

§ 1201.10

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governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of Corporation Employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Corporation of its mission and duties; and

(8) The need to avoid involving the Corporation in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance may not ordinarily be authorized are those when compliance would:

(1) Violate a statute, a rule of procedure, a specific regulation, or an executive order;

(2) Reveal information properly classified in the interest of national security;

(3) Reveal confidential commercial or financial information or trade secrets without the owner's consent;

(4) Reveal the internal deliberative processes of the Executive Branch; or

(5) Potentially impede or prejudice an ongoing law enforcement investigation.

§ 1201.10 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, Corporation Employees shall not provide opinion or expert testimony based upon information that they acquired in the scope and performance of their official Corporation duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the Gen-

eral Counsel, in the exercise of discretion, may grant special, written authorization for Corporation Employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a Corporation Employee such individual shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal review of or challenge to the court's order will be made, the Corporation Employee shall comply with the order. If so directed by the General Counsel, however, the individual shall respectfully decline to testify.

§ 1201.11 Authority.

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990 as amended (42 U.S.C. 12501 *et seq.*).

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

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APPENDIX A TO PART 1203—PROGRAMS TO WHICH THIS PART APPLIES

APPENDIX B TO PART 1203—PROGRAMS TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1.

SOURCE: 39 FR 27322, July 26, 1974, unless otherwise noted.

§ 1203.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as title VI), to the end that a person in the United States shall not, 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 a program or activity receiving Federal financial assistance from ACTION.

§ 1203.2 Application of this part.

(a) This part applies to each program for which Federal financial assistance is authorized under a law administered by ACTION, including the federally assisted programs listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under a program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

- (1) Federal financial assistance by way of insurance or guaranty contracts;
- (2) Money paid, property transferred, or other assistance extended under a program before the effective date of this part, except when the assistance was subject to the title VI regulations of an agency whose responsibilities are now exercised by ACTION;
- (3) Assistance to any individual who is the ultimate beneficiary under a program; or
- (4) Employment practices, under a program, of an employer, employment agency, or labor organization, except to the extent described in § 1203.4(c).

The fact that a program is not listed in Appendix A to this part does not mean, if title VI is otherwise applicable, that the program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this part.

(b) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under that property are included as part of the program receiving that assistance,

the nondiscrimination requirement of this part extends to a facility located wholly or in part in that space.

§ 1203.3 Definitions.

Unless the context requires otherwise, in this part:

(a) *Applicant* means a person who submits an application, request, or plan required to be approved by ACTION, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means that application, request, or plan.

(b) *Facility* includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(c) *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 the 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 the sale or lease to the recipient; and
- (5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) *Primary recipient* means a recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) *Program* includes a program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training or other services whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid, or

other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance are deemed to include a service, financial aid, or other benefits provided:

(1) With the aid of Federal financial assistance,

(2) With the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet the matching requirements or other conditions which must be met in order to receive the Federal financial assistance, or

(3) In or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) *Recipient* may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under a program.

(g) *Director* means the Director of ACTION or any person to whom he has delegated his authority in the matter concerned.

§ 1203.4 Discrimination prohibited.

(a) *General.* A person in the United States shall not, 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, a program to which this part applies.

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

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

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

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

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

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

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

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

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

(3) 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.

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

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

(c) *Employment practices.* (1) When a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by ACTION which have as a primary objective the providing of employment include those set forth in Appendix B to this part.

(3) 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 tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part

applies, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this part 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 title VI of this part.

§ 1203.5 Assurances required.

(a) *General.* (1) An application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance

is sought for the construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. ACTION shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring non-discrimination for the period during which the real property is used for a purpose involving the provision of similar services or benefits. When no transfer of property of interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by ACTION to revert title to the property in the event of a breach of the covenant where, in the discretion of ACTION, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event 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 property for the purposes for which the property was transferred, ACTION may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible ACTION official if the applicant establishes, to the satisfaction of the responsible ACTION official, that the practices in other agencies or parts or programs of the governmental unit will in no way affect:

(1) Its practices in the program for which Federal financial assistance is sought, or

(2) The beneficiaries of or participants in or persons affected by the program, or

(3) Full compliance with this part as respects the program.

(c) *Assurance from academic and other institutions.* (1) In the case of an application for Federal financial assistance by an academic institution, the assurance required by this section extends to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible ACTION official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in the program. If the assistance sought is

for the construction of a facility or part of a facility, the assurance shall extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A to this part) shall as a condition to its approval and the extension of Federal financial assistance pursuant to the application:

(1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with the requirements imposed by or pursuant to this part, and

(2) Provide or be accompanied by provision for methods of administration for the program as are found by ACTION to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under the program will comply with the requirements imposed by or pursuant to this part.

(Approved by the Office of Management and Budget under control number 3001-0016, paragraph (a)(1))

[39 FR 27322, July 26, 1974, as amended at 47 FR 3553, Jan. 26, 1982]

§ 1203.6 Compliance information.

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

(b) *Compliance reports.* Each recipient shall keep records and submit to ACTION timely, complete, and accurate compliance reports at the times, and in the form and containing the information ACTION may determine necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of a program under which a primary recipient extends Federal financial assistance to other recipients, the other recipients shall also submit compliance reports to the primary recipient as may be nec-

essary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for ACTION racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by ACTION during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. When information required of a recipient is in the exclusive possession of an other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this part and its applicability to the program under which the recipient received Federal financial assistance, and make this information available to them in the manner, as ACTION finds necessary, to apprise the persons of the protections against discrimination assured them by title VI and this part.

§ 1203.7 Conduct of investigations.

(a) *Periodic compliance reviews.* ACTION may 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 persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with ACTION a written complaint. A complaint shall be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by ACTION.

