes each of its operating agencies and other organizational units.

(c) "Secretary" means the Secretary of Agriculture or any officer or employees of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act for the Secretary under the regulations in this part.

(d) "Federal financial assistance" means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the

proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property of any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient, or in recognition of public interest to served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(e) "Recipient" means the State or political subdivision thereof, of any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(f) "Applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(g) "Educational institution" means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (h), (i), (j), or (k) of this section.

(h) "Institution of graduate higher education" means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received

the highest graduate degree in any field of study.

(i) "Institution of undergraduate higher education" means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(j) "Institution of professional education" means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(k) "Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(l) "Administratively separate unit" means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(m) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, participation, or matriculation in or at an education program or activity operated by a recipient.

(n) "Student" means a person who has gained admission.

(o) "Transition plan" means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(p) "Educational recipient" means an educational institution as defined in

§ 15a.2(g) and every other recipient which has education as a significant purpose.

(q) "Education program or activity" means:

(1) Every program or activity operated by an educational recipient; and

(2) Every program or activity operated by other recipients where a significant purpose of the financial assistance is education.

(r) "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.

#### § 15a.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative Action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient shall, within one year of the effective date of this part:

(1) Evaluate in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following the effective date of this part or completion of the evaluation required under paragraph (c) of this section, whichever is longer, and shall provide to

the Secretary upon request, a description of any modifications made pursuant to paragraph (c)(1) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

#### § 15a.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Secretary, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 15a.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Secretary of such assurance.

(b) *Transfers of Property.* If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of subpart B.

(c) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property 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 real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurances shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(d) *Form.* The Secretary will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's

subgrantees, contractors, subcontractors, transferees, or successors in interest.

#### 15a.5 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206 and 206(d); and any other act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(d) *Effect of compliance with HEW regulations.* If a recipient is covered by the title IX regulations issued by HEW, 45 CFR Part 86, and has already complied with the HEW requirements corresponding to §§ 15a.3(c), 15a.4(a), 15a.7 (a) and (b), and 15a.8 (a) and (b), then the requirements of those sections need not be duplicated in order to comply with this part. However, if the requirements have not been applied to all programs funded by this Department, then the requirements will have to be met as to those programs.

#### 15a.6 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

#### 15a.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its

responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt, and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

#### 15a.8 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by Title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to 15a.7 or to the Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers, (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employees of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

### Subpart B—Coverage

#### 15a.11 Application.

Except as provided in this subpart, this Part 15a applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

#### 15a.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the Secretary a statement by the highest ranking official of the institution identifying the provisions of this part which conflict with a specific tenet of the religious organization.

#### § 15a.13 Military and merchant marine educational institution.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marines.

#### § 15a.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the

membership sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

#### § 15a.15 Exempt activities.

(a) These regulations shall not apply to:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Girls State Conference, Girls Nation Conference, Boys State Conference, Boys Nation Conference, or

(2) The selection of students to attend any such conference.

(b) These regulations shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex.

(c) These regulations shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

#### § 15a.16 Admission.

(a) Admission to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purpose only of this section, §§ 15a.17 and 15a.18, and Subpart C, each administratively separate unit shall

be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraph (c) and (d) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

#### **§ 15a.17 Education institutions eligible to submit transition plans.**

(a) *Applications.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in 15a.18, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

#### **§ 15a.18 Transition plans.**

(a) *Submission of plans.* An institution to which 15a.17 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan shall: (1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such

plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 15a.17 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 15a.17 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

#### **Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

##### **§ 15a.21 Admission.**

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 15a.17 and 15a.18.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies

any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise,

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

##### **§ 15a.22 Preference in admission.**

A recipient to which the subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or



predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

#### § 15a.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 15a.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 15a.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at education institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

#### Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

##### § 15a.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in the part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules or behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student, or applicant, including eligibility for in-State fees and tuitions;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist, in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution, provided a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in education consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

#### § 15a.32 Housing.

(a) *General.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

#### § 15a.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

#### § 15a.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective

date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports, the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

#### **§ 15a.35 Access to schools operated by L.E.A.s.**

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

#### **§ 15a.36 Counseling and use of appraisal and counseling materials.**

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use

different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

#### **§ 15a.37 Financial assistance.**

(a) *General.* Except as provided in paragraph (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests or similar legal instruments or by acts of a foreign government which require that awards be made to members of a particular sex specified therein: *Provided*, That the overall effect

of the award of such sex-restricted scholarships, fellowships and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designed for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aids, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 15a.41.

#### **§ 15a.38 Employment assistance to students.**

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E.

#### **§ 15a.39 Health and insurance benefits and services.**

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not

discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

#### § 15a.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.*

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity on the basis of such student's pregnancy, childbirth, false pregnancy, termination or pregnancy or recover therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave

under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

#### § 15a.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics, offered by the recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Secretary will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with the section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

#### § 15a.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

### Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

#### § 15a.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which

directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

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

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

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

#### § 15a.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

#### § 15a.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

#### § 15a.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

#### § 15a.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 15a.61.

#### § 15a.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave and any

other benefit or service of employment not subject to the provision of § 15a.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

#### § 15a.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as



a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

**§ 15a.58 Effect of State or local law or other requirements.**

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

**§ 15a.59 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona-fide occupational qualification for the particular job in question.

