PART 101–1—INTRODUCTION

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AUTHORIZED: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 29 FR 13255, Sept. 24, 1964, unless otherwise noted.

Subpart 101–1.1—Regulation System

§ 101–1.100 Scope of subpart.

This subpart sets forth introductory material concerning the Federal Property Management Regulations System: its content, types, publication, authority, applicability, numbering, deviation procedure, as well as agency consultation, implementation, and supplementation.


The Federal Property Management Regulations System described in this subpart is established and shall be used by General Services Administration (GSA) officials and, as provided in this subpart, by other executive agency officials, in prescribing regulations, policies, procedures, and delegations of authority pertaining to the management of property, and other programs and activities of the type administered by GSA, except procurement and contract matters contained in the Federal Acquisition Regulations (FAR).

[54 FR 37652, Sept. 12, 1989]

§ 101–1.102 Federal Property Management Regulations.

The Federal Property Management Regulations (FPMR) are regulations, as described by §101–1.101, prescribed by the Administrator of General Services to govern and guide Federal agencies.

§ 101–1.103 FPMR temporary regulations.

(a) FPMR temporary regulations are authorized for publication when time or exceptional circumstances will not permit promulgation of an amendment to the Code of Federal Regulations and if the regulation will be effective for a period of 12 months or less except as provided in §101–1.103(b), below. These temporary regulations will be codified before the designated expiration date or their effective date will be extended if it is determined that conversion to permanent form cannot be accomplished within the specified time frame.

(b) FPMR temporary regulations may have an effective period of up to 2 years when codification is not anticipated or is not considered practical.

[54 FR 37652, Sept. 12, 1989]

§ 101–1.104 Publication and distribution of FPMR.

§ 101–1.104–1 Publication.

FPMR will be published in the Federal Register, in looseleaf form, and in accumulated form in the Code of Federal Regulations. Temporary-type FPMR will be published in the Notices
§ 101–1.104–2 Distribution.

(a) Each agency shall designate an official to serve as liaison with GSA on matters pertaining to the distribution of FPMR and other publications in the FPMR series. Agencies shall report all changes in designation of agency liaison officers to the General Services Administration (CAR), Washington, DC 20405.

(b) FPMR and other publications in the FPMR series will be distributed to agencies in bulk quantities for internal agency distribution in accordance with requirements information furnished by liaison officers. FPMR and other publications in the FPMR series will not be stocked by, and cannot be obtained from, GSA regional offices.

(c) Agencies shall submit their consolidated requirements for FPMR and other publications in the FPMR series, including requirements of field activities, and changes in such requirements on GSA Form 2053, Agency Consolidated Requirements for GSA Regulations and Other External Issuances (illustrated at §101–1.4902–2053). The mailing address is shown on the form.

§ 101–1.105 Authority for FPMR System.

The FPMR system is prescribed by the Administrator of General Services under authority of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and other laws and authorities specifically cited in the text.

§ 101–1.106 Applicability of FPMR.

The FPMR apply to all Federal agencies to the extent specified in the Federal Property and Administrative Services Act of 1949 or other applicable law.

§ 101–1.107 Agency consultation regarding FPMR.

FPMR are developed and prescribed in consultation with affected Federal agencies.

§ 101–1.108 Agency implementation and supplementation of FPMR.

Chapters 102 through 150 of this title are available for agency implementation and supplementation of FPMR contained in chapter 101 of this title. Supplementation pertains to agency regulations in the subject matter of FPMR but not yet issued in chapter 101.

§ 101–1.109 Numbering in FPMR System.

(a) In the numbering system, all FPMR material is preceded by the digits 101-. This means that it is chapter 101 in title 41 of the Code of Federal Regulations. It has no other significance. The digit(s) before the decimal point indicates the part; the digits after the decimal point indicate, without separation, the subpart and section. For example:

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<table>
<thead>
<tr>
<th>Chapter</th>
<th>Part</th>
<th>Subpart</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>101</td>
<td>1</td>
<td>101</td>
<td>1</td>
</tr>
</tbody>
</table>
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(b) At the bottom of each page appears the number and date (month and year) of the FPMR amendment which transmitted it.

(c) Agency implementing regulations should conform to the FPMR section numbers, except for the substitution of the chapter designation of the agency. Agency supplementing regulations should be numbered “50” or higher for section, subpart, or part as may be involved.

§ 101–1.110 Deviation.

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations; i.e., the use of any policy or procedure in any manner that is inconsistent with a policy or procedure prescribed in the Federal Property Management Regulations, are prohibited unless such deviations have been requested from the approved by
Federal Property Management Regulations § 101–3.000

Subpart 101–1.49—Illustrations of Forms

§ 101–1.4900 Scope of subpart.

This subpart illustrates forms prescribed or available for use in connection with subject matter covered in other subparts of this part 101–1.

[36 FR 4983, Mar. 16, 1971]

§ 101–1.4901 Standard forms. [Reserved]

§ 101–1.4902 GSA forms.

(a) The GSA forms are illustrated in this section to show their text, format, and arrangement and to provide a ready source of reference. The subsection numbers in this section correspond with the GSA numbers.

(b) GSA forms illustrated in §101–1.4902 may be obtained by addressing requests to the General Services Administration, National Forms and Publications Center–7 CAR-W, Warehouse 4, Dock No. 1, 501 West Felix Street, Forth Worth, TX 76115.


§ 101–1.4902–2053 GSA Form 2053, Agency Consolidated Requirements for GSA Regulations and Other External Issuances.

NOTE: The form listed in §101–1.4902–2053 is filed as part of the original document. Copies of the form may be obtained from the General Services Administration (3BRD), Washington, DC 20407.

[36 FR 4984, Mar. 16, 1971]

PART 101–3—ANNUAL REAL PROPERTY INVENTORIES

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 55594, Nov. 2, 2001, unless otherwise noted.


For information on annual real property inventories previously contained in this part, see FMR part 84 (41 CFR part 102–84).
Part 101-4—Nondiscrimination On the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Subpart A—Introduction

§ 101-4.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), 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 these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

§ 101-4.105 Definitions.

As used in these Title IX regulations, the term:

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.
Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means the Associate Administrator for Civil Rights.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

1. A grant or loan of Federal financial assistance, including funds made available for:
   a. The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
   b. 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 or any interest therein at nominal consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

5. Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

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;

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.

Institution of professional education means an institution (except any institution of undergraduate higher education) that 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 Secretary of Education.

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;

3. An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that 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 full-time study.

Recipient means any State or political subdivision thereof, or 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 that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.


Title IX regulations means the provisions set forth at §§101–4.100 through 101–4.605.

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§101–4.110 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the designated agency official 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 designated agency official 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 consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 333; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) Self-evaluation. Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, 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 that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that 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 completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§101–4.115 Assurance required.

(a) General. Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards
Federal Property Management Regulations

§ 101–4.125

of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with §101–4.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) 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 assurance 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.

(c) Form.

(1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant’s or recipient’s subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 101–4.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that 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 §§101–4.205 through 101–4.235(a).

§ 101–4.125 Effect of other requirements.


(b) Effect of State or local law or other requirements. The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that 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 these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization,
§ 101–4.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations 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.

§ 101–4.135 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 these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. 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 that would be prohibited by these Title IX regulations.

§ 101–4.140 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 that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§101–4.300 through 101–4.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to §101–4.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnus, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee 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 that 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 paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.
§ 101–4.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) Administratively separate units. For the purposes only of this section, §§ 101–4.225 and 101–4.230, and §§ 101–4.300 through 101–4.310, each administratively separate unit shall be deemed to be an educational institution.

(c) Application of §§ 101–4.300 through 101–4.310. Except as provided in paragraphs (d) and (e) of this section, §§ 101–4.300 through 101–4.310 apply to each recipient. A recipient to which §§ 101–4.300 through 101–4.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 101–4.300 through 101–4.310.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 101–4.300 through 101–4.310 apply 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. §§ 101–4.300 through
§ 101–4.225 Educational institutions eligible to submit transition plans.

(a) Application. This section applies to each educational institution to which §§101–4.300 through 101–4.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only 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 §§101–4.300 through 101–4.310.

§ 101–4.230 Transition plans.

(a) Submission of plans. An institution to which §101–4.225 applies and that 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 Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education 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 §101–4.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§101–4.300 through 101–4.310 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 §101–4.225 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 that emphasize the institution’s commitment to enrolling students of the sex previously excluded.


(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:
§ 101–4.235

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) Program or activity or program means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

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

(B) 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;

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

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

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

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

(B) 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

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) Program or activity does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a “program or activity” subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated
by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 101–4.300 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 §§101–4.300 through 101–4.310 apply, except as provided in §§101–4.225 and 101–4.230.

(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 §§101–4.300 through 101–4.310 apply 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 that 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 that 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 §§101–4.300 through 101–4.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that 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 that so discriminates or excludes;

(3) Subject to §101–4.235(d), 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 these Title IX regulations.

§ 101–4.305 Preference in admission.

A recipient to which §§101–4.300 through 101–4.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that 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 §§101–4.300 through 101–4.310.

§ 101–4.310 Recruitment.

(a) Nondiscriminatory recruitment. A recipient to which §§101–4.300 through 101–4.310 apply 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 §101–4.110(a), and may choose to undertake such efforts as affirmative action pursuant to §101–4.110(b).

