

SBA

SOP 90 30 3

Civil Rights Compliance

Office of Administration

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

| | | | |
|--|--------------------------|----------------------|------------|
| SUBJECT: CIVIL RIGHTS COMPLIANCE | S.O.P. | | REV |
| | SECTION 90 | NO. 30 | 3 |

INTRODUCTION

1. Purpose. To outline the policies and procedures for the SBA Civil Rights Compliance Program.
2. Personnel Concerned. All SBA personnel.
3. Standard Operating Procedure Canceled.
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TABLE OF CONTENTS

| | |
|--|-----------|
| CHAPTER 1 | 5 |
| OVERVIEW OF THE OFFICE OF CIVIL RIGHTS COMPLIANCE | 5 |
| 1. What Does the Office of Civil Rights Compliance Do? | 5 |
| 2. What Are My Responsibilities as an OCRC Staff Person? | 6 |
| 3. Who Must Comply with SBA's Nondiscrimination Regulations? | 6 |
| CHAPTER 2 | 7 |
| HOW TO CONDUCT COMPLIANCE REVIEWS | 7 |
| 1. What Kinds of Reviews Are There? | 7 |
| 2. How Are Reviews Selected? | 8 |
| 3. What Must I Do to Prepare for a Review? | 8 |
| 4. What Must I Review? | 9 |
| 5. What Information Must SBA Recipients Maintain and Submit? | 11 |
| 6. What Practices by SBA Recipients Are Prohibited? | 11 |
| 7. What Practices by SBA Programs and Program Offices Are Prohibited? | 12 |
| 8. What Information Must SBA Recipients Provide to Their Employees and the Public? | 12 |
| 9. What Happens If I Find Problems in the Recipient's Program? | 12 |
| 10. What Must the ACRD Do to Achieve Voluntary Compliance? | 12 |
| 11. What Action is Taken by Headquarters to Achieve Compliance? | 13 |
| 12. How Must I Prepare the Written Report? | 14 |
| CHAPTER 3 | 17 |
| HOW TO HANDLE COMPLAINTS | 17 |
| 1. Who May File a Complaint? | 17 |
| 2. What Must a Complaint Contain? | 17 |
| 3. What Are the Time Limits for Filing a Complaint? | 17 |
| 4. What Happens If OCRC Does Not Have Jurisdiction in the Complaint? | 17 |
| 5. How Does the OCRC Transfer or Refer Employment Complaints? | 18 |
| 6. What Does the OCRC Do If the Complaint Is Filed Under Title VII or the Equal Pay Act of 1963? | 18 |
| 7. What Does the OCRC Do When It Retains a Case? | 18 |
| 8. What Is Required in an OCRC Referral to EEOC? | 19 |
| 9. What Happens When There Is a Settlement? | 19 |
| 10. What Happens When There Is a Dismissal? | 19 |
| 11. What Happens When There Is Conciliation? | 20 |
| 12. How Is a Preliminary Inquiry Conducted? | 21 |
| 13. How Must I Prepare for a Complaint Investigation? | 22 |
| 14. What Happens During a Complaint Investigation? | 22 |
| 15. What Does the Lead Investigator Do? | 23 |
| 16. What Happens When the Director, OCRC, Reviews the Report? | 24 |
| 17. What Happens If OGC Finds the Final Decision Factually or Legally Insufficient? | 24 |
| 18. What Happens If the ACRD Receives a Written Request For Information? | 24 |
| 19. How Do I Write the Report of Investigation? | 25 |
| 20. What Happens If I Find Discrimination? | 26 |

| | |
|---|-----------|
| 21. What Happens If I Do Not Find Discrimination?..... | 27 |
| CHAPTER 4..... | 28 |
| REQUIREMENTS FOR INTERAGENCY COOPERATION AND DELEGATIONS | 28 |
| 1. What Are the Legal Requirements for Interagency Cooperation? | 28 |
| 2. What Are OCRC's Coordination Responsibilities? | 28 |
| 3. How Are Delegations to or From Other Agencies Handled? | 29 |
| CHAPTER 5..... | 30 |
| OCRC'S TECHNICAL ASSISTANCE PROGRAM | 30 |
| 1. What Is the Purpose of OCRC's Technical Assistance Program? | 30 |
| 2. What Are OCRC's Responsibilities for the Technical Assistance Program? | 30 |
| CHAPTER 6..... | 31 |
| RECORDS AND REPORTS | 31 |
| 1. What Civil Rights Compliance Records Must Be Maintained? | 31 |
| 2. What Civil Rights Compliance Reports Is OCRC Responsible for Completing? | 31 |
| APPENDIX 1..... | 32 |
| What Definitions and Terms Do I Need to Know? | 32 |
| APPENDIX 2..... | 35 |
| What Are the Authorities for My Work? | 35 |

CHAPTER 1

OVERVIEW OF THE OFFICE OF CIVIL RIGHTS COMPLIANCE

1. What Does the Office of Civil Rights Compliance Do?

The Office of Civil Rights Compliance works to ensure compliance with non-discrimination rules and regulations by SBA recipients of Federal financial assistance and, with regard to individuals with disabilities, SBA programs and program offices. To achieve this goal, the Office of Civil Rights Compliance:

