AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



or designee in writing, the ILP Intermediary fails to make timely payment to SBA on its ILP Loan.

(6) *Failure to take adequate corrective actions*. The ILP Intermediary fails to take adequate corrective actions, to SBA's satisfaction, as required by SBA under §109.510 within the timeframe requested by SBA.

(7) *Violation of ILP Program Requirements*. The ILP Intermediary violates one or more ILP Program Requirement.

(8) *Actions that increase risk*. The ILP Intermediary takes other action which increases the risk of loss to SBA.

(c) *Opportunity to Cure*. SBA may, in its discretion, provide the ILP Intermediary with an opportunity to cure an event of default identified in paragraph (b) of this section. If SBA provides the ILP Intermediary with such a cure opportunity, SBA will issue written notice discussing the relevant facts, and directing the ILP Intermediary to cure the default and provide SBA with documentation to show that the default has been cured within a specified period of time (generally 15 days). SBA will then provide the ILP Intermediary with a final notification advising whether the default has been satisfactorily cured. In the event SBA determines the default has not been cured, the ILP Loan balance, including accrued interest, is immediately due and payable to SBA and the ILP Intermediary's authority to participate in the ILP program is revoked upon the ILP Intermediary's receipt of this final notification.

(d) *Appeals*. Notification of default without opportunity to cure under paragraph (b) of this section and final notification of uncured default under paragraph (c) of this section are final agency decisions. An ILP Intermediary may appeal a final agency decision only in the appropriate federal district court.

### §109.530 Debarment and Suspension.

In accordance with 2 CFR Parts 180 and 2700, SBA may take any necessary action to debar or suspend an ILP Intermediary or any officer, director, general partner, manager, employee, agent or other participant in the affairs of an ILP Intermediary's SBA operations.

## PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

112.1 Purpose.
112.2 Application of this part.
112.3 Discrimination prohibited.
112.4 Discrimination in employment.
112.5 Discrimination in providing financial assistance.
112.6 Discrimination in accommodations or services.
112.7 Illustrative applications.
112.8 Assurances required.
112.9 Compliance information.
112.10 Conduct of investigations.
112.11 Procedure for effecting compliance.
112.12 Effect on other regulations; forms and instructions.

APPENDIX A TO PART 112

AUTHORITY: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1).

SOURCE: 30 FR 298, Jan. 9, 1965, unless otherwise noted.

### §112.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the *Act*) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any financial assistance activities of the Small Business Administration to which the Act applies.

### §112.2 Application of this part.

(a) This part applies to all recipients of Federal financial assistance administered by the Small Business Administration. (See appendix A)

(b) 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 nominal

consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(c) This part does not apply to financial assistance extended by way of insurance or guarantee.

(d) The terms *applicant* and *recipient* mean, respectively, one who applies for and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section. The term *recipient* also shall be deemed to include *subrecipients* of SBA financial assistance, i.e., concerns which secondarily receive financial assistance from the primary recipients of such financial assistance.

(e) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(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 (e)(1),(2), or (3) of this section.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973; 50 FR 1441 Jan. 11, 1985; 68 FR 51348, 51349, Aug. 26, 2003]

### § 112.3 Discrimination prohibited.

(a) *General.* To the extent that this part applies, 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 by any business or other activity.

(b) *Specific discriminatory actions prohibited.* (1) To the extent that this part applies, a business or other activity may not, directly or through contractual or other arrangements, on ground of race, color or national origin:

(i) Deny an individual any services, financial aid or other benefit provided by the business or other activity;

(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 by the business or other activity;

(iii) Subject an individual to segregation or separate treatment in any manner related to his receipt of any service, financial aid or other benefit from the business or other activity;

(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 from the business or other activity;

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

(2) The enumeration of specific forms of prohibited discrimination in this

paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

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

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973; 68 FR 51349, Aug. 26, 2003]

### § 112.4 Discrimination in employment.

Small business concerns and development companies which apply for or receive any financial assistance of the kind described in §112.2(a) (1) and (2), including concerns which are identifiable beneficiaries of loans made under §112.2(a)(2), may not discriminate on the grounds of race, color, or national origin in their employment practices. Such assistance is deemed to have as a primary objective the providing of employment. Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of §112.7(a) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity and nondiscriminatory treatment.