(b) Recruitment at certain institutions. A recipient to which §§101–4.300 through 101–4.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that 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 §§101–4.300 through 101–4.310.
§ 101–4.400 Education programs or activities.

(a) General. Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, or 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 that receives Federal financial assistance. Sections 101–4.400 through 101–4.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§101–4.300 through 101–4.310 do not apply, or an entity, not a recipient, to which §§101–4.300 through 101–4.310 would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in §§101–4.400 through 101–4.455, 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 of behavior, sanctions, or other treatment;
5. Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
6. Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;
7. 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, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that 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) Aids, benefits or services not provided by recipient. (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational 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 that these Title IX regulations would prohibit such recipient from taking; and
   (ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 101–4.405 Housing.

(a) Generally. 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,
§ 101–4.410 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.

§ 101–4.415 Access to course offerings.

(a) 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.

(b)(1) 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 September 29, 2000. 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 September 29, 2000.

(b)(2) 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.

(b)(3) This section does not prohibit separation of students by sex within physical education classes and activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(b)(4) 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 that do not have such effect.

(b)(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(b)(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 101–4.420 Access to schools operated by LEAs.

A recipient that 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.

§ 101–4.425 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 that 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 that 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, 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.

§ 101–4.430 Financial assistance.

(a) General. Except as provided in paragraphs (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 that 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 that provides assistance to any of such recipient’s students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that 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 that 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 designated for a member of that student’s sex.

(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, 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) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and §101–4.450.

§ 101–4.435 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient that 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 that discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient that employs any of its students shall not do so in a manner that violates §§101–4.500 through 101–4.550.

§ 101–4.440 Health and insurance benefits and services.

Subject to §101–4.235(d), 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 that would violate §§101–4.500 through 101–4.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 101–4.445 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 that 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 of pregnancy, or recovery 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 as 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 that 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 separate portion is comparable to that offered to non-pregnant students.

(4) Subject to §101–4.235(d), 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 that 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 that 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 as 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 that she held when the leave began.

§ 101–4.450 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
§ 101–4.500 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 that receives 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 that could adversely affect any applicant’s or employee’s employment opportunities or status because of sex.
§ 101–4.505 Employment criteria.
A recipient shall not administer or operate any test or other criterion for any employment opportunity that 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.

§ 101–4.510 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 so discriminated in the past, 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 that 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 §§101–4.500 through 101–4.550.

§ 101–4.515 Compensation.
A recipient shall not make or enforce any policy or practice that, 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 that are performed under similar working conditions.

§ 101–4.520 Job classification and structure.
A recipient shall not:
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(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 that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in §101–4.550.

§ 101–4.525 Fringe benefits.

(a) “Fringe benefits” defined. For purposes of these Title IX regulations, 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 §101–4.515.

(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 that does not provide for equal periodic benefits for members of each sex and 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 that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 101–4.530 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 that 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. Subject to §101–4.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, 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 that 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 that 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.

§ 101–4.535 Effect of state or local law or other requirements.

(a) Prohibitory requirements. The obligation to comply with §§101–4.500 through 101–4.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.
(b) Benefits. A recipient that 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,
§ 101–4.540  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.

§ 101–4.545  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 these Title IX regulations.

§ 101–4.550  Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§101–4.500 through 101–4.550 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 that 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

§ 101–4.600  Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the Federal Register a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency’s office that enforces Title IX.

§ 101–4.605  Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 41 CFR part 101–6, subpart 101–6.2.
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Subpart 101–5.49—Forms, Reports, and Instructions

§ 101–5.4900 Scope of subpart.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 101–5.000 Scope of part.

This part prescribes the methods by which the General Services Administration provides for establishment of centralized services in Federal buildings or complexes occupied by a number of executive agencies.

[56 FR 33873, July 24, 1991]

Subpart 101–5.1—General

SOURCE: 30 FR 4199, Mar. 31, 1965, unless otherwise noted.

§ 101–5.100 Scope of subpart.

This subpart states general policies, guidelines, and procedures for establishing centralized services in multi-occupant Federal buildings.

[42 FR 35853, July 12, 1977]

§ 101–5.101 Applicability.

The regulations in this part apply to all executive agencies which occupy space in or are prospective occupants of multi-occupant Federal buildings located in the United States. In appropriate circumstances, the centralized services provided pursuant to this part are extended to agencies occupying other Federal buildings in the same geographical area. For purposes of this part, reference to Federal buildings may be deemed to include, when appropriate, leased buildings or specific leased space in a commercial building under the control of GSA.

[56 FR 33873, July 24, 1991]

§ 101–5.102 Definitions.

(a) Centralized services means those central supporting and administrative services and facilities provided to occupying agencies in Federal buildings or nearby locations in lieu of each agency providing the same services or facilities for its own use. This includes those common administrative services provided by a Cooperative Administrative Support Unit (CASU). It does not include such common building features as cafeterias, blind stands, loading platforms, auditoriums, incinerators, or similar facilities. Excluded are interagency fleet management centers established pursuant to Public Law 766, 83d Congress, and covered by part 101–39 of this chapter.

(b) Occupying agency means any Federal agency assigned space in a building or complex for which GSA has oversight of, or responsibility for the functions of operation and maintenance in addition to space assignment.

(c) Cooperative Administrative Support Unit (CASU) means an organized mechanism for providing administrative services for agencies in multi-tenant federally occupied buildings.

[56 FR 33873, July 24, 1991]

§ 101–5.103 Policy.

To the extent practicable, GSA will provide or arrange for the provision of centralized services whenever such services insure increased efficiency and economy to the Government without hampering program activities or essential internal administration of the agencies to be served.

§ 101–5.104 Economic feasibility of centralized services.

§ 101–5.104–1 General.

GSA is currently providing various centralized services to Federal agencies in such fields as office and storage space, supplies and materials, communications, records management, transportation services, and printing and reprographics. Other centralized CASU’s may be providing supporting services or activities such as health units, use of training devices and facilities, pistol ranges, and central facilities for receipt and dispatch of mail. Consolidation and sharing is frequently feasible with resulting economies in personnel, equipment, and space. Opportunities to effect economies through planned consolidation of such services occur particularly during the design stage of the construction of new Federal buildings, or the renovations to existing buildings. Opportunities may also occur as a result of needs.
§ 101–5.104–2 Basis for determining economic feasibility.

(a) Whenever possible, determination of the economic feasibility of a proposed centralized service shall be based upon standard data on the relationship of the size of the Federal building, the number of occupants, location, and other factors pertinent to the type of centralized service being considered.

(b) In the absence of standard data on which a determination of economic feasibility can be based, or where such data must be supplemented by additional factual information, a formal feasibility study may be made by GSA or a CASU workgroup, in coordination with local agencies to be involved, prior to a final determination to proceed with the furnishing of a centralized service. Generally, a formal feasibility study will be made only if provision of the proposed centralized service would involve the pooling of staff, equipment, and space which occupying agencies otherwise would be required to use in providing the service for themselves. Examples of centralized services which may require formal studies include printing and duplicating plants and similar facilities.

(c) On the basis of experience under the centralized services program, GSA will develop criteria as to cost comparisons, production needs, building population, number of agencies involved, and other appropriate factors for consideration in determining the practicability of establishing various types of centralized services.

§ 101–5.104–3 Data requirements for feasibility studies.

(a) The data requirements for feasibility studies may vary from program to program, but shall be standard within any single program. Such data shall disclose the costs resulting from provisions of the service on a centralized basis as compared to the same service provided separately by each occupying agency, including the costs of personnel assigned to provide the service, comparative space needs, equipment use, and any other pertinent factors.

(b) Wherever feasible and appropriate, data will be secured directly from the prospective occupying agencies, subject to necessary verification procedures. Suitable standard formats and necessary instructions for submission of data will be prescribed in applicable subchapters of chapter 101.

(c) Agencies required to submit data for a feasibility study will be furnished with copies of the prescribed reporting forms and such assistance as may be needed to assure their accurate and timely completion.

§ 101–5.104–4 Scheduling feasibility studies.

The schedule of feasibility studies will be coordinated by GSA with its construction, space management, and buildings management programs. Before initiating the study, the Administrator of General Services, or his authorized designee, will give at least 30 days’ notice to the head of each agency that would be served by the proposed centralized facility. Such notice will contain an indication of the cost elements involved and the general procedures to be followed in the study.

§ 101–5.104–5 Designating agency representatives.

The head of each agency receiving a GSA notice regarding a scheduled feasibility study will be requested to designate one or more officials at the location where the study will be made who may consult with authorized GSA representatives. Such information and assistance as is required or pertinent for an adequate review of the feasibility of the proposed centralized service shall be made available to GSA through the designated agency representatives.

§ 101–5.104–6 Conduct of feasibility studies.

An initial meeting of the representatives of prospective occupying agencies will be held to discuss the objectives and detailed procedures to be followed in the conduct of each feasibility study.

§ 101–5.106 Agency committees.

(a) Establishment. An occupying agency committee will be established by GSA if one does not exist, to assist the occupying agency, or such other agency as may be responsible, in the cooperative use of the centralized services, as defined in 101–5.102(a), provided in a Federal building. Generally, such a committee will be established when the problems of administration and coordination necessitate a formal method of consultation and discussion among occupying agencies.