**§ 15a.60 Pre-employment inquiries.**

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

**§ 15a.61 Sex as a bona-fide occupational qualification.**

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient,

employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

**Subpart F—Procedures (Interim)**

**§ 15a.71 Interim procedures.**

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to Title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 7 CFR 15.5—15.11 and 7 CFR 15.60 et seq.

**Appendix**

Programs covered by Title IX include, but are not limited to, the following:

1. Community Facilities Program. 7 U.S.C. 1926(a)(1).
2. Permits for use of National Forests. 16 U.S.C. 497; 16 U.S.C. 432; 7 U.S.C. 1011(c), (d).
3. Permits for use of Government-owned improvements and land used therewith by other than individuals at a nominal charge. 16 U.S.C. 580d.
4. Revenue sharing payment to States: (a) Payment of 25 percent of National Forest receipts to States for schools and roads. 16 U.S.C. 500. (b) Payment to New Mexico and Arizona of proportion of National Forest receipts for common-school fund. Sections 6 and 24, Act of June 20, 1910. 36 Stat. 557, 562, 573. (c) Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act, lands to counties for school and road purposes. 7 U.S.C. 1012.
5. Technical assistance in forest management. 16 U.S.C. 568c, 568d.
6. General forestry assistance. Annual Appropriation Acts commencing with the Department Appropriation Act of 1905; Organic Act of 1862, 7 U.S.C. 2201.
7. Financial assistance to private timber organizations to carry out timber development programs. 40 U.S.C. 204.
8. Advance of funds for cooperative research. 16 U.S.C. 581i-1.
9. Research cooperation. 16 U.S.C. 581 et seq.
10. Grants for research. 7 U.S.C. 450i.
11. Food Distribution Program. 7 U.S.C. 612c, 1431; 42 U.S.C. 1755, 1758, 1761; 42 U.S.C. 1777.
12. National School Lunch Program. 42 U.S.C. 1751 et seq.
13. Special Milk Program. 42 U.S.C. 1772.
14. School Breakfast Program. 42 U.S.C. 1773.
15. Special Food Service Program for Children. 42 U.S.C. 1761.
16. Special Supplemental Food Program for Women, Infants, and Children. 42 U.S.C. 1786.

17. Cash grants to States for nutrition education. 42 U.S.C. 1787, 1788.

18. Advisory services studies for farmers cooperatives. 7 U.S.C. 451-457.

19. Cooperative Agricultural Extension Service. 7 U.S.C. 341-349; D.C. Code 31-1609.

20. Resource Conservation and Development Program. 16 U.S.C. 590a.

21. Educational Aspects of Agricultural Marketing Act, 7 U.S.C. 1623-1624.

22. Hatch Act research programs. 7 U.S.C. 361a-1.

23. Experiment Station Research Facilities. 7 U.S.C. 390a-k.

24. McIntire-Stennis Cooperative Forestry Research Program. 16 U.S.C. 582a-582a-7.

25. Rural Development and Small Farm Research and Education Program, 7 U.S.C. 2661 et seq.

26. Youth Conservation Corps. 16 U.S.C. 1701 et seq.

27. Young Adult Conservation Corps. 29 U.S.C. 993 et seq.

28. Agricultural Research and Education Grants Program. 7 U.S.C. 3151 et seq.

29. National Food and Human Nutrition Research and Extension Program. 7 U.S.C. 3171 et seq.

30. Animal Health and Disease Research Program. 7 U.S.C. 3191 et seq.

31. The 1890 Land-Grant College Funding Program. 7 U.S.C. 3221 et seq.

32. Solar Energy Research and Development Program. 7 U.S.C. 3241, 3261-62, 3271.

**Federal Register**

Vol. 44, No. 196

Tuesday, October 9, 1979

**7 CFR Part 15a**

**Education Programs or Activities Receiving or Benefitting From Federal Financial Assistance; Nondiscrimination on the Basis of Sex**

**AGENCY:** Department of Agriculture.

**ACTION:** Notice of Presidential Approval of Final Rule.

**SUMMARY:** On April 11, 1979, the Department of Agriculture published regulations implementing Title IX of the Education Amendments of 1972, as amended, which prohibits (with certain exceptions) sex discrimination in federally-assisted education programs and activities. These regulations appeared in 44 FR 21607-21619.

The regulations were inadvertently published without the approving signature of the President as required by section 902 of the Education Amendments, 20 U.S.C. 1682. On July 25, 1979, the President approved the regulations as previously published.

**EFFECTIVE DATE:** These regulations are effective on July 25, 1979.

**FOR FURTHER INFORMATION CONTACT:** William C. Payne, (202) 447-7328.

Dated: October 2, 1979.

Jim Williams,  
Secretary of Agriculture.

the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act by tending to establish and maintain, in the interests of producers and consumers, an orderly flow of oranges to market and avoid unreasonable fluctuations in supplies and prices. The action is not for the purpose of maintaining prices to farmers above the level which is declared to be the policy of Congress under the act. This amendment has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on April 4, 1979, and considered the need for amendment of the regulation. It recommended an increased quantity of navel oranges to be handled as herein specified. The committee reports the demand for navel oranges continues good on all sizes and grades.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. It is necessary to effectuate the declared purposes of the act to make this amendment effective as specified and handlers have been apprised of this amendment.

#### § 907.759 [Amended]

1. Paragraph (a)(1) in § 907.759 Navel Orange Regulation 459, as amended (44 FR 18640, 20395), is hereby further amended to read:

(1) District 1: 1,135,000 cartons

\* \* \* \* \*

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 5, 1979.