[38 FR 17934, July 5, 1973]

### § 112.5 Discrimination in providing financial assistance.

Development companies and small business investment companies which apply for or receive any of the financial assistance described in §112.2(a) may not discriminate, on the ground of race, color or national origin, in providing financial assistance to small business concerns.

### § 112.6 Discrimination in accommodations or services.

Small business concerns which apply for or receive any financial assistance of the kind described in §112.2(a)(1), concerns which are identifiable beneficiaries of loans made under §112.2(a)(2), and physicians, hospitals, schools, libraries, and other individuals or organizations which apply for or receive financial assistance of the kind described in §112.2(a)(5), may not discriminate in the treatment accommodations or services they provide to their patients, students, visitors, guests, members, passengers, or patrons in the conduct of such businesses or other enterprises, whether or not operated for profit.

[31 FR 2374, Feb. 4, 1966]

### § 112.7 Illustrative applications.

(a) *Employment.* The discrimination prohibited by §112.4 includes but is not limited to any action (taken directly or through contractual or other arrangements) which subjects an individual to discrimination on the ground of race, color or national origin in any employment practice, including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities.

(b) *Financial assistance.* The discrimination prohibited by §112.5 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to extend a loan or equity financing to him or to any business concern of which he is an owner or employee; or, in the case of financing

which has actually been extended, the failure or refusal, because of the race, color, or national origin of the borrower or of an owner or employee of the borrower, to accord the borrower fair treatment and the customary courtesies regarding such matters as default, grace periods and the like.

(c) *Accommodations or services.* The discrimination prohibited by §112.6 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to accept him on a nonsegregated basis as a patient, student, visitor, guest, member, customer, passenger or patron.

(d) *Affirmative action.* (1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under §112.3(b)(3) to provide information as to the availability of equal opportunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal opportunity fully available to racial and nationality groups previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial or nationality groups. In such circumstances a recipient may properly give special consideration to race, color, or national origin to make opportunity more widely available to such groups.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

### § 112.8 Assurances required.

An application for any of the financial assistance described in §112.2(a) shall, as a condition to its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. Such an assurance shall contain provisions authorizing the acceleration of the maturity of the recipient's financial obligation to the SBA in the event of a failure to comply, and provisions which give the United States a right to seek judicial enforcement of the terms of the assurance. SBA shall specify the form of the foregoing assurance, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors in interest, and other participants.

[30 FR 298, Jan. 9, 1965, as amended at 68 FR 51349, Aug. 26, 2003]

### § 112.9 Compliance information.

(a) *Cooperation and assistance.* SBA shall to the fullest extent practicable seek the cooperation of applicants and recipients in obtaining compliance with this part and shall provide assistance and guidance to applicants and recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each applicant or recipient shall keep such records and submit to SBA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as SBA may determine to be necessary to enable SBA to ascertain whether the applicant or recipient has complied or is complying with this part. In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, such concern shall submit to the company such information as may be necessary to enable the company to meet its reporting requirements under this part.

(c) *Access to sources of information.* Each applicant or recipient shall permit access by SBA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or 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 applicant or recipient shall so certify in its report and shall set forth what efforts it has made to obtain this information.

(d) *Information to the public.* Each recipient shall make available to persons entitled under the Act and under this

part to protection against discrimination by the recipient such information as SBA may find necessary to apprise them of their rights to such protection.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

### § 112.10 Conduct of investigations.

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

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

(c) *Investigations.* SBA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the applicant or recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the applicant or recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, SBA will so inform the applicant or 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 § 112.11.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, SBA will so inform the applicant or recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No applicant or 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 by this part or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

### § 112.11 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant or, in the case of a loan which has been partially disbursed, by refusing to make further disbursements. In addition, compliance may be effected by any other means authorized by law.

(2) Such other means may include but are not limited to (i) legal action by SBA to enforce its right, embodied in the assurances described in § 112.8, to accelerate the maturity of the recipient's obligation; (ii) 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; and (iii) any applicable proceedings under State or local law.

(b) *Noncompliance with § 112.8.* If an applicant fails or refuses to furnish an assurance required under § 112.8 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 paragraph (c) of this section. SBA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that SBA 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 part. Such proceedings shall be conducted in accordance with the provisions of part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of §134.228. The applicant's failure to file a timely motion in accordance with §§134.222 and 134.211, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of part 134.