(b) Membership. Each occupying agency of a Federal building is entitled to membership on an agency committee. The chairperson of each such committee shall be an employee of the agency designated by the appropriate GSA Regional Administrator, except when another agency had been designated to administer the centralized service. In this instance, the chairperson shall be an employee of such other agency as designated by competent authority within that agency.

(c) Activities. Agency committees shall be advisory in nature and shall be concerned with the effectiveness of centralized services in the building. Recommendations of an agency committee will be forwarded by the chairperson to the appropriate GSA officials for consideration and decision.

(d) Reports. A résumé of the minutes of each meeting of an agency committee shall be furnished to each member of the committee and to the appropriate GSA Regional Administrator.

§ 101–5.300 Scope of subpart.

This subpart 101–5.3 states the objective, guiding principles, criteria, and general procedures in connection with the establishment and operation of Federal employee health services in buildings managed by GSA.

§ 101–5.301 Applicability.

This subpart 101–5.3 is applicable to all Federal agencies which occupy space in or are prospective occupying agencies of a building or group of adjoining buildings managed by GSA.

§ 101–5.302 Objective.

It is the objective of GSA to provide or arrange for appropriate health service programs in all Government-owned and leased buildings, or groups of adjoining buildings, which it manages where the building population warrants, where other Federal medical facilities are not available, and where the number of the occupying agencies indicating a willingness to participate in such a program on a reimbursable basis makes it financially feasible.

§ 101–5.303 Guiding principles.

The following principles will control the scope of the health services to be provided in keeping with the objective:

(a) Employees who work in groups of 300 or more, counting employees of all departments or agencies who are scheduled to be on duty at one time in the same building or group of buildings in the same locality will constitute the minimum number of employees required to warrant the establishment of a health service of a scope specified in §101–5.304.

(b) As an exception to paragraph (a) of this section, health services of the scope specified in §101–5.304 may be provided for employees who work in groups of less than 300 where the employing department or agency determines that working conditions involving unusual health risks warrant such provision.

(c) Treatment and medical care in performance-of-duty cases will be provided to employees as set forth in the Federal Employees’ Compensation Act (5 U.S.C. 751 et seq.).

(d) Reimbursable costs for providing health services will be based on an operating budget which is a summary of all costs required to operate the health service. The reimbursement cost is prorated to participating agencies by means of a per capital formula computed by dividing the operating budget of the health service by the total number of employees sponsored for service. The size of the Federal population served, the compensation of the employees of the health unit, and other factors of medical economics prevalent in the area are factors which affect the local reimbursement cost. Further, in appropriate cases where more than one health unit is servicing employees housed in the same general locality, costs may be equalized by combining the operating budgets of all such units and dividing the total of the operating budgets by the number of employees sponsored. Special industrial conditions or other abnormal health or accident risk environments may increase the per capita cost.


§ 101–5.304 Type of occupational health services.

The type of occupational health services made available to occupying agencies will be as follows:

(a) Emergency diagnosis and first treatment of injury or illness that become necessary during working hours and that are within the competence of the professional staff and facilities of the health service unit, whether or not such injury was sustained by the employee while in the performance of duty or whether or not such illness was caused by his employment. In cases where the necessary first treatment is outside the competence of the health service staff and facilities, conveyance of the employee to a nearby physician or suitable community medical facility
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May be provided at Government expense at the request of, or on behalf of, the employee.

(b) Preemployment examinations of persons selected for appointment.

(c) Such inservice examinations of employees as the participating agency determines to be necessary, such as voluntary employee health maintenance examinations which agencies may request for selected employees. Such examinations may be offered on a limited formula plan to all participating agencies when the resources of the health service staff and facilities will permit. Alternatively, when agencies are required to limit the cost of an occupational health services program, the provision of inservice examinations may be provided to selected employees of individual agencies and reimbursed on an individual basis.

(d) Administration, in the discretion of the responsible health service unit physician, of treatments and medications

(1) Furnished by the employee and prescribed in writing by his personal physician as reasonably necessary to maintain the employee at work, and

(2) Prescribed by a physician providing medical care in performance-of-duty injury or illness cases under the Federal Employees’ Compensation Act.

(e) Preventive services within the competence of the professional staff

(1) To appraise and report work environment health hazards as an aid in preventing and controlling health risks;

(2) To provide health education to encourage employees to maintain personal health; and

(3) To provide specific disease screening examinations and immunizations.

(f) In addition, employees may be referred, upon their request, to private physicians, dentists, and other community health resources.

§ 101–5.306 Economic feasibility.

(a) The studies by GSA which lead to the development of space requirements and the determinations made as the result thereof will constitute the feasibility studies and the Administrator’s determination contemplated by §101–5.104.

(b) Each determination to provide health services will be governed by the principles stated in §101–5.303 and will be in consonance with the general standards and guidelines furnished Federal agencies by the Public Health Service of the Department of Health, Education, and Welfare.

§ 101–5.307 Public Health Service.

(a) The only authorized contact point for assistance of and consultation with the Public Health Service is the Federal Employee Health Programs, Division of Hospitals, Public Health Service, Washington, DC 20201. Other Federal agencies may be designated by the GSA Regional Administrator, pursuant to §101–5.105(b) to operate occupational health services. Designated agencies should contact the Public Health Service directly on all matters dealing with the establishment and operation of these services.

(b) Public Health Service should be consulted by the designated agency on such matters as types, amounts, and approximate cost of necessary equipment; the scope of the services to be provided if it is affected by the amount of space and number of building occupants; types and amounts of supplies, materials, medicines, etc., which should be stocked; and the approximate cost of personnel staffing in cases where this method of operation is chosen, etc. PHS should also be asked to develop and monitor standards under
which each health unit would be operated.

Subparts 101–5.4—101–5.48
[Reserved]

Subpart 101–5.49—Forms, Reports, and Instructions

§ 101–5.4900 Scope of subpart.

This subpart contains forms, reports, and related instructions used in connection with the regulations on centralized services in Federal buildings prescribed in this part 101–5.

[30 FR 4359, Apr. 3, 1965]

PART 101–6—MISCELLANEOUS REGULATIONS

Sec.

101–6.000 Scope of part.

Subpart 101–6.1 [Reserved]

Subpart 101–6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

101–6.201 Scope of subpart.
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Subpart 101–6.3—Ridesharing


Subpart 101–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment


Subpart 101–6.5—Code of Ethics for Government Service

101–6.500 Scope of subpart.

Subpart 101–6.6—Fire Protection (Firesafety) Engineering


Subparts 101–6.7—101–6.9 [Reserved]

Subpart 101–6.10—Federal Advisory Committee Management

Federal Property Management Regulations

§ 101–6.203

Subparts 101–6.1—101–6.20 [Reserved]

Subpart 101–6.21—Intergovernmental Review of General Services Administration Programs and Activities

101–6.2100 Scope of subpart.
101–6.2101 What is the purpose of these regulations?
101–6.2102 What definitions apply to these regulations?
101–6.2103 What programs and activities of GSA are subject to these regulations?
101–6.2104 What is the Administrator’s general responsibilities under the Order?
101–6.2105 What is the Administrator’s obligation with respect to Federal interagency coordination?
101–6.2106 What procedures apply to the selection of programs and activities under these regulations?
101–6.2107 How does the Administrator communicate with State and local officials concerning GSA’s programs and activities?
101–6.2108 How does the Administrator provide States an opportunity to comment on proposed Federal financial assistance and direct Federal development?
101–6.2109 How does the Administrator receive and respond to comments?
101–6.2110 How does the Administrator make efforts to accommodate intergovernmental concerns?
101–6.2111 What are the Administrator’s obligations in interstate situations?
101–6.2112 How may a State simplify, consolidate, or substitute federally required State plans?
101–6.2113 May the Administrator waive any provision of these regulations?

Subparts 101–6.22—101–6.48 [Reserved]

Subpart 101–6.49—Illustrations

101–6.4900 Scope of subpart.
101–6.4901 [Reserved]
101–6.4902 Format of certification required for budget submissions of estimates of obligations in excess of $100,000 for acquisitions of real and related personal property.


SOURCE: 29 FR 16287, Dec. 4, 1964, unless otherwise noted.


§ 101–6.201 Scope of subpart.

This subpart provides the regulations of the General Services Administration (GSA) under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–7) concerning nondiscrimination in federally assisted programs in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA.

[38 FR 17973, July 5, 1973]

§ 101–6.202 Purpose.

The purpose of this subpart 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 receiving Federal financial assistance from GSA.

§ 101–6.203 Application of subpart.

(a) Subject to paragraph (b) of this section, this subpart applies to any program for which Federal financial assistance is authorized under a law administered in whole or in part by GSA, including the laws listed in §101–6.217. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program after the effective date which do not come within the scope of any other subchapter of chapter 101.


[29 FR 15972, Dec. 1, 1964]
of this subpart pursuant to an application approved prior to such effective date. This subpart 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 to any such program before the effective date of this subpart, except to the extent otherwise provided by contract, (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 §101–6.204–2(d). The fact that a statute which authorizes GSA to extend Federal financial assistance to a program or activity is not listed in §101–6.217 shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(b) The regulations issued by the following Departments pursuant to title VI of the Act shall be applicable to Federal financial assistance of the kind indicated, and those Departments shall respectively be responsible for determining and enforcing compliance therewith:

(1) Department of Health, Education, and Welfare—donation or transfer of surplus property for purposes of education or public health (§101–6.217(a)(2) and (b)).