Charles R. Brader,  
Acting Director, Fruit and Vegetable Division, Agricultural  
Marketing Service.

[Navel Orange Regulation 459; Amdt. 2]

[FR Doc. 79-11140 Filed 4-10-79; 8:45 am]

BILLING CODE 3410-02-M

## Agricultural Marketing Service

### 7 CFR Part 1004

#### Milk in the Middle Atlantic Marketing Area; Order Amending Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action amends the order based on milk industry proposals considered at a public hearing held in October 1978. More than the required two-thirds of dairy farmers affected approved the order as amended.

The amended order reduces pooling requirements for distributing plants and reserve processing plants and permits a federation of cooperative associations to operate a pool reserve processing plant. The order also increases the number of days' milk production of a producer that may be diverted monthly to nonpool plants as pooled milk during the months of September through February. The amended order reflects changed supply-demand conditions and methods of handling the market's reserve milk supplies and is necessary to assure orderly milk marketing in the area.

**EFFECTIVE DATE:** May 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Notice of Hearing issued September 14, 1978, published September 19, 1978 (43 FR 41990).

Order Suspending certain provisions issued October 18, 1978, published October 23, 1978 (43 FR 49285).

Order Suspending Certain Provisions; Correction issued November 13, 1978, published November 16, 1978 (43 FR 53413).

Recommended decision issued January 19, 1979, published January 25, 1979 (44 FR 5140).

Final decision issued March 19, 1979, published March 22, 1979 (44 FR 17518).

#### Findings and Determinations

The following findings and determinations are made for the order in this proceeding. They supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and affirmed, except where they may conflict with those set forth below.

(a) *Findings upon the basis of the hearing record.* A public hearing was

held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held according to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than May 1, 1979. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Acting Deputy Administrator, Marketing Program Operations, was issued January 19, 1979, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued March 19, 1979. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective May 1, 1979, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559)

(c) *Determinations.* It is hereby determined that:

MONDAY, JANUARY 22, 1979

PART VI



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**DEPARTMENT OF  
AGRICULTURE**  
Office of the Secretary

■

**NONDISCRIMINATION  
ON THE BASIS OF  
HANDICAP IN  
PROGRAMS AND  
ACTIVITIES RECEIVING  
OR BENEFITING FROM  
FEDERAL FINANCIAL  
ASSISTANCE**

[3410-01-M]

## DEPARTMENT OF AGRICULTURE

Office of the Secretary

[7 CFR Part 15b]

PROGRAMS AND ACTIVITIES RECEIVING OR  
BENEFITING FROM FEDERAL FINANCIAL AS-  
SISTANCE

## Nondiscrimination on the Basis of Handicap

AGENCY: Department of Agriculture.

ACTION: Proposed rules.

**SUMMARY:** The Department of Agriculture proposes to add a new Part 15b to its rules and regulations contained in Title 7 of the Code of Federal Regulations. These rules are intended to implement section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, which provides that "no otherwise qualified individual . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving Federal financial assistance". The regulation defines and forbids acts of discrimination against qualified handicapped persons in employment and in operation of programs and activities receiving assistance from the Department. This rule is issued in accordance with the procedures, standards and guidelines, 45 CFR Part 85, effective January 13, 1978, implementing Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs".

**DATES:** Comments must be received on or before April 23, 1979.

**ADDRESS:** Comments must be submitted to James Frazier, Director, Office of Equal Opportunity, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: 202-447-4256.

Comments are available for public inspection in the Office of Equal Opportunity, Civil Rights Division, Room 4119, Auditor's Building, 201 14th Street, SW., Washington, D.C. 20250, Monday-Friday, 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION  
CONTACT:

William C. Payne, Jr., Civil Rights Division, Office of Equal Opportunity, Washington, D.C. 20250, Phone: 202-447-7328 (Teletypewriter available).

**SUPPLEMENTARY INFORMATION:** Section 504 of the Rehabilitation Act of 1973 provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. On April 26, 1978,

the president issued Executive Order 11914, under which the Department of Health, Education, and Welfare is required to coordinate governmentwide enforcement of section 504. As lead agency, HEW published its final regulation implementing section 504 on May 4, 1977. See 45 CFR Part 84. In accordance with Executive Order 11914, HEW issued on January 13, 1978, final standards, procedures and guidelines to be followed by each Federal agency in issuing section 504 regulations. See 45 CFR Part 85.

The rules proposed by this Department are intended to be consistent with the HEW standards and guidelines. Because the Department has many common recipients of Federal financial assistance with HEW, the proposed rules incorporate most of the HEW section 504 regulations.

The differences between the HEW regulations and the proposed rules are minor. The definition for "Secretary" and "Department" have been changed to reflect the Department of Agriculture. Throughout the rules, "Secretary" has been substituted for "Director".

The definition of "section 504," § 15b.3(c), the definition of "handicapped person," § 15d.3(k), and the sections on discrimination prohibited, § 15b.4(b)(iii), § 15b.4(b) and § 15b.4(e) reflect wording found in the more recent HEW guidelines. See 45 CFR Part 85.

Section 15b.6(C)(2) requires all recipients to keep records of their self-evaluation, the HEW regulations, on the other hand, require only recipients with 15 or more employees to keep such records. Since all recipients are required to complete a self-evaluation, we believe that all recipients should be required to maintain such records.