(c) *Conditions precedent.* No order suspending, terminating, or refusing financial assistance shall become effective until (1) SBA has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means; (2) there has been an express finding on the record after an opportunity for an oral hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part; (3) the initial decision has become final pursuant to §134.227(b); and (4) the expiration of 30 days after SBA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction of the form of financial assistance involved, a full written report of the circumstances and the grounds for such action.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) SBA has determined that compliance cannot be secured by voluntary means; (2) the action has been approved by the Administrator or his designee; (3) the applicant or recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and (4) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973; 49 FR 33629, Aug. 24, 1984; 61 FR 2691, Jan. 29, 1996]

### §112.12 Effect on other regulations; forms and instructions.

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

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

(b) *Forms and instructions.* SBA shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of SBA or to officials of other agencies of the Government with the consent of such agencies, responsibilities in connection with the effectuation of the purpose of Title VI

of the Act and this part (other than responsibility for final decision as provided in §112.13), including the achievement of effective coordination and maximum uniformity within SBA and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Administrator of SBA.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17935, July 5, 1973. Redesignated at 49 FR 33629, Aug. 24, 1984]

APPENDIX A TO PART 112

| Name of Federal financial assistance | Authority |
|---|---|
| **Federal Financial Assistance Involving Grants of Funds** | |
| Regular business loans | Small Business Act, sec. 7(a) and 7(a)(11). |
| Handicapped assistance loans. | Small Business Act, sec. 7(a)(10) |
| Small business energy loans | Small Business Act, sec. 7(a)(12). |
| Small general contractors | Small Business Act, sec. 7(a)(9). |
| Vietnam-era and Disabled Veterans Loan Program. | Pub. L. 97–72. |
| Debtor State development company loans (501) and their small business concerns. | Small Business Investment Act, title V, and Small Business Act, sec. 7(a)(13). |
| Debtor small business investment companies and their small business concerns. | Small Business Investment Act, title III. |
| **Disaster Loans** | |
| Physical | Small Business Act, sec. 7(b)(1). |
| Economic injury (EIDL) | Small Business Act, sec. 7(b)(2). |
| Federal action—economic injury. | Small Business Act, sec. 7(b)(3). |
| Currency fluctuation—economic injury. | Small Business Act, sec. 7(b)(4). |
| **Other Federal Financial Assistance** | |
| Women's business enterprise | Executive Order 12138. |
| Small business innovation and research. | Small Business Act, sec. 9. |
| Procurement automated source system. | Small Business Act, sec. 8 and Pub. L. 96–302. |
| Business Development Program. | Small Business Act, sec. 8(a) and Pub. L. 95–507, as amended by Pub. L. 96–481. |
| Small Business Institute Program. | Small Business Act, sec. 8(b)(1) and Pub. L. 85–536. |
| Certificate of competency | Small Business Act, sec. 8(b)(7) and Pub. L 95–89. |
| Subcontracting Assistance Program. | Small Business Act, sec. 8(d) and Pub. L. 95–507. |
| Technology Assistance Program. | Small Business Act, sec. 9. |
| Small business development centers. | Small Business Act, sec. 21 and Pub. L. 96–302. |
| International Trade Program | Small Business Act, sec. 22 and Pub. L. 96–481. |
| Service Corps of Retired Executives and Active Corps of Executives. | Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95–510. |
| Veterans affairs programs | Pub. L. 93–237. |
| Private sector initiatives | Small Business Act, sec. 8(b)(1). |

NOTE: All types of Federal financial assistance listed above are also covered by part 113 of title 13 of the Code of Federal Regulations.

[50 FR 1441, Jan. 11, 1985, as amended at 68 FR 51348, 51349, Aug. 26, 2003]

# PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

## Subpart A—General Provisions

Sec.

113.1 Purpose.
113.2 Definitions.
113.3 Discrimination prohibited.
113.3–1 Consideration of race, color, religion, sex, marital status, handicap, or national origin.
113.3–2 Accommodations to religious observance and practice.
113.3–3 Structural accommodations for handicapped clients.
113.4 Assurances required.
113.5 Compliance information.
113.6 Conduct of investigations.
113.7 Procedure for effecting compliance.
113.8 Effect on other regulations, forms and instructions.

APPENDIX A TO SUBPART A OF PART 113

## Subpart B—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

INTRODUCTION

113.100 Purpose and effective date.
113.105 Definitions.