(2) Department of Defense—donation of surplus personal property for purposes of civil defense (§101–6.217(a)(2)).

(3) Department of Transportation—donation of property for public airport purposes (§101–6.217(c)). GSA will, however, be responsible for obtaining such assurances as may be required in applications and in instruments effecting the transfer of property.

(4) Department of the Interior—disposal of surplus real property, including improvements, for use as a public park, public recreational area, or historic monument (§101–6.217(d) (1) and (2)). GSA will, however, be responsible for obtaining such assurances as may be required in applications and in instruments effecting the transfer of property for use as a historic monument.

(5) Department of Housing and Urban Development—disposal of surplus real property for use in the provision of rental or cooperative housing to be occupied by families or individuals of low or moderate income (§101–6.217(q)).

(c) Each Department named in paragraph (b) of this section shall keep GSA advised of all compliance and enforcement actions, including sanctions imposed or removed, taken by it with respect to the types of Federal financial assistance specified in paragraph (b) of this section to which the regulations of such Department apply.

[38 FR 17973, July 5, 1973]

§ 101–6.204 Discrimination prohibited.

§ 101–6.204–1 General.

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

§ 101–6.204–2 Specific discriminatory actions prohibited.

(a)(1) In connection with any program to which this subpart applies, a recipient 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 benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment,
(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 (d) of this §101–6.204–2).

(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 respect 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 program to which this subpart applies, on the ground of race, color, or national origin, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

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

(b) As used in this §101–6.204–2 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 in or through a facility provided with the aid of Federal financial assistance.

(c) The enumeration of specific forms of prohibited discrimination in this §101–6.204–2 does not limit the generality of the prohibition in §101–6.204–1.

(d)(1) Where a primary objective of the Federal financial assistance to a program to which this subpart applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin in its employment practices under such program (including, but not limited to, recruitment or recruitment advertising; employment; layoff or termination; upgrading, demotion, or transfer; rates of pay or other forms of compensation; selection for training, including apprenticeship; and use of facilities). The requirements applicable to construction employment under any such program shall be those specified in or pursuant to part III of Executive Order 11246 or the corresponding provisions of any Executive order which supersedes it.

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


§ 101–6.204–3 Special benefits.

An individual shall not be deemed subjected to discrimination by reason of his exclusion from benefits limited by Federal law to individuals of a particular race, color, or national origin different from his.

§ 101–6.205 Assurances required.

§ 101–6.205–1 General.

(a) Every application for Federal financial assistance to which this subpart 101–6.2 applies, except an application to which §101–6.205–2 applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this subpart 101–6.2. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. 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 GSA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible GSA 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 Administrator 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 reverter title for so long as the lien of such mortgage or other encumbrance remains effective.

(c) The assurance required in the case of a transfer of personal property shall...
be inserted in the instrument effecting the transfer of the property.

d) In the case of Federal financial assistance not involving a transfer of property, the assurance required shall be inserted in the agreement executed between the United States and the recipient covering the extension of Federal financial assistance.


Every application by a State or a State agency for continuing Federal financial assistance to which this subpart applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (a) 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 subpart, and (b) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible GSA official 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 this subpart.


The requirements of §§101–6.205–1 and 101–6.205–2 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) 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 carry out such plan. In any case of continuing Federal financial assistance such responsible official 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 subpart. 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.

§ 101–6.206 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions of this subpart to certain programs for which Federal financial assistance is extended by GSA (in all cases the discrimination prohibited is discrimination on the ground of race,
color, or national origin, prohibited by title VI of the Act and this subpart):

(a) In the programs involving the transfer of surplus property for airport, park or recreation, historic monument, wildlife conservation, or street widening purposes (§101–6.217(c), (d), (e), and (h)), the public generally is entitled to the use of the facility and to receive the services provided by the facility and to facilities operated in connection therewith, without segregation or any other discriminatory practices.

(b) In the program involving the loan of machine tools to nonprofit institutions or training schools (§101–6.217(o)), discrimination by the recipient in the admission of students or trainees or in the treatment of its students or trainees in any aspect of the educational process is prohibited. In the case of an institution of higher education, the prohibition applies to the entire institution. In the case of elementary or secondary schools, the prohibition applies to all elementary and secondary schools of the recipient school district, consistent with §101–6.205–3. In this and other illustrations the prohibition of discrimination in the treatment of students or trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the recipient.

(c) In the programs involving the donation of personal property to public bodies or the American National Red Cross (§101–6.217(f) and (j)), discrimination in the selection or treatment of individuals to receive or receiving the benefits or services of the program is prohibited.

(d) In the program involving the donation of personal property to eleemosynary institutions (§101–6.217(f)), the assurance will apply to applicants for admission, patients, interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the institution, and will apply to the entire institution and to facilities operated in connection therewith.

(e) In the programs involving the allotment of space by GSA to Federal Credit Unions, without charge for rent or services, and the provision of free space and utilities for vending stands operated by blind persons (§101–6.217(i) and (k)), discrimination by segregation or otherwise in providing benefits or services is prohibited.

(f) In the program involving grants to State and local agencies and to nonprofit organizations and institutions for the collecting, describing, preserving, and compiling and publishing of documentary sources significant to the history of the United States (§101–6.217(n)), discrimination by the recipient in the selection of students or other participants in the program, and, with respect to educational institutions, in the admission or treatment of students, is prohibited.

(g) In the program involving the transfer of surplus real property for use in the provision of rental or cooperative housing to families or individuals of low or moderate income (§101–6.217(q)), discrimination in the selection and assignment of tenants is prohibited.

(h) A recipient may not take action that is calculated to bring about indirectly what this subpart forbids it to accomplish directly.

(i) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under §101–6.209–4 to provide information as to the availability of the program or activity and the rights of beneficiaries under this subpart have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will ensure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In
such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.


§§ 101–6.207—101–6.208 [Reserved]

§ 101–6.209 Compliance information.

§ 101–6.209–1 Cooperation and assistance.

Each responsible GSA official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this subpart 101–6.2 and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

§ 101–6.209–2 Compliance reports.

Each recipient shall keep such records and submit to the responsible GSA official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible GSA official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this subpart 101–6.2. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.


Each recipient shall permit access by the responsible GSA official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this subpart. 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.

§ 101–6.209–4 Information to beneficiaries and participants.

Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart 101–6.2 and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible GSA official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this subpart 101–6.2.

§ 101–6.210 Conduct of investigations.

§ 101–6.210–1 Periodic compliance reviews.

The responsible GSA official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this regulation.


Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart 101–6.2 may by himself or by a representative file with the responsible GSA official or his designee a written complaint. A 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 responsible GSA official or his designee.


The responsible GSA official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to

(a) If an investigation pursuant to §101–6.210–3 indicates a failure to comply with this subpart 101–6.2, the responsible GSA official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in §101–6.211.

(b) If an investigation does not warrant action pursuant to paragraph (a) of this section the responsible GSA official or his designee will so inform the recipient and the complainant, if any, in writing.

§ 101–6.210–5 Intimidatory or retaliatory acts prohibited.

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this subpart 101–6.2, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 101–6.211 Procedure for effecting compliance.

§ 101–6.211–1 General.

If there appears to be a failure or threatened failure to comply with this subpart 101–6.2, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this subpart may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (a) 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 (b) any applicable proceeding under State or local law.


If an applicant fails or refuses to furnish an assurance required under §101–6.205 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of §101–6.211–3. The GSA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under §101–6.211–3 except that GSA 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 this subpart 101–6.2.

§ 101–6.211–3 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 (a) the responsible GSA official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (b) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart 101–6.2, (c) the action has been approved by the Administrator pursuant to §101–6.213–5, and (d) the expiration of 30 days after the Administrator 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.
Federal Property Management Regulations

§ 101–6.212 Hearings.

§ 101–6.212–1 Opportunity for hearing.

Whenever an opportunity for a hearing is required by § 101–6.211–3, 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:

(a) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible GSA official that the matter be scheduled for hearing, or

(b) 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 section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 101–6.211–3, and consent to the making of a decision on the basis of such information as is available.

§ 101–6.212–2 Time and place of hearing.

Hearings shall be held, at a time fixed by the responsible GSA official, at the offices of GSA in Washington, DC, unless such official determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings shall be held before the responsible GSA official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 or 3344 (section 11 of the Administrative Procedure Act).

§ 101–6.212–3 Right to counsel.

In all proceedings under this § 101–6.212 the applicant or recipient and GSA shall have the right to be represented by counsel.

§ 101–6.212–4 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 101–6.212–1, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.
(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart 101–6.2, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the 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.


§ 101–6.212–5 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute non-compliance with this subpart 101–6.2 with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Administrator may, by agreement with such other departments, or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this regulation. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with §101–6.213.

§ 101–6.213 Decisions and notices.

§ 101–6.213–1 Decision by person other than the responsible GSA official.

If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible GSA official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible GSA official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible GSA official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible GSA official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible GSA official.

§ 101–6.213–2 Decisions on record or review by the responsible GSA official.