Consistent with the HEW regulations, on the other hand, require only recipients with 15 or more employees to keep such records. Since all recipients are required to complete a self-evaluation, we believe that all recipients should be required to maintain such records.

Consistent with the HEW guidelines, § 15b.8 impose a notification requirement on all recipients, § 15b.10 requires coordination of sections 502 and 503 of the Act and § 15b.11 requires interagency cooperation.

Except to the extent noted above, these regulations follow the language in HEW's regulations at 45 CFR Part 84.

A draft impact analysis which addresses regulatory options for implementing Section 504 of the Rehabilitation Act of 1973 is available upon request.

Copies of the regulations are also available on tape or in braille and will be provided upon request.

In consideration of the above, it is proposed that Part 15b be added to Title 7 of the Code of Federal Regulations to read as set forth below.

Dated: January 16, 1979.

BOB BERGLAND  
Secretary.PART 15b—NONDISCRIMINATION ON THE  
BASIS OF HANDICAP IN PROGRAMS AND  
ACTIVITIES RECEIVING OR BENEFITING  
FROM FEDERAL FINANCIAL ASSISTANCE

## Subpart A—General Provisions

- Sec.
- 15b.1 Purpose.
- 15b.2 Application.
- 15b.3 Definitions.
- 15b.4 Discrimination prohibited.
- 15b.5 Assurances required.
- 15b.6 Remedial action, voluntary action, and self-evaluation.
- 15b.7 Designation of responsible employees and adoption of grievance procedures.
- 15b.8 Notice.
- 15b.9 Administrative requirements for small recipients.
- 15b.10 Coordination with sections 502 and 503.
- 15b.11 Interagency cooperation.
- 15b.12 Effect of State or local law or other requirements and effect of employment opportunities.

## Subpart B—Employment Practices

- 15b.13 Discrimination prohibited.
- 15b.14 Reasonable accommodation.
- 15b.15 Employment criteria.
- 15b.16 Preemployment inquiries.

## Subpart C—Program Accessibility

- 15b.17 Discrimination prohibited.
- 15b.18 Existing facilities.
- 15b.19 New construction.

Subpart D—Preschool, Elementary, and  
Secondary Education

- 15b.20 Application of this subpart.
- 15b.21 Location and notification.
- 15b.22 Free appropriate public education.
- 15b.23 Educational setting.
- 15b.24 Evaluation and placement.
- 15b.25 Procedural safeguards.
- 15b.26 Nonacademic services.
- 15b.27 Preschool and adult education programs.
- 15b.28 Private education programs.

## Subpart E—Postsecondary Education

- 15b.29 Application of this subpart.
- 15b.30 Admissions and recruitment.
- 15b.31 Treatment of students; general.
- 15b.32 Academic adjustments.
- 15b.33 Housing.
- 15b.34 Financial and employment assistance to students.
- 15b.35 Nonacademic services.

Subpart F—Health, Welfare, Social and Other  
Services

- 15b.36 Application of this subpart.
- 15b.37 Health, welfare, social and other services.
- 15b.38 Drug and alcohol addicts.
- 15b.39 Education of institutionalized persons.

Subpart G—Procedures

15b.40 Procedures.

Subpart A—General Provisions

§ 15b.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 15b.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Agriculture and to each program or activity that receives or benefits from such assistance.

§ 15b.3 Definitions.

As used in this part, the term:

(a) "Executive Order" means Executive Order 11914, titled "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," issued on April 28, 1976.

(b) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(d) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(e) "Department" means the Department of Agriculture and includes each of its operating agencies and other organizational units.

(f) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act under the regulations in this part.

(g) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(h) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition of becoming a recipient.

(i) "Federal financial assistance" means any grant, loan, contract (other

than a procurement contract or a contract of insurance or guaranty), cooperative agreement, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

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

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

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

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

(k) "Handicapped Person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (k)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness and drug addiction and alcoholism.

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

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

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but

that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments, or (C) has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

(1) "Qualified handicapped person" means:

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

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standard requisite to admission or participation in the recipient's education program or activity;

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

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

§ 15b.4 Discrimination prohibited.

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

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provides a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain



the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others:

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped person unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity

that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

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

(e) Recipients shall take appropriate steps to ensure communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

#### § 15b.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will 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 the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure non-discrimination for the period during which the real property is used for purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall 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. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

#### § 15b.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 of this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in

the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

**§ 15b.7 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to post-secondary educational institutions.

**§ 15b.8 Notice.**

(a) A recipient shall take appropriate initial and continuing steps to

notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 or this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 15b.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include but are not limited to the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of the paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

**§ 15b.9 Administrative requirements for small recipients.**

The Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with § 15b.7, in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

**§ 15b.10 Coordination with sections 502 and 503.**

(a) Agencies and other organizational units within the Department shall consult with Architectural and Transportation Barriers Compliance Board in developing requirements for the accessibility of new facilities and alterations, as required in § 15b.19, and in enforcing such requirements with respect to facilities that are subject to section 502 of the Rehabilitation Act of 1973, as amended, as well as section 504.

(b) Agencies and other organizational units within the Department shall consult and coordinate with the De-

partment of Labor in enforcing requirements concerning employment discrimination with respect to recipients that are also Federal contractors subject to section 503 of the Rehabilitation Act of 1973, as amended.

