

## § 8.1

- 8.4 Discrimination prohibited.
- 8.5 Nondiscrimination clause.
- 8.6 Applicability of this part to Department assisted programs.

### Subpart B—General Compliance

- 8.7 Cooperation, compliance reports and reviews and access to records.
- 8.8 Complaints.
- 8.9 Intimidatory or retaliatory acts prohibited.
- 8.10 Investigations.
- 8.11 Procedures for effecting compliance.
- 8.12 Hearings.
- 8.13 Decisions and notices.
- 8.14 Judicial review.
- 8.15 Effect on other laws; supplementary instructions; coordination.

#### APPENDIX A TO PART 8—FEDERAL FINANCIAL ASSISTANCE COVERED BY TITLE VI

AUTHORITY: Sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d-1).

SOURCE: 38 FR 17938, July 5, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 8 appear at 68 FR 51352, Aug. 26, 2003.

### Subpart A—General Provisions; Prohibitions: Nondiscrimination Clause; Applicability to Programs

#### § 8.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the “Act”) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Department of Commerce. This part is consistent with achievement of the objectives of the statutes authorizing the financial assistance given by the Department of Commerce as provided in section 602 of the Act.

#### § 8.2 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in Appendix A to this part and as said Appendix may be amended. It applies to

## 15 CFR Subtitle A (1-1-11 Edition)

money paid, property transferred, or other Federal financial assistance extended after January 9, 1965, pursuant to an application approved prior to such effective date.

(b) This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended before January 9, 1965, except where such assistance was subject to the title VI regulations of this Department or of any other agency whose responsibilities are now exercised by this Department, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization except to the extent described in § 8.4(c). The fact that a type of Federal financial assistance is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to the list by notice published in the FEDERAL REGISTER.

#### § 8.3 Definitions.

(a) *Department* means the Department of Commerce, and includes each and all of its operating and equivalent other units.

(b) *Secretary* means the Secretary of Commerce.

(c) *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.

(d) *Person* means an individual in the United States who is or is eligible to be a participant in or an ultimate beneficiary of any program which receives Federal financial assistance, and includes an individual who is an owner or member of a firm, corporation, or other business or organization which is or is eligible to be a participant in or an ultimate beneficiary of such a program. Where a primary objective of the Federal financial assistance to a program

is to provide employment, “person” includes employees or applicants for employment of a recipient or other party subject to this part under such program.

(e) *Responsible department official* with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. It also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under this part.

(f) *Federal financial assistance* includes

(1) Grants, loans, or agreements for participation in loans, of Federal funds,

(2) The grant or donation of Federal property or interests in property,

(3) The sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or in property in which the Federal Government has an interest, without consideration, or at a nominal consideration, or at a consideration which is reduced, for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient,

(4) Waiver of charges which would normally be made for the furnishing of Government services,

(5) The detail of Federal personnel,

(6) Technical assistance, and

(7) Any Federal agreement, arrangement, contract, or other instrument which has as one of its purposes the provision of assistance.

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

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

(ii) The entity of such State or local government that distributes such assistance and each such department or

agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

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

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

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

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

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

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

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

(h) *Facility* includes all or any portion of structures, equipment, vessels, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, contract for use, or acquisition of facilities.

(i) *Recipient* means any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which is an applicant for Federal financial assistance, or to whom Federal financial assistance is extended directly or through another recipient. Recipient further includes a subgrantee, an entity which leases or operates a facility for or on behalf of a recipient, and any successors, assignees, or transferees of any kind of the recipient, but does not include any person who is an ultimate beneficiary.

(j) *Primary recipient* means any recipient which is authorized or required to

## § 8.4

extend or distribute Federal financial assistance to another recipient.

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

(l) *Other parties subject to this part* includes any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which, like a recipient, is not to engage in discriminatory acts with respect to applicable persons covered by this part, because of his or its direct or substantial participation in any program, such as a contractor, subcontractor, provider of employment, or user of facilities or services provided under any program.

[38 FR 17938, July 5, 1973, as amended at 68 FR 51352, Aug. 26, 2003]

### § 8.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory acts prohibited.* (1) A recipient of Federal financial assistance, or other party subject to this part, shall not participate, directly or through contractual or other arrangements, in any act or course of conduct which, on the ground of race, color, or national origin:

(i) Denies to a person any service, financial aid, or other benefit provided under the program;

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

(iii) Subjects a person to segregation or separate or other discriminatory treatment in any matter related to his receipt (or nonreceipt) of any such service, financial aid, property, or other benefit under the program.

(iv) Restricts a person in any way in the enjoyment of services, facilities, or any other advantage, privilege, prop-

## 15 CFR Subtitle A (1-1-11 Edition)

erty, or benefit provided to others under the programs;

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

(vi) Denies a person an opportunity to participate in the program through the provision of property or services or otherwise, or affords 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) Denies a person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor, subcontractor, or subgrantee;

(viii) Denies a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, or other party subject to this part, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any program, or the class of persons 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 persons to be afforded an opportunity to participate in any such program, shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect any persons of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or other party subject to this part may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the

grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided or made available in or through or utilizing a facility provided with the aid of Federal financial assistance.

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

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

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

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipients and other parties subject to this part shall take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, or national origin. Such recipients and other parties sub-

ject to this part shall, as may be required by supplemental regulations, develop a written affirmative action plan. The requirements applicable to construction employment under any such program shall be in addition to those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it. Federal financial assistance to programs under laws funded or administered by the Department which has as a primary objective the providing of employment include those set forth in Appendix A II of this part.