(c) *Investigations.* ACTION will make a prompt investigation whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with this part. The investigation will include, when appropriate, a review of the pertinent

practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the 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, ACTION will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in §1203.8.

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

(e) *Intimidatory or retaliatory acts prohibited.* A recipient or other person shall not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by section 601 of title VI of 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 an investigation, hearing, or judicial proceeding arising thereunder.

§1203.8 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 the suspension or termination of or refusal to grant or to continue Federal financial assistance or by other means authorized by law.

(2) Other means may include, but are not limited to: (i) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under a law of the United States (including other titles of the Civil Rights Act of 1964) or

an assurance or other contractual undertaking, and

(ii) An applicable proceeding under State or local law.

(b) *Noncompliance with §1203.5.* If an applicant fails or refuses to furnish an assurance required under §1203.5 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. ACTION shall not be required to provide assistance in that case during the pendency of the administrative proceedings under this paragraph. Subject, however, to §1203.12, ACTION shall continue assistance during the pendency of the proceedings where the assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* An order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall not become effective until—

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

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Director pursuant to §1203.10(e); and

(4) The expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for the action.

An action to suspend or terminate or refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been so found.

(d) *Other means authorized by law.* An action to effect compliance with title VI by other means authorized by law shall not be taken by ACTION until—

(1) ACTION has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of a notice to the recipient or person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take corrective action as may be appropriate.

§1203.9 Hearings.

(a) *Opportunity for hearing.* When an opportunity for a hearing is required by §1203.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of notice within which the applicant or recipient may request of ACTION that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and 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 paragraph or to appear at a hearing for which a date has been set is deemed to be a waiver of the right to a hearing under section 602 of title VI and §1203.8(c) and consent to the making of a decision on the basis of the information available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of ACTION in Washington, DC, at a time fixed by ACTION unless it determines that the convenience of the applicant or recipient or of ACTION requires that another place be selected. Hearings shall be held before the Director, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and ACTION have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and an administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with the 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 paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both ACTION and the applicant or recipient are entitled to introduce 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.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. 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. Decisions shall be based on the hearing

record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI, ACTION may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this part. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with § 1203.10.

§ 1203.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the 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 Director for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Director his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Director 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. On the filing of the exceptions or of notice of review, the Director 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, subject to paragraph (e) of this section, shall constitute the final decision of the Director.

(b) *Decisions on record or review by the Director.* When a record is certified to the Director for decision or the Director reviews the decision of a hearing examiner pursuant to paragraph (a) of

this section, or when the Director conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Director will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to § 1203.9, a decision shall be made by ACTION on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

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

(e) *Approval by ACTION.* A final decision by an official of ACTION other than by the Director, 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 part or title VI, shall promptly be transmitted to the Director, who may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of title VI and this part, including provisions designed to assure that Federal financial assistance will not thereafter be extended under the programs to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies ACTION that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

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

(3) If ACTION denies a request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes ACTION is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by ACTION. The applicant or recipient shall be restored to eligibility if it proves at the 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 remain in effect.

§ 1203.11 Judicial review.

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

§ 1203.12 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this part by ACTION which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin under a program to which this part applies, and which authorizes the suspension or ter-

mination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the requirements, are superseded to the extent that discrimination is prohibited by this part, except that nothing in this part relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this part. This part does not supersede any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued there under or

(2) Any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* ACTION shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies, and for which it is responsible.

(c) *Supervision and coordination.* ACTION may from time to time assign to officials of ACTION, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI and this part (other than responsibilities for final decision as provided in § 1203.10), including the achievement of effective coordination and maximum uniformity within ACTION and within the executive branch in the application of title VI and this part to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by ACTION.

APPENDIX A TO PART 1203—PROGRAMS TO WHICH THIS PART APPLIES

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

APPENDIX B TO PART 1203—PROGRAMS TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

PART 1204—OFFICIAL SEAL

Sec.

1204.1 Authority.

1204.2 Description.

1204.3 Custody and authorization to affix.

AUTHORITY: Sec. 402, Pub. L. 93-113, 87 Stat. 407 (42 U.S.C. 5042).

SOURCE: 38 FR 34118, Dec. 11, 1973, unless otherwise noted.

§ 1204.1 Authority.

Pursuant to section 402(9) of Pub. L. 93-113, the ACTION official seal and design thereof which accompanies and is made part of this document, is hereby adopted and approved, and shall be judicially noticed.

[52 FR 20714, June 3, 1987]

§ 1204.2 Description.

The official seal of ACTION is described as follows:

(a) The words "The Federal Domestic Volunteer Agency USA" are in blue capital letters and form the outer circle of the seal.

(b) Within the circle of letters, on a field of white, appears the logotype word "ACTION" in blue, capital letters and in Italic type.

(c) The logotype word "ACTION" is split; "ACT" on a higher level and

"ION" drops down to a slightly lower level.

(d) Two red bars, also split on two levels, underline the logotype word "ACTION."

The official seal of ACTION is modified when reproduced in black and white and when embossed, as it appears below.



[52 FR 20714, June 3, 1987]

§ 1204.3 Custody and authorization to affix.

(a) The seal is the official emblem of ACTION and its use is therefore permitted only as provided in this part.

(b) The seal shall be kept in the custody of the General Counsel, or any other person he authorizes, and should be affixed by him, the Director or the Deputy Director to all commissions of officials of ACTION, and used to authenticate records of ACTION and for other official purposes. The General Counsel may redelegate and authorize redelegations of, this authority.

(c) The Director shall designate and prescribe by internal written delegations and policies the use of the seal for other publication and display purposes and those ACTION officials authorized to affix the seal for these purposes.

(d) Use by any person or organization outside of the Agency may be made only with the Agency's prior written approval. Such request must be made in writing to the General Counsel.