**§ 15b.11 Interagency cooperation.**

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more agencies or where two or more agencies cooperate in administering assistance for a given class of recipients, the agencies shall (1) coordinate compliance with section 504 and (2) designate one of the agencies as the primary agency for section 504 compliance purposes.

(b) Any agency conducting a compliance review or investigating a complaint of an alleged section 504 violation shall notify any other affected agency upon discovery of its jurisdiction and shall inform it of the findings made. Reviews or investigations may be made on a joint basis.

**§ 15b.12 Effect of State or local law or other requirements and effect of employment opportunities.**

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

#### Subpart B—Employment Practices

**§ 15b.13 Discrimination prohibited.**

(a) General.

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

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that ad-

versely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

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

(3) Rates of pay or any other form of compensation and changes in compensation;

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

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

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

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

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other condition, or privilege of employment.

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

#### § 15b.14 Reasonable accommodation.

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

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an

accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

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

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

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

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

#### § 15b.15 Employment criteria.

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

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Secretary to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

#### § 15b.16 Preemployment inquiries.

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

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 15b.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 15b.6(b), or when a recipient is

taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped *Provided, That:*

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

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

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. *Provided, That:* (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodation;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

#### Support C—Program Accessibility

#### § 15b.17 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

#### § 15b.18 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity when viewed in its entirety is readily accessible to and usable by handicapped per-



sons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of § 15b.19, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

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

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the ac-

cessibility of its program or activity to handicapped persons;

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

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

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

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 15b.19 New construction.

(a) *Design and construction.* Each facility or part of the facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961)(R1971),<sup>1</sup> which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

Subpart D—Preschool, Elementary, and Secondary Education

§ 15b.20 Application of this subpart.

This subpart applies to preschool, elementary, secondary, and adult edu-

<sup>1</sup> Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

cation programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 15b.21 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 15b.22 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of § 15b.23, § 15b.24, and § 15b.25.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education.*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to handicapped persons or their parents or guardians, except for those fees that are imposed on nonhandicapped persons or their parents or guardians. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the re-

quirements of this subpart, or payment of the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places handicapped persons in or refers such persons to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the persons or their parents or guardians if the persons were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to handicapped persons because of their handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the persons or their parents or guardians.

(4) *Placement of handicapped persons by parents.* If a recipient has made available in conformance with the requirements of this section and § 15b.23, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 15b.25.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part.

#### § 15b.23 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational en-

vironment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic setting.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 15b.26(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

#### § 15b.24 Evaluation and placement.

(a) *Placement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluations and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the fac-

tors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude or achievement tests, teacher recommendations, physical condition, social cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 15b.23.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

#### § 15b.25 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

#### § 15b.26 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employ-

ment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation of differentiation is consistent with the requirements of §15b.23 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate of different.

#### §15b.27 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

#### §15b.28 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in §15b.22(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is

justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of §15b.24 and §15b.25. Each recipient to which this section applies is subject to the provisions of §§15b.23, 15b.26 and 15b.27.

#### Subpart E—Postsecondary Education

##### §15b.29 Application of this subpart.

This Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

##### §15b.30 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §15b.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §15b.6(b), the recipient may invite applicants for admissions to indicate whether and to what extent they are handicapped; *Provided, That:*

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

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

(d) *Validity studies.* For the purpose of paragraph (c)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

##### §15b.31 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education program or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handi-



capped student from any course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

#### § 15b.32 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with

hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted by use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

#### § 15b.33 Housing.

(a) *Housing providing by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C of this part, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

#### § 15b.34 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance of qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not vio-

late Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

#### § 15b.35 Nonacademic services.

(a) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 15b.31(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

#### Subpart F—Health, Welfare, Social and Other Services

#### § 15b.36 Application of this subpart.

This Subpart F applies to health, welfare, social and other programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

**§ 15b.37 Health, Welfare, Social and Other Services.**

(a) *General.* In providing health, welfare, social and other services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 15b.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory,

manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

**§ 15b.38 Drug and alcohol addicts.**

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

**§ 15b.39 Education of institutionalized persons.**

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 15b.3(k)(2), in its program, or activity is provided an appropriate education, as defined in § 15b.22(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D of this part.

**Subpart G—Procedures**

**§ 15b.40 Procedures.**

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 7 CFR 15.5—15.11 and 7 CFR 15.60 et seq.

[FR Doc. 79-2158 Filed 1-19-79; 8:45 am]

THE UNIVERSITY OF GEORGIA  
COOPERATIVE EXTENSION SERVICE  
COUNTY AFFIRMATIVE ACTION PLAN

Revised and Reissued:  
7/1/85

**AFFIRMATIVE ACTION PLAN TO ASSURE ALL REASONABLE EFFORT  
IN PROVIDING EXTENSION PROGRAMS IN A  
NON-DISCRIMINATORY MANNER**