Whenever a record is certified to the responsible GSA official for decision or he reviews the decision of a hearing examiner pursuant to §101–6.213–1, or whenever the responsible GSA official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible GSA official shall be given in writing to the applicant or recipient, and to the complainant, if any.

§ 101–6.213–3 Decisions on record where a hearing is waived.

Whenever a hearing is waived pursuant to §101–6.212 a decision shall be made by the responsible GSA official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

§ 101–6.213–4 Rulings required.

Each decision of a hearing officer or responsible GSA official shall set forth his ruling on each finding, conclusion,
or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart 101–6.2 with which it is found that the applicant or recipient has failed to comply.

§ 101–6.213–5 Approval by Administrator.

Any final decision of a responsible GSA official (other than the Administrator) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart 101–6.2 or the Act, shall promptly be transmitted to the Administrator, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

§ 101–6.213–6 Content of orders.

The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this subpart 101–6.2, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this subpart, or to have otherwise failed to comply with this subpart, unless and until it corrects its noncompliance and satisfies the responsible GSA official that it will fully comply with this subpart.

§ 101–6.213–7 Post termination proceedings.

(a) An applicant or recipient adversely affected by an order issued pursuant to §101–6.213–6 shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart. An elementary or secondary school or school system which is unable to file an assurance of compliance with §101–6.24 shall be restored to full eligibility to receive financial assistance if it files a court order or a plan for desegregation meeting the requirements of §101–6.205–3 and provides reasonable assurance that it will comply with this court order or plan.

(b) Any applicant or recipient adversely affected by an order entered pursuant to §101–6.213–6 may at any time request the responsible GSA official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (a) of this section. If the responsible GSA official determines that those requirements have been satisfied, he shall restore such eligibility.

(c) If the responsible GSA official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible GSA official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, the sanctions imposed by the order issued under §101–6.213–6 shall remain in effect.

[38 FR 17975, July 5, 1973]

§ 101–6.214 Judicial review.

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

§ 101–6.215 Effect on other regulations; forms and instructions.

§ 101–6.215–1 Effect on other regulations.

All regulations, orders, or like directions heretofore issued by any officer of GSA which imposed requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this subpart 101–
§ 101–6.215–2 Forms and instructions.

Each responsible GSA official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this subpart 101–6.2 as applied to programs to which this subpart applies and for which he is responsible.

§ 101–6.215–3 Supervision and coordination.

The Administrator may from time to time assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this subpart (other than responsibility for final decision as provided in §101–4.213), including the achievement of effective coordination and maximum uniformity within GSA and within the executive branch of the Government in the application of title VI and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the responsible GSA official.

38 FR 17975, July 5, 1973

§ 101–6.216 Definitions.

As used in this subpart:

(a) The term General Services Administration or GSA includes each of its operating services and other organizational units.

(b) The term Administrator means the Administrator of General Services.

(c) The term responsible GSA official with respect to any program receiving Federal financial assistance means the Administrator or other official of GSA who by law or by delegation has the principal responsibility within GSA for the administration of the law extending such assistance.

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

(e) The term Federal financial assistance includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a consideration which is reduced for the purposes of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The terms program or activity and program mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance.
§ 101–6.217 Laws authorizing Federal financial assistance for programs to which this subpart applies.

(a)(1) Donation of surplus personal property to educational activities which are of special interest to the armed services (section 203(j)(2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(j)(2)).

(2) Donation of surplus personal property for use in any State for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(j)(3) and (4) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(j)(3) and (4)), and the making available to State agencies for surplus property, or the transfer of title to such agencies, of surplus personal property approved for donation for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(n) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(n)).

(b) Disposal of surplus real and related personal property for purposes of education or public health, including research (section 203(k)(1) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k)(1)).

(c) Donation of property for public airport purposes (section 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g); section 23 of the Airport and Airway Development Act of 1970, Pub. L. 91–258).

(d)(1) Disposal of surplus real property, including improvements, for use as a historic monument (section 13(h) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(h)).
(2) Disposal of surplus real and related personal property for public park or public recreational purposes (section 203(k)(2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k)(2)).

(c) Disposal of real property to States for wildlife conservation purposes (Act of May 19, 1948, 16 U.S.C. 667b-d).

(d) Donation of personal property to public bodies (section 202(h) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 483(h)).

(e) Grants of easements by the General Services Administration pursuant to the Act of October 23, 1962, (40 U.S.C. 319–319(c), and grants by the General Services Administration of revocable licenses or permits to use or occupy Federal real property, if the consideration to the Government for such easement, licenses, or permits is less than estimated fair market value.

(h) Conveyance of real property or interests therein by the General Services Administration to States or political subdivisions for street widening purposes pursuant to the Act of July 7, 1960 (40 U.S.C. 345c), if the consideration to the Government is less than estimated fair market value.

(i) Allotment of space by the General Services Administration in Federal buildings to Federal Credit Unions, without charge for rent or services (section 25 of the Federal Credit Union Act, 12 U.S.C. 1770).

(j) Donation of surplus property to the American National Red Cross (section 203(l) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(l)).

(k) Provision by the General Services Administration of free space and utilities for vending stands operated by blind persons (section 1 of the Randolph-Sheppard Act, 20 U.S.C. 107).

(l) Donation of forfeited distilled spirits, wine, and malt beverages to eleemosynary institutions (26 U.S.C. 5688).


(n) Grants to State and local agencies and to nonprofit organizations and institutions for the collecting, describing, preserving and compiling, and publishing of documentary sources significant to the history of the United States (section 503 of the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 88-383).

(o) Loan of machine tools and industrial manufacturing equipment in the national industrial reserve to nonprofit educational institutions or training schools (section 7 of the National Industrial Reserve Act of 1948, 50 U.S.C. 456).

(p) District of Columbia grant-in-aid hospital program (60 Stat. 896, as amended).

(q) Disposal of surplus real property for use in the provision of rental or cooperative housing to be occupied by families or individuals of low or moderate income (section 414 of the Housing and Urban Development Act of 1969, Pub. L. 91–152).


Subpart 101–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

AUTHORITY: 40 U.S.C. 486(c); Executive Order 12191 dated February 1, 1980; Sec. 205(c), 63 Stat. 390.

SOURCE: 67 FR 54968, Sept. 12, 2000, unless otherwise noted.

§ 101–6.300 Cross-reference to the Federal Management Regulation (FMR)

101 CFR chapter 102 parts 1 through 220.

For information on Federal facility ridesharing, see FMR part 102–74 (41 CFR part 102–74).

For policy concerning official use of Government passenger carriers between residence and place of employment previously contained in this part, see FMR part 5 (41 CFR part 102–5), Home-to-Work Transportation.

Subpart 101–6.5—Code of Ethics for Government Service

§ 101–6.500 Scope of subpart.

(a) In accordance with Public Law 96–303, the requirements of this section shall apply to all executive agencies (as defined by section 105 of title 5, United States Code), the United States Postal Service, and the Postal Rate Commission. The heads of these agencies shall be responsible for ensuring that the requirements of this section are observed and complied with within their respective agencies.

(b) Each agency, as defined in “(a)” above, shall display in appropriate areas of buildings in which at least 20 individuals are regularly employed by an agency as civilian employees, copies of the Code of Ethics for Government Service (Code).

(c) For Government-owned or wholly leased buildings subject to the requirements of this section, at least one copy of the Code shall be conspicuously displayed, normally in the lobby of the main entrance to the building. For other buildings subject to the requirements of this section which are owned, leased, or otherwise provided to the Federal Government for the purpose of performing official business, at least one copy of the Code may be displayed in other appropriate building locations, such as auditoriums, bulletin boards, cafeterias, locker rooms, reception areas, and other high-traffic areas.

(d) Agencies of the Federal Government shall not pay any costs for the printing, framing, or other preparation of the Code. Agencies may properly pay incidental expenses, such as the cost of hardware, other materials, and labor incurred to display the Code. Display shall be consistent with the decor and architecture of the building space. Installation shall cause no permanent damage to stonework or other surfaces which are difficult to maintain or repair.

(e) Agencies may obtain copies of the Code by submitting a requisition for National Stock Number (NSN) 7690–01–099–8167 in Fedstrip format to the GSA regional office responsible for providing support to the requisitioning agency. Agencies will be charged a nominal fee to cover shipping and handling.

[58 FR 21945, Apr. 28, 1994]

Subpart 101–6.6—Fire Protection (Firesafety) Engineering

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 67 FR 76882, Dec. 13, 2002, unless otherwise noted.


For information on fire protection (firesafety) engineering, see FMR part 102–74 (41 CFR part 102–74) and FMR part 102–80 (41 CFR part 102–80).

Subparts 101–6.7—101–6.9 [Reserved]

Subpart 101–6.10—Federal Advisory Committee Management


SOURCE: 66 FR 37733, July 19, 2001, unless otherwise noted.


For Federal advisory committee management information previously contained in this subpart, see FMR part 102–3 (41 CFR part 102–3).
Subparts 101–6.11—101–6.20
[Reserved]

Subpart 101–6.21—Intergovernmental Review of General Services Administration Programs and Activities


SOURCE: 48 FR 29329, June 24, 1983, unless otherwise noted.


§ 101–6.2100 Scope of subpart.


§ 101–6.2101 What is the purpose of these regulations?


(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, area-wide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of GSA, and are not intended to create any right or benefit enforceable at law by a party against GSA or its officers.