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

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

#### § 8.5 Nondiscrimination clause.

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

## § 8.5

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

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

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

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

(4) That the recipient agrees to secure the compliance or to cooperate actively with the Department to secure the compliance by others with this part and the nondiscrimination clause as may be directed under an applicable program. For instance, the recipient may be requested by the responsible Department official to undertake and

## 15 CFR Subtitle A (1-1-11 Edition)

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

(5) In the case of real property, structures or improvements thereon, or interests therein, which are acquired for a program receiving Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition

coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

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

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

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

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

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or pro-

viding of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.

(11) In the case where the Federal financial assistance is in the form of or to aid in the acquisition of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipients, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a 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 or transferee retains ownership or possession of the property, whichever is longer. In the case of any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973, as amended at 68 FR 51352, Aug. 26, 2003]

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

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

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

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

(2) The acquisition of goods or services, or the production, preparation,

## § 8.6

manufacture, marketing, transportation, or distribution of goods or services in connection with a program or its operations;

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

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

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

(i) Any program receiving Federal financial assistance for the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage.

(ii) Any program receiving Federal financial assistance in the form of loans or direct or supplementary grants for the acquisition or development of land and improvements for public works, public service or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment.

(iii) In any program receiving any form of technical assistance designed to alleviate or prevent conditions of excessive employment or underemployment.

(iv) In any program receiving Federal financial assistance in the form of administrative expense grants.

(b) *Assistance to support the training of students.* A current example of such assistance is that received by State maritime academies or colleges, by contract, of facilities (vessels), related equipment and funds to train merchant marine officers. In this and other instances of student training, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection of persons to be trained and in their treatment by the recipients in any aspect of the educational process and discipline during their training, or in the availability or use of any academic, housing, eating, recreational, or other facilities and services, or in financial assistance to students furnished or controlled by the recipients or incidental to the program. In any case where selection of trainees is

## 15 CFR Subtitle A (1-1-11 Edition)

made from a predetermined group, such as the students in an institution or area, the group must be selected without discrimination.

(c) *Assistance to support mobile or other trade fairs.* In programs in which operators of mobile trade fairs using U.S. flag vessels and aircraft and designed to exhibit and sell U.S. products abroad, or in which other trade fairs or exhibitions, receive technical and financial assistance, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection or retention of any actual or potential exhibitors, or in access to or use of the services or accommodations by, or otherwise with respect to treatment of, exhibitors or their owners, officers, employees, or agents.

(d) *Assistance to support business entities eligible for trade adjustment assistance.* In programs in which eligible business entities receive any measure or kind of technical, financial or tax adjustment assistance because of or in connection with the impact of U.S. international trade upon such business, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in their employment practices as defined in § 8.4(c).

(e) *Assistance to support research and development and related activities.* In programs in which individuals, educational or other institutions, public governmental or business entities receive Federal financial assistance in order to encourage or foster research or development activities as such, or to obtain, promote, develop, or protect thereby technical, scientific, environmental, or other information, products, facilities, resources, or services which are to be made available to or used by others; but where such programs do not constitute Government procurement of property or services, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination with respect to (1) the choice, retention or treatment of contractors, subcontractors, subgrantees or of any other person; (2) the provision of services, facilities, or financial aid; (3) the participation of any party in the research activities; (4) the

dissemination to or use by any person of the results or benefits of the research or development, whether in the form of information, products, services, facilities, resources, or otherwise. If research is performed within an educational institution under which it is expected that students or others will participate in the research as a part of their experience or training, on a compensated or uncompensated basis, there shall be no discrimination in admission of students to, or in their treatment by, that part of the school from which such students are drawn or in the selection otherwise of trainees or participants. The recipient educational institutions will be required to give the assurances provided in § 8.5(b)(10).

(f) *Assistance to aid in the operations of vessels engaged in U.S. foreign commerce.* In programs in which the operators of American-flag vessels used to furnish shipping services in the foreign commerce of the United States receive Federal financial assistance in the form of operating differential subsidies, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in soliciting, accepting or serving in any way passengers or shippers of cargo entitled to protection in the United States under the Act.

[38 FR 17938, July 5, 1973, as amended at 68 FR 51352, Aug. 26, 2003]

## Subpart B—General Compliance

### § 8.7 Cooperation, compliance reports and reviews and access to records.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients and other parties subject to this part in obtaining compliance with this part and shall provide assistance and guidance to recipients and other parties to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient and other party subject to this part shall keep such records and submit to the responsible Department official timely, complete, and accurate compliance reports at such times and in such form and containing such information as the responsible Department official may determine to be necessary to en-

able him to ascertain whether the recipient or such other party has complied or is complying with this part. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case in which a primary recipient extends Federal financial assistance to any other recipient, or under which a recipient is obligated to obtain or to cooperate in obtaining the compliance of other parties subject to this part, such other recipients or other parties shall also submit such compliance reports to the primary recipient or recipients as may be necessary to enable them to carry out their obligations under this part.

(c) *Access to sources of information.* Each recipient or other party subject to this part shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Where any information required of a recipient or other party is in the exclusive possession of another who fails or refuses to furnish this information, the recipient or other party 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 or other party subject to this part shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner as this part and the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(e) *Compliance review.* The responsible Department official or his designee shall from time to time review the practices of recipients and other parties subject to this part to determine