\_\_\_\_\_  
COUNTY

STANDARD	ACTION REQUIRED	SPECIFY ACTION TAKEN (TO BE TAKEN) TO MEET THE REQUIREMENT OF THE STANDARD INCLUDING "WHO" IS TO TAKE THE ACTION
<p>1. Appropriate Extension programs and methods are to be available to all in the county population regardless of race, color, national origin, age, sex or handicap status.</p> <p>Program methods, content and places of meetings are to be designed to meet the needs of the population and are to be accessible in a non-discriminatory manner.</p>	<p>1. County Extension Staff to:</p> <p>a. Review and adjust teaching methods, subject matter content and meeting places to insure that effective methods and programs are made available to all in a non-discriminatory manner.</p> <p>b. Identify groups participating in Extension's educational programs and their membership by race and sex.</p> <p>Determine the membership requirements of each group</p> <p>Determine the extent to which the membership of each group reflects the racial composition of the community.</p> <p>Develop and implement plans, procedures and criteria to bring about EEO/CR/AA compliance.</p>	<p>Subject matter content will be determined by program planning process to insure that effective methods and programs are made available to all in a non-discriminatory manner. Teaching methods will be adjusted accordingly. Meeting places will be scheduled where all are welcome. Programs are to be geared specifically for minority groups as well as all socio-economic and educational levels. County Extension staff will readjust program efforts to show efficient use of time to reach groups of all socio-economic levels. Program efforts will be in balance with all racial ethnic groups and provide services on equal basis.</p> <p>Counties should identify participating groups; i.e., workshops, special interest groups, civic clubs and senior citizens. Data is available to determine the number of groups and membership of groups.</p> <p>Membership and participation are to be open to all people within the various counties and communities. Participation limited only where facilities are not adequate to accommodate group.</p> <p>In counties where membership and group participation do not always reflect the racial composition of the community, aggressive action is to be taken to upgrade efforts in reaching minority groups. Community racial composition should be determined and records filed in all County Extension Offices of all group participation.</p> <p>It is the responsibility of the County Extension Director and District Extension Director to assure compliance. A State Internal Review Team will assist administration by periodically reviewing randomly selected counties for program compliance.</p>

<p>1. (Continued)</p>	<p>c. Identify ways and means for individuals and special interest groups, including those not currently being reached, to participate in educational programs utilizing all appropriate methods.</p> <p>d. Identify ways and means to encourage all potential clientele groups and individuals to participate actively in local or community workshops, open meetings, organizations, leader lessons, special interest groups, etc.</p> <p>e. Develop plans to publicize and encourage attendance at county, district, state and national meetings inviting all potential clientele.</p>	<p>All counties should identify ways and means for individuals and special interest groups to participate in educational programs, including:</p> <ol style="list-style-type: none"> <li>1. Invitation through mass media.</li> <li>2. Cooperation with other agencies to recruit individuals and identify needs.</li> <li>3. Personal telephone calls and contacts.</li> <li>4. Newsletters.</li> <li>5. Educational programs to be conducted where all are welcome.</li> <li>6. Utilize local department and grocery stores to distribute fliers and display posters.</li> <li>7. Adopt educational subject matter to meet needs of potential audience.</li> </ol> <p>Specific ways and means appear in the various county plans and are on file in the County Extension Offices.</p> <p>Specific ways and means to encourage all potential client groups and individuals to actively participate should be identified by county staffs and kept on file in the County Extension Offices. Included in the various county plans are:</p> <ol style="list-style-type: none"> <li>1. Educational programs will be conducted in locations where all are welcome. Facilities will also be located to insure ease of transportation for participants.</li> <li>2. Necessary fees for participating in educational programs will be charged only for supplies and materials deemed necessary for adequate conduct of training.</li> </ol> <p>These types of programs will be limited in number while other programs will be conducted without cost to the participant.</p> <ol style="list-style-type: none"> <li>3. Local and/or neighborhood leaders will be utilized to legitimize efforts and encourage potential clientele to participate actively in educational programs.</li> </ol> <p>County staffs will aggressively publicize all meetings and invite all potential clientele by:</p> <ol style="list-style-type: none"> <li>1. Newspaper articles and ads.</li> <li>2. Radio spot announcements.</li> <li>3. Television announcements where applicable.</li> <li>4. Posters in public places.</li> <li>5. Individual contacts.</li> </ol>
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<p>2. Educational methods and content relevant to specific individuals and groups are to be provided.</p> <p>Educational workshops, special interest groups, person-to-person teaching, counseling and other educational methods shall be provided.</p>	<p>1. County Extension Staff to:</p> <ul style="list-style-type: none"> <li>a. Determine the extent to which educational methods used, including workshops, open meetings, etc., are accessible to all interested persons without regard to race, color, national origin, age, sex or handicap status.</li> <li>b. Determine areas or communities where racial-ethnic minorities live and if and how these are being served by the county Extension program.</li> <li>c. Evaluate and adjust teaching methods and content in relation to background, experience, needs, interests and abilities of the clientele to be reached.</li> <li>d. Develop and implement educational programs and methods to reach and serve the needs of those potential audiences not being served.</li> </ul>	<p>The State Staff and County Extension Staffs have surveyed, by some established method of needs analysis, the accessibility of educational methodology to all interested persons. It has been established that all facilities are accessible to all interested persons in a non-discriminatory manner.</p> <p>Evaluations to be made by District and County staffs and adjustments made when necessary.</p> <p>The State Extension program area staffs have designed programs especially for persons not formerly served and identified as potential audiences.</p> <p>County Extension agents will not provide assistance to any organization or group that discriminates or excludes from participation any person because of race, color, national origin, age, sex, or handicap status.</p> <p>Where the Extension agent does not have current knowledge or documentation substantiating that the requesting organization or group does not exclude any person from membership or participation because of race, color, national origin, age, sex, or handicap status, an inquiry will be made by the agent to the requesting official or representative of the organization or group. If the official or representative assures the County Extension Agent they do not exclude or discriminate because of race, color, national origin, age, sex, or handicap status, the agent will give the assistance requested, if feasible and practical.</p> <p>If the official or representative cannot give assurance they do not exclude or discriminate because of race, color, national origin, age, sex or handicap status, the request for assistance must be refused and the reasons given.</p>
<p>3. Extension Service cannot provide assistance to any organization that excludes any person from membership or participation because of race, color, national origin, age, sex, or handicap status.</p>	<p>1. County Extension staff to determine whether an organization follows discriminatory practices based on race, color, national origin, age, sex, or handicap status.</p> <p>2. Identify such organization(s) and notify them in writing that Extension Service provides programs to those organizations that operate under the same non-discriminatory policy as Extension.</p>	