§ 101–6.2102 What definitions apply to these regulations?

GSA means the U.S. General Services Administration.


Administrator means the Administrator of General Services or an official or employee of GSA acting for the Administrator under a delegation of authority.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 101–6.2103 What programs and activities of GSA are subject to these regulations?

The Administrator publishes in the FEDERAL REGISTER a list of GSA’s programs and activities that are subject to these regulations.

§ 101–6.2104 What are the Administrator’s general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, GSA.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials’ concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where
permitted by law, encourages the substitution of State plans for federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 101–6.2105 What is the Administrator’s obligation with respect to Federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and GSA regarding programs and activities covered under these regulations.

§ 101–6.2106 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 101–6.2103 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Administrator of the GSA programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit to the Administrator an assurance that the State has consulted with elected local elected officials regarding the change. GSA may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State’s process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 101–6.2107 How does the Administrator communicate with State and local officials concerning GSA’s programs and activities?

(a) [Reserved]

(b) The Administrator provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

NOTE: This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which GSA in its discretion deems appropriate.

§ 101–6.2108 How does the Administrator provide States an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Administrator gives State processes or directly affected State, areawide, regional and local officials and entities at least:

(1) [Reserved]

(2) 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with GSA have been delegated.

§ 101–6.2109 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 101–6.2110 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and

(2) That office or official transmits a State process recommendation for a program selected under § 101–6.2106.

(b) The single point of contact is not obligated to transmit comments from State, areawide, regional or local...
§ 101–6.2110 How does the Administrator make efforts to accommodate intergovernmental concerns?

(a) If a State process provides a State process recommendation to GSA through its single point of contact, the Administrator either:

1. Accepts the recommendation;
2. Reaches a mutually agreeable solution with the State process; or
3. Provides the single point of contact with such written explanation of its decision, as the Administrator finds in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

1. GSA will not implement its decision for at least ten days after the single point of contact receives the explanation; or
2. The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 101–6.2111 What are the Administrator’s obligations in interstate situations?

(a) The Administrator is responsible for:

1. Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
2. Notifying appropriate officials and entities in States which have adopted a process and which have selected a GSA program or activity;
3. Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or have not selected a GSA program or activity; and
4. Responding pursuant to § 101–6.2110 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with GSA have been delegated.

(b) The Administrator uses the procedures in § 101–6.2110 if a State process provides a State process recommendation to GSA through a single point of contact.

§ 101–6.2112 How may a State simplify, consolidate, or substitute federally required State plans?

(a) As used in this section:

1. Simplify means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.
2. Consolidate means that a State may meet statutory and regulatory requirements by combining two or more
Federal Property Management Regulations

§ 101–6.2113 May the Administrator waive any provision of these regulations?

In an emergency, the Administrator may waive any provision of these regulations.

Subparts 101–6.22—101–6.48 [Reserved]

Subpart 101–6.49—Illustrations

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 101–6.4900 Scope of subpart.

This subpart contains illustrations prescribed for use in connection with the subject matter covered in part 101–6.

[37 FR 20542, Sept. 30, 1972]

§ 101–6.4901 [Reserved]

§ 101–6.4902 Format of certification required for budget submissions of estimates of obligations in excess of $100,000 for acquisitions of real and related personal property.

NOTE: The illustration in §101–6.4902 is filed as part of the original document.

[37 FR 20542, Sept. 30, 1972]

PART 101–8—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subparts 101–8.1—101–8.2 [Reserved]

Subpart 101–8.3—Discrimination Prohibited on the Basis of Handicap

Sec.
101–8.300 Purpose and applicability.
101–8.301 Definitions.
101–8.302 General prohibitions.
101–8.303 Specific prohibitions.
101–8.304 Effect of State or local law or other requirements and effect of employment opportunities.
101–8.305 Employment practices prohibited.
101–8.308 Preemployment inquiries.
101–8.309 Accessibility.
101–8.310 New construction.
101–8.311 Historic Preservation Programs.
101–8.312 Procedures.
101–8.313 Self-evaluation.

Subparts 101–8.4—101–8.6 [Reserved]

Subpart 101–8.7—Discrimination Prohibited on the Basis of Age

101–8.701 Scope of General Services Administration’s age discrimination regulation.
101–8.702 Applicability.
101–8.703 Definitions of terms.
101–8.704 Rules against age discrimination.
101–8.705 Definition of normal operation and statutory objective.
101–8.706 Exceptions to the rules against age discrimination.
101–8.706–1 Normal operation or statutory objective of any program or activity.
101–8.706–2 Reasonable factors other than age.
101–8.708 Affirmative action by recipient.
101–8.709 Special benefits for children and the elderly.
101–8.710 Age distinctions contained in General Services Administration regulation.
101–8.711 General responsibilities.
101–8.712 Notice to subrecipients and beneficiaries.
101–8.714 Information requirements.
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101–8.716 Complaints.
101–8.717 Mediation.
101–8.718 Investigation.
101–8.719 Prohibition against intimidation or retaliation.
101–8.720 Compliance procedure.
101–8.721 Hearings.
101–8.723 Remedial action by recipient.
101–8.724 Exhaustion of administrative remedies.
101–8.725 Alternate funds disbursal.
§ 101–8.300 Purpose and applicability.

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

(b) This subpart applies to each recipient or subrecipient of Federal assistance from GSA and to each program or activity that receives assistance.

§ 101–8.301 Definitions.


(b) Handicapped person means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairments, or is regarded as having such an impairment.

(c) As used in paragraph (b) of this section, the phrase:

(1) Physical or mental impairment means:

(i) 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

(ii) 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, when current use of drugs and/or alcohol is not detrimental to or interferes with the employee’s performance, nor constitutes a direct threat to property or safety of others.

(2) Major life activities means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) 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.

(d) 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 education 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) Has none of the impairments defined in paragraphs (c)(1)(i) and (ii) of this section, but is treated by a recipient as having such an impairment.

(e) Is regarded as having an impairment means:

(i) 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;

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

(iii) Has none of the impairments defined in paragraphs (c)(1)(i) and (ii) of this section, but is treated by a recipient as having such an impairment.
(iii) To whom a state is required to provide a free appropriate public education under section 612 of the Education for All Handicapped Children Act of 1975, Public Law 94–142.

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and

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

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

(f) The term **program or activity** means all of the operations of any entity described in paragraphs (f)(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 (f)(1), (2), or (3) of this section.

The definitions set forth in §101–6.216, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.


§ 101–8.302 **General prohibitions.**

No qualified handicapped persons 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 that receives Federal assistance from GSA.

§ 101–8.303 **Specific prohibitions.**

(a) A recipient, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) 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;

(3) Provide 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 others;

(4) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) 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 services to beneficiaries of the recipient's program or activity;
§ 101–8.304 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this subpart 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 subpart 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.

(f) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal 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 assistance.

(g) The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this subpart.

(h) Recipients shall take appropriate steps to ensure that communications with the donees, applicants, employees, and handicapped persons participating in federally assisted programs or activities or receiving aid, benefits, or services are available to persons with impaired vision and hearing. Examples of communications methods include: Telecommunication devices for the deaf (TDD’s), other telephonic devices, provision of braille materials, readers, and qualified sign language interpreters.

(i) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in §101–8.302 of this subpart.
§ 101–8.305 Employment practices prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to employment discrimination under any program or activity to which this subpart applies.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this subpart 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 adversely affects their opportunities or status because of handicap.

(c) 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. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeships.

(d) The provisions of this subpart apply to:

(1) Recruitment, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of 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 or otherwise;

(6) Fringe benefits available by virtue of employment, whether administered by the recipient or not;

(7) Selection and provision of 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 those that are social or recreational; and

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

(e) 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.

§ 101–8.306 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 or activity.

(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, such as telecommunications devices or other telephonic devices for hearing impaired persons; provision of reader or qualified sign language interpreters; and other similar actions. These actions are to be taken either upon request of the handicapped employee or, if not so requested, upon the recipient’s own initiative, after consultation with and approval by the handicapped person.

(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient’s program or activity, factors to be considered include:

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

(2) The type of the recipient’s operation, including the composition and structure of the recipient’s work force; and

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

(d) A recipient may not deny an employment opportunity to a qualified handicapped employee or applicant if
§ 101–8.307 Employment criteria.
(a) A recipient may not use an employment test or other selection criterion that screens out or tends to screen out handicapped persons unless the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question.
(b) A recipient shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills except where those skills are the factors that the test purports to measure.

§ 101–8.308 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 inquiries 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 inquiries 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, or is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action under section 503 of the Rehabilitation Act of 1973, as amended, 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 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 subpart.
(c) This section does not 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 all entering employees are subjected to the examination regardless of handicap or absence of handicap and results of the examination are used only in accordance with the requirements of this subpart.
(d) Information obtained in accordance with this section concerning the medical condition or history of the applicant shall be collected and maintained on separate forms that are to be accorded confidentiality as medical records, except that:
1. Supervisors and managers may be informed of restrictions on the work or duties of handicapped persons and of necessary accommodations;
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 section 504 of the Rehabilitation Act of 1973, as amended, shall be provided relevant information upon request.