<p>3. (Continued)</p> <p>4. The county to maintain an educational program which meets the needs of all segments of the society for which Extension has a responsibility.</p> <p>5. District Extension Office to maintain communications and provide guidance and training to assist counties in developing and maintaining non-discrimination programs.</p>	<p>1. County to determine the potential of Extension programs and establish realistic goals for meeting the educational needs of the clientele.</p> <p>1. The District Team to develop and utilize effective methods to assist county staff and leaders with needs identification and analysis, program planning, training methodology and support in maintaining a balanced program.</p>	<p>If such request is not in writing, a letter will be sent to the group or organization confirming information given to the official or representative stating why assistance may not be given and clearly defining the official policy on such matters. All copies of such letters will be retained for review.</p> <p>An evaluation of the county plans should indicate that potential growth is expected.</p> <p>1. Design educational programs for all people, based on needs and interests.</p> <p>2. Increase participation in special interest programs.</p> <p>3. Present more programs in identified minority audiences.</p> <p>The County Staffs should adjust methodology to make it more accessible to all interested persons. District Staff will suggest alternative ways to reach various audiences and potential audiences.</p> <p>It is the responsibility of the County Extension Director and District Extension Directors to insure the development and maintenance of a non-discriminatory balanced County Extension program. A State Internal Review Team will assist administration by periodically reviewing EEO/CR/AA program compliance in randomly selected counties.</p>
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Signature	Date

Signature	Date

Public Notification Plan of Action  
To Insure All Potential Recipients  
Equal Access to Programs

(USDA, Title 9 - Administrative Regulations:)  
Equal Opportunity

(7 CFR Part 15a. Education Programs or activities)  
Receiving or Benefitting From Federal Financial  
Assistance: Nondiscrimination on the Basis of Sex.

Revised and Reissued:  
7/1/85

## Public Notification Plan

### Purpose

The "Public Notification Plan" is designed to more fully meet the requirements of Title VI of the Civil Rights Act of 1964, and other supporting documents related thereto, including:

- (1) "Supplemental Instructions for Administration of Title VI of the Civil Rights Act of 1964, in the Cooperative Extension Service" July 1965, pp. 3-6.
- (2) USDA - Title 9 - Administrative Regulations: Equal Opportunity.
- (3) 7 CFR Part 15a Education Programs or Activities Receiving or Benefitting From Federal Financial Assistance; Nondiscrimination on the Basis of Sex.

### Objectives

- (1) Develop and implement an effective Public Notification program which will contribute more fully to the achievement of the objectives of the Act; and of the requirements of Title IX Education Amendments.
- (2) Keep all eligible people, covered by these requirements, informed of all Extension programs and their equal access to these programs and of their protection against discrimination in the conduct of such programs.

Public Notification Plan of Action to Insure All Potential Recipients  
Equal Access to Programs

PROGRAM FUNCTION	ACTION REQUIRED	RESPONSIBLE ADMINISTRATIVE LEVEL TO INITIATE SPECIFIC PROCEDURE TO MEET THE ACTION REQUIRED
I. Advise minorities of Program availability and requirements of nondiscrimination on the basis of race, color, or national origin.	a. Prepare program announcements, promotional literature as well as other educational materials (bi-lingual as appropriate) that meet the level of compre- hension of target audiences.	State Office District Office County Office
Advise recipients of program availability and requirements of nondiscrimination on the basis of sex.	b. Identify and utilize the various mass media outlets that serve to disseminate information to minorities and the underprivileged. (Match the audience to the media.)	State Office District Office County Office
	c. Direct information on programs to sources of business and social contacts of minorities and the underprivileged, and all other potential recipients.	District Office County Office
	d. Develop a procedure for handling information on new programs and changes in current programs for dissemination to minorities and the underprivileged; and to all other recipients encouraging their participation without regard to race, color, national origin, sex, handicap, or religion.	District Office County Office
	e. Design a system for getting minorities and the under- privileged on mailing lists; consolidate and/or adjust single sex-segregated mailing lists into unisex lists.	County Office

PROGRAM FUNCTION

ACTION REQUIRED

RESPONSIBLE ADMINISTRATIVE LEVEL TO INITIATE  
SPECIFIC PROCEDURE TO MEET THE ACTION REQUIRED

I. (Continued)

- f. Develop a uniform statement(s) for Title VI and Title IX requirements of nondiscrimination in programs and activities; include such a statement in all publications, printed materials, program announcements, and promotional literature.

State Office

- g. Provide the name(s), office address(es), and telephone number(s) of Title IX Coordinator(s) and the procedures for referring inquiries on Title IX to the designated person(s) as releases to various sources of mass media outlets, including newspapers, radio and T.V. stations.