§ 101–8.309 Accessibility.
(a) General. No 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 be subjected to discrimination under any program or activity that receives Federal assistance from GSA.
(b) Accessibility. A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.
(c) Methods. A recipient may comply with the requirement of paragraph (a)

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of this section through such means as acquisition or redesign of equipment, such as telecommunications devices or other telephonic devices for the hearing impaired; reassignment of classes or other services to alternate sites which have accessible buildings; assignment of aides to beneficiaries, such as readers for the blind or qualified sign language interpreters for the hearing impaired when appropriate; home visits; delivery of health, welfare, or other social services at alternate accessible sites; alterations of existing facilities and construction of new facilities in conformance with the requirements of §101–8.310; 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 serve handicapped persons in the most integrated setting appropriate.

(d) Small service providers. If a recipient with fewer than 15 employees finds, after consultation with a handicapped person seeking its services, that there is no available 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 at no additional cost to the handicapped person.

(e) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this subpart, except that where structural changes in facilities are necessary, the changes are to be made as expeditiously as possible, but in no event later than 3 years after the effective date of this subpart.

(f) Transition plan. In the event that structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this subpart, a transition plan setting forth the steps necessary to complete the changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and the plan must meet with the approval of the Director of Civil Rights, GSA. A copy of the transition plan shall be made available for public inspection. At a minimum, the plan shall:

1. Identify physical obstacles in the recipient’s facilities that limit the accessibility to and usability by handicapped persons of its program or activity;

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

3. Specify the schedule for taking the steps necessary to achieve full accessibility under paragraph (a) of this section and, if the time period or the transition plan is longer than 1 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.

(g) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to, and usable by, handicapped persons.

§ 101–8.310 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in a manner that the facility or part of the facility is readily accessible to, and usable by, handicapped persons, if the construction began after the effective date of this subpart.

(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 subpart 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 a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.
§ 101–8.311 Historic Preservation Programs.

(a) Definitions. For purposes of this section:

1. Historic Preservation Programs are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

2. Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places.

3. Substantial impairment means a permanent alteration that results in a significant loss of the integrity of finished materials, design quality or special character.

(b) Obligation—(1) Accessibility. A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons.

This paragraph does not necessarily require a recipient to make each of its existing historic properties or every part of an historic property accessible to and usable by handicapped persons. Methods of achieving accessibility include:

(i) Making physical alterations which enable handicapped persons to have access to otherwise inaccessible areas or features of historic properties;

(ii) Using audio-visual materials and devices to depict otherwise inaccessible areas or features of historic properties;

(iii) Assigning persons to guide handicapped persons into or through otherwise inaccessible portions of historic properties;

(iv) Adopting other innovative methods to achieve accessibility.

Because the primary benefit of an Historic Preservation Program is the experience of the historic property itself, in taking steps to achieve accessibility, recipients shall give priority to those means which make the historic property, or portions thereof, physically accessible to handicapped individuals.

(b) Waiver of accessibility standards. Where accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Administrator may grant a waiver of the accessibility requirement. In determining whether accessibility can be achieved without causing a substantial impairment, the Administrator shall consider the following factors:

1. Scale of property, reflecting its ability to absorb alterations;

2. Use of the property, whether primarily for public or private purpose;

3. Importance of the historic features of the property to the conduct of the program or activity; and

4. Cost of alterations in comparison to the increase in accessibility.

The Administrator shall periodically review any waiver granted under this section and may withdraw it if technological advances or other changes so warrant.

(c) Advisory Council comments. Where the property is federally owned or where Federal funds may be used for

The Age Discrimination Act of 1975, as amended, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

§ 101–8.701 Scope of General Services Administration’s age discrimination regulation.

This regulation sets out General Services Administration’s (GSA) policies and procedures under the Age Discrimination Act of 1975, as amended, in accordance with 45 CFR part 90. The Act and the Federal regulation permits Federally assisted programs or activities to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 101–8.702 Applicability.

(a) The regulation applies to each GSA recipient and to each program or activity operated by the recipient.

(b) The regulations does not apply to:

1. An age distinction contained in that part of Federal, State, local statute or ordinance adopted by an elected, general purpose legislative body that:

   (i) Provides any benefits or assistance to persons based on age;
   
   (ii) Establishes criteria for participation in age-related terms; or
   
   (iii) Describes intended beneficiaries or target groups in age-related terms.

2. Any employment practice of any employer, employment agency, labor organization or any labor-management apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act (CETA) (29 U.S.C. 801 et seq.).

§ 101–8.703 Definitions of terms.

(a) As used in these regulations, the term: Act means the Age Discrimination Act of 1975, as amended (title III of Pub. L. 94–135).
§ 101–8.704 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §101–8.706 of this regulation.

(a) General rule. No person in the United States may on the basis of age, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program 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 (k)(1), (2), or (3) of this section.

(i) 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 any other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

§ 101–8.705 Definition of normal operation and statutory objective.

The terms normal operation and statutory objective are defined as follows:

(a) Normal operation means the operation of a program or activity without significant changes that would inhibit meeting objectives.

(b) Statutory objective means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 101–8.706 Exceptions to the rules against age discrimination.

§ 101–8.706–1 Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor if:

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

(b) The other characteristic must be measured or approximated for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

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

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

§ 101–8.706–2 Reasonable factors other than age.

(a) A recipient is permitted to take an action, otherwise prohibited by §101–8.706–1, which is based on something other than age, even though the action may have a disproportionate effect on persons of different ages.

(b) An action may be based on a factor other than age only if the factor bears a direct and substantial correlation to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 101–8.707 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §101–8.706 is the recipient’s.

§ 101–8.708 Affirmative action by recipient.

Even in the absence of a finding of age discrimination, a recipient may take affirmative action to overcome the effects resulting in limited participation in the recipient’s program or activity.

§ 101–8.709 Special benefits for children and the elderly.

If a recipient’s program or activity provides special benefits to the elderly or to children, such use of age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of §101–8.705.

§ 101–8.710 Age distinctions contained in General Services Administration regulation.

Any age distinctions contained in a rule or regulation issued by GSA are presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies. The GSA regulation 41 CFR 101–44.207(a) (3) through (27), describes specific Federal
§ 101–8.711 General responsibilities.

Each recipient of Federal financial assistance from GSA is responsible for ensuring that its programs or activities comply with the Act and this regulation and must take steps to eliminate violations of the Act. A recipient is also responsible for maintaining records, providing information, and affording GSA access to its records to the extent GSA finds necessary to determine whether the recipient is complying with the Act and this regulation.

§ 101–8.712 Notice to subrecipients and beneficiaries.

(a) If a primary recipient passes on Federal financial assistance from GSA to subrecipients, the primary recipient provides to subrecipients, written notice of their obligations under the Act and this regulation.

(b) Each recipient makes necessary information about the Act and this regulation available to its beneficiaries to inform them about the protections against discrimination provided by the Act and this regulation.

§ 101–8.713 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from GSA signs a written assurance as specified by GSA that it intends to comply with the Act and this regulation.

(b) Recipient assessment of age distinctions.

(1) As part of a compliance review under §101–8.715 or complaint investigation under §101.8.718, GSA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from GSA to assess the recipient’s compliance with the Act.

(2) If an assessment indicates a violation of the Act and the GSA regulation, the recipient takes corrective action.

§ 101–8.714 Information requirements.

Each recipient must:

(a) Keep records in a form and containing information that GSA determines necessary to ensure that the recipient is complying with the Act and this regulation.

(b) Provide to GSA upon request, information and reports that GSA determines necessary to find out whether the recipient is complying with the Act and this regulation.

(c) Permit reasonable access by GSA to books, records, accounts, facilities, and other sources of information to the extent GSA finds it necessary to find out whether the recipient is complying with the Act and this regulation.

(d) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 59–511), the reporting and record keeping provisions included in this regulation will be submitted, for approval, to the Office of Management and Budget (OMB). No data collection or record keeping requirement will be imposed on recipients or donees without the required OMB approval number.
§ 101–8.715 Compliance reviews.
(a) GSA may conduct compliance reviews and use similar procedures to investigate and correct violations of the Act and this regulation. GSA may conduct the reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and this regulation has occurred.
(b) If a compliance review indicates a violation of the Act or this regulation, GSA attempts to achieve voluntary compliance with the Act. If compliance cannot be achieved, GSA arranges for enforcement as described in § 101–8.720.

§ 101–8.716 Complaints.
(a) Any person, individually or as a member of a class (defined at §101–8.703(e)) or on behalf of others, may file a complaint with GSA alleging discrimination prohibited by the Act or this regulation based on an action occurring after July 1, 1979. A complainant must file a complaint within 80 days from the date the complainant first has knowledge of the alleged act of discrimination. However, for good cause shown, GSA may extend this time limit.
(b) GSA considers the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.
(c) GSA attempts to facilitate the filing of complaints if possible, including taking the following measures:
(1) Accepting as a sufficient complaint, any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes the action or practice complained of, and is signed by the complainant;
(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint;
(3) Notifying the complainant and the recipient (or their representative) of their right to contact GSA for information and assistance regarding the complaint resolution process.
(d) GSA returns to the complainant any complaint outside the jurisdiction of this regulation, and states the reason(s) why it is outside the jurisdiction of the regulation.