State Office

- h. Provide procedures and guidance for county personnel use in disseminating those policies to local news outlets, radio and T.V. interviews and program scripts, newsletters to program recipients and other materials released to them for use.

State Office  
District Office

II. Prominently display the nondiscrimination poster, "and Justice for All", in all offices and other facilities used by Extension in serving the public.

- a. Place poster in all Extension office locations where it is readily visible to the public.

County Office

- b. Place poster in Extension Conference room for public visibility.

County Office

- c. Place poster in prominent position at 4-H camps which are operated by the Extension Service.

State Office

PROGRAM FUNCTION

ACTION REQUIRED

RESPONSIBLE ADMINISTRATIVE LEVEL TO INITIATE  
SPECIFIC PROCEDURE TO MEET THE ACTION REQUIRED

II. (Continued)

Display suitable notice of nondiscrimination requirements in educational programs, activities and employment under Title IX, and name, address, telephone number of Title IX Coordinator(s).

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|----|---|---------------|
| d. | Place a nondiscriminatory statement of Title IX requirements in all Extension office locations where it is readily visible to the public; | County Office |
| e. | Place name(s), address(es), and telephone number(s) of Title IX Coordinator(s) in a prominent position within the statement.              | County Office |
| f. | Place statement regarding Title IX in conference room for public visibility.  | County Office |

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| g. | Place statement regarding Title IX in prominent position at 4-H camps which are operated by the Extension Service. | State Office |
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| h. | Place statement regarding Title IX at training sessions, and association and commodity group meetings. | District Office<br>County Office |
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| III. Inform minorities of new programs and program changes by mailing information to "grass roots" organizations listed by Director, Office of Equal Opportunity. | a. | Develop procedures for maintaining communications, on a continuing basis, about new programs and current programs of interest to these organizations. | District Office<br>County Office |
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| b. | Develop a list of organizations within the State with "grass roots" contacts with minorities and the disadvantaged to supplement and complement the list provided. | State Office |
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Inform organizations, groups, associations, etc. with whom Extension cooperates in the conduct of educational programs and activities of the non-discriminatory provisions of Title IX.

## PROGRAM FUNCTION

## ACTION REQUIRED

RESPONSIBLE ADMINISTRATIVE LEVEL TO INITIATE  
SPECIFIC PROCEDURE TO MEET THE ACTION REQUIRED

## III. (Continued)

c. Develop procedures for maintaining communications, on a continuing basis, about Title VI and Title IX nondiscriminatory requirements and of Extension's obligation not to provide any service to organizations which discriminate on the basis of race, color, national origin, sex, or religion.

State Office  
District Office

d. Develop procedures to inform, in writing, such organizations and groups which discriminate that services of the Extension Service are withdrawn and are not available to them until the nondiscriminatory provisions are met.

State Office  
District Office  
County Office

IV. Notify the office of Information of any new programs or program changes.

a. State Extension Service will provide Administrator, US-CES, with information on new programs and program changes which can be submitted to the Office of Information, USDA. This will include both Title VI and Title IX changes to programs or new programs.

State Office

b. Develop and implement general guidelines for State and county staffs use in reviewing and reporting content information on new programs or program changes regarding Title VI and Title IX adjustments.

State Office

V. Submit Civil Rights "success stories" to administrator, US-CES, for submission to the Office of Information.

a. Provide a continuing supply of "success stories" on programs where the State Extension Service was primarily responsible for accomplishment regarding Title VI and Title IX adjustments.

District Office  
County Office



PROGRAM FUNCTION

ACTION REQUIRED

RESPONSIBLE ADMINISTRATIVE LEVEL TO INITIATE  
SPECIFIC PROCEDURE TO MEET THE ACTION REQUIRED

V. (Continued)		
	<p>b. Submit to US-CES, Administrator, accounts of a major program accomplishment in working with minorities and the underprivileged to serve as leads for feature stories and articles regarding Title VI and Title IX adjustments.</p>	State Office
	<p>c. Provide procedures and guidelines for State and county personnel to use for their prompt and efficient reporting of success stories of Title VI and Title IX accomplishments.</p>	District Office
<p>VI. All informational materials released to the public will, as appropriate, contain a statement that the program or activity will be conducted on a nondiscriminatory basis. Where appropriate, photos and other graphics will be used to convey the message of equal opportunity.</p>	<p>a. Develop appropriate statements (sample) for County personnel use that all programs and activities of the State Extension Service will be conducted on a non-discriminatory basis in keeping with both Title VI and Title IX regulations.</p> <p>b. Establish policies and procedures whereby such statements will appear on and/or in all informational materials released to the public by State and county personnel.</p>	<p>State Office District Office</p> <p>State Office</p>
	<p>c. Establish policies and procedures which will ensure appropriate and effective use of photos, illustrations, and other graphics, including sex-neutral language in all publications. Such policies and procedures apply to State and county released publications.</p>	State Office

PROGRAM FUNCTION

ACTION REQUIRED

RESPONSIBLE ADMINISTRATIVE LEVEL TO INITIATE  
SPECIFIC PROCEDURE TO MEET THE ACTION REQUIRED

71. (Continued)

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| d. Encourage all staff members to actively participate in the program and to assist in the achievement of its objectives.          | State Office<br>District Office<br>County Office |
| e. Evaluate the effectiveness of the program on an annual basis.   | State Office<br>District Office<br>County Office |
| f. Develop and maintain at the State Office a repository of materials in support of activities and accomplishments of the program. | State Office                                     |