§ 101–8.717 Mediation.
(a) GSA promptly refers to the mediation agency designated by the Secretary, HHS, all sufficient complaints that:
(1) Fall within the jurisdiction of the Act and this regulation, unless the age distinction complained of is clearly within an exception; and
(2) Contain the information needed for further processing.
(b) Both the complainant and the recipient must participate in the mediation process to the extent necessary to reach an agreement or make an informed judgement that an agreement is not possible. Both parties need not meet with the mediator at the same time.
(c) If the complainant and the recipient agree, the mediator will prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator must send a copy of the agreement to GSA. GSA takes no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.
(d) The mediator must protect the confidentiality of all information obtained in the course of the mediation. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.
(e) The mediation proceeds for a maximum of 60 calendar days after a complaint is filed with GSA. Mediation ends if:
(1) 60 calendar days elapse from the time the complaint is filed; or
(2) Before the end of the 60 calendar-day period an agreement is reached; or
(3) Before the end of that 60 calendar-day period, the mediator finds that an agreement cannot be reached.
Note: The 60 calendar day period may be extended by the mediator, with the concurrence of GSA, for not more than 30 calendar days if the mediator determines that agreement is likely to be reached during the extension period.
§ 101–8.718 Investigation.

(a) Informal investigation. GSA investigates complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement. As part of the initial investigation, GSA uses informal factfinding methods, including joint or separate discussions with the complainant and the recipient, to establish the fact and, if possible, settle the complaint on terms that are mutually agreeable to the parties. GSA may seek the assistance of any involved State agency. GSA puts any agreement in writing and has it signed by the parties and an authorized official designated by the Administrator or the Director, Office of Organization and Personnel. The settlement may not affect the operation of any other enforcement efforts of GSA, including compliance reviews and investigation of other complaints that may involve the recipient. The settlement is not a finding of discrimination against a recipient.

(b) Formal investigation. If GSA cannot resolve the complaint through informal investigation, it begins to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, GSA attempts to obtain voluntary compliance. If GSA cannot obtain voluntary compliance, it begins enforcement as described in § 101–8.720.

§ 101–8.719 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:
(a) Attempts to assert a right protected by the Act of this regulation; or
(b) Cooperates in any mediation, investigation, hearing, conciliation, and enforcement process.

§ 101–8.720 Compliance procedure.

(a) GSA may enforce the Act and these regulations through:
(1) Termination of a recipient’s Federal financial assistance from GSA under the program or activity involved where the recipient has violated the Act or this regulation. The determination of the recipient’s violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.
(2) Any other means authorized by law including, but not limited to:
(i) Referral to the Department of Justice for proceeding to enforce any rights of the United States or obligations of the recipients created by the Act or this regulation, or
(ii) Use of any requirement of or referral to any Federal, State, or local government agency that has the effect of correcting a violation of the Act or this regulation.

(b) GSA limits any termination to the particular recipient and program or activity or part of such program or activity GSA finds in violation of this regulation. GSA does not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from GSA.

(c) GSA takes no action under paragraph (a) until:
(1) The administrator advises the recipient of its failure to comply with the Act and this regulation and determines that voluntary compliance cannot be obtained, and
(2) 30 calendar days elapse after the Administrator sends a written report of the grounds of the action to the committees of Congress having legislative jurisdiction over the program or activity involved. The Administrator files a report if any action is taken under paragraph (a) of this section.

(d) GSA may also defer granting new Federal financial assistance from GSA to a recipient when a hearing under § 101–8.721 is initiated.
(1) New Federal financial assistance from GSA includes all assistance for which GSA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from GSA does not include assistance approved before the beginning of a hearing.
(2) GSA does not begin a deferral until the recipient receives notice of an opportunity for a hearing under § 101–8.721. GSA does not continue a deferral
for more than 60 calendar days unless a
hearing begins within that time or the
time for beginning the hearing is ex-
tended by mutual consent of the recipi-
ent and the Administrator. GSA does
not continue a deferral for more than
30 calendar days after the close of the
hearing, unless the hearing results in a
finding against the recipient.

(3) GSA limits any deferral to the
particular recipient and program or ac-
tivity or part of such program or activ-
ity GSA finds in violation of these reg-
ulations. GSA does not base any part of
a deferral on a finding with respect to
any program or activity of the recipi-
ent which does not, and would not, re-
ceive Federal financial assistance from
GSA.

§ 101–8.721 Hearings.

(a) Opportunity for hearing. Whenever
an opportunity for a hearing is re-
quired, reasonable notice shall be given
by registered or certified mail, return
receipt requested, to the affected appli-
cant or recipient. This notice shall ad-
vise the applicant or recipient of the
action proposed to be taken, the spe-
cific provision under which the pro-
posed action against it is to be taken,
and the matters of fact or law asserted
as the basis for this action; and either
fix a date not less than 20 days after
the date of such notice within which
the applicant or recipient may request
of the responsible GSA official that the
matter be scheduled for hearing or ad-
vise 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 sub-
mit written information and argument
for the record. The failure of an appli-
cant or recipient to request a hearing
for which a notice has been set shall be
deemed to be a waiver of the right to a
hearing under section 602 of the Act,
and consent to the making of a deci-
sion on the basis of such information
as may be filed as the record.

(b) Time and place of hearing. Hear-
ings shall be held at GSA in Wash-
ington, D.C., at a time fixed by the Di-
rector, Office of Civil Rights (OCR), un-
less he or she determines that the con-
venience of the applicant or recipient
or of GSA requires that another place
be selected. Hearings shall be held be-
fore a hearing examiner designated in
accordance with 5 U.S.C. 3105 and 3344
(section 11 of the Administrative Pro-
cedure Act).

(c) Right to counsel. In all proceed-
ings under this section, the applicant or re-
cipient and GSA shall have the right to
be represented by counsel.

(d) Procedures, evidence, and record.
(1) The hearing, decision, and any admin-
istrative review thereof shall be con-
ducted in conformity with sections 5–8
of the Administrative Procedure Act,
and in accordance with such rules of
procedure as are proper (and not incon-
sistent with this section) relating to
the conduct of the hearing, giving of
notices subsequent to those provided
for in paragraph (a) of this section, tak-
ing of testimony, exhibits, argu-
ments and briefs, requests for findings,
and other related matters. Both GSA
and the applicant or recipient shall be
entitled to introduce all relevant evi-
dence on the issues as stated in the no-
tice for hearing or as determined by
the Officer conducting the hearing at
the outset of or during the hearings.
Any person (other than a Government
employee considered to be on official
business) who, having been invited or
requested to appear and testify as a
witness on the Government’s behalf,
attends at a time and place scheduled
for a hearing provided for by this part,
may be reimbursed for his travel and
actual expenses of attendance in an
amount not to exceed the amount pay-
able under the standardized travel reg-
ulations to a Government employee
traveling on official business.

(2) Technical rules of evidence shall
not apply to hearings conducted pursu-
ant to this part, but rules or principles
designed to assure production of the
most credible evidence available and to
subject testimony to test by cross-ex-
amination shall be applied where rea-
sonably necessary by the officer con-
ducting the hearing. The hearing offi-
cer may exclude irrelevant, immate-
rial, 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 advances 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 of Joint Hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the responsible GSA official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with §101–8.722.


(a) Decisions by hearing examiners. After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Agency designated reviewing authority for final decision. A copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for GSA may, within the period provided for in the rules of procedure issued by GSA official, file with the reviewing authority exceptions to the initial decision, with his or her reasons therefore. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue a decision including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) Decisions on record or review by the reviewing authority. Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority 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 §101–8.721(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. 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 examiner or reviewing authority shall set forth a ruling on each findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) Review in certain cases by the Administrator. If the Administrator has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for GSA may request the Administrator to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible GSA official. Such review is not a matter of right and shall be granted only where the Administrator determines there are special and important reasons therefor. The Administrator may grant or deny such request, in whole or in part. He or she may also review such a decision in accordance with rules of procedure issued by the responsible GSA official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of GSA when
the Administrator transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

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

(g) Post-termination proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that is will fully comply with 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 responsible GSA official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible GSA official determines that those requirements have been satisfied, he or she shall restore such eligibility.

(3) If the responsible GSA official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible GSA official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it 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.

§ 101–8.723 Remedial action by recipient.

If GSA finds a recipient discriminated on the basis of age, the recipient must take any remedial action that GSA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that discriminated, GSA may require both recipients to take remedial action.

§ 101–8.724 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 calendar days elapse after the complainant files the complaint and GSA makes no finding with regard to the complaint; or

(2) GSA issues a finding in favor of the recipient.

(b) If GSA fails to make a finding within 180 days or issues a finding in favor of the recipient, GSA must:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring civil action for injunctive relief; and

(3) Inform the complainant:

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

(ii) That a complainant prevailing in a civil action has the right to be
§ 101–8.725 Alternate funds disbursal.

If GSA withholds Federal financial assistance from a recipient under this regulation, the Administrator may disburse the assistance to an alternate recipient: any public or nonprofit private organization; or agency or State or political subdivision of the State. The Administrator requires any alternate recipient to demonstrate:

(a) The ability to comply with this regulation; and

(b) The ability to achieve the goals of the Federal Statutes authorizing the Federal financial assistance.

PART 101–9—FEDERAL MAIL MANAGEMENT


Source: 67 FR 38897, June 6, 2002, unless otherwise noted.


For Federal mail management information previously contained in this part, see FMR part 192 (41 CFR part 102–192).