- a. Conducts compliance reviews and investigations of the employment, business, and credit practices of SBA recipients of Federal financial assistance to enforce non-discrimination laws and regulations;
- b. Investigates or refers to other agencies of Federal financial assistance, based on jurisdiction, complaints of discrimination filed against SBA recipients of Federal financial assistance;
- c. Investigates complaints of discrimination based on disability filed against SBA programs or program offices;
- d. Monitors SBA recipients' of Federal financial assistance compliance with the civil rights regulations of the Attorney General (the Department of Justice), the Departments of Labor, Health and Human Services, Education, Housing and Urban Development, the Equal Employment Opportunity Commission, the Board of Governors of the Federal Reserve System and other Federal agencies, when appropriate;
- e. Reviews for outstanding civil rights complaints for all SBA "success story" and other award nominees submitted by district and regional offices;
- f. Provides technical assistance in civil rights matters to SBA officials, SBA recipients of Federal financial assistance and the small business community;
- g. Collects data and prepares and evaluates regular and special reports on the civil rights compliance activities and policies of the SBA;
- h. Serves as SBA's liaison with other Federal and non-Federal agencies on matters relating to the civil rights compliance program; and
- i. Refers to the Office of Inspector General (OIG) any non-civil rights concerns which appear to be violations of existing statute or regulation revealed during civil rights compliance reviews or investigations.

2. What Are My Responsibilities as an OCRC Staff Person?

OCRC employees are responsible for SBA's Civil Rights Compliance Program in designated geographical areas. An Area Civil Rights Director (ACRD) is in charge of each OCRC Central Office Duty Station (CODS).

3. Who Must Comply with SBA's Nondiscrimination Regulations?

All applicants for or SBA recipients of financial assistance must comply with SBA's non-discrimination regulations. SBA programs and program offices must comply with SBA's nondiscrimination regulations regarding individuals with disabilities.

CHAPTER 2

HOW TO CONDUCT COMPLIANCE REVIEWS

1. What Kinds of Reviews Are There?

OCRC conducts three types of recipient reviews:

- a. Pre-award reviews: OCRC conducts a pre-award review of an SBA loan applicant prior to the disbursement of funds when:
 - (1) the District Counsel or District Director/Branch Manager notifies the OCRC that the applicant refuses, or is reluctant to submit an executed "Assurance of Compliance" (SBA Form 4); or
 - (2) a social, civic, or fraternal organization whose constitution or by-laws do not conform with SBA's nondiscrimination regulations applies for financial assistance; or
 - (3) an SBA program official has reasonable cause to believe the applicant may not be complying with SBA's nondiscrimination provisions; or
 - (4) the applicant or one of its officials was previously found in noncompliance or potential noncompliance with nondiscrimination policies of SBA or another Federal agency.

When the pre-award review reveals civil rights compliance deficiencies, SBA must not provide financial assistance until the applicant furnishes a plan for remedying those deficiencies, and the Director, OCRC, or his/her designee formally approves that plan. If the applicant fails to furnish such a plan, the Agency will issue a preliminary finding of noncompliance.

- b. Recipient reviews: The OCRC conducts recipient reviews to determine compliance with SBA's nondiscrimination provisions, usually no more than once during the life of the financial assistance.
- c. Follow-up compliance reviews: The OCRC will conduct follow-up compliance reviews if:
 - (1) there is a need to examine specific corrective action on findings from the recipient or pre-award reviews; or
 - (2) a discrimination complaint is filed against the recipient; or
 - (3) the recipient has not fully cooperated with OCRC.

2. How Are Reviews Selected?

- a. The OCRC selects the following recipients for review:
 - (1) pre-award civil rights reviews of success stories and external award nominees;
 - (2) recipients against whom a complaint of discrimination has been filed;
 - (3) recipients which an ACRD has reason to believe may not be in compliance with nondiscrimination requirements;
 - (4) social, civic, or other membership organizations, and recipients of Federal financial assistance who provide services;
 - (5) recipients of Federal financial assistance with the greatest impact on size, amount of loan, employment or geographic location; and
 - (6) debtor (having received SBA financial assistance) Small Business Investment Companies (SBICs) and their Small Business Concerns (SBCs), and Certified Development Companies (CDCs) and their SBCs.
- b. Using the above criteria, the reviewer, with the approval of the ACRD, examines:
 - (1) the number of employees-- priority is given to businesses with 15 or more employees;
 - (2) the dollar amount of the financial assistance-- priority is given to those companies with SBA assistance of \$50,000 or more; and
 - (3) the type of business--priority is given to manufacturing, construction and service businesses.

3. What Must I Do to Prepare for a Review?

- a. Check loan status, principal's name, business telephone number and verify address of each recipient selected for review.
- b. Obtain population and/or labor force data pertinent to the geographic location of each recipient.
- c. Contact each recipient selected and schedule the specific date and time for the review. Send a letter confirming the date, time and information that must be provided at the review by the recipient.

- d. When reviewing an SBIC or CDC, determine whether the SBIC is a debtor company before scheduling an on-site compliance review. Send copies of SBC review confirmation letters to the SBIC. Send a memo notifying the Office of Investment, Headquarters, prior to contacting the SBIC.
- e. Notify other program offices of pending recipient reviews when requested by those offices.
- f. If the recipient has undergone a civil rights compliance review by another Federal agency during the previous 12-month period, or is scheduled for one in the near future, request the other agency's report of its review in advance to determine whether an SBA review of the recipient is necessary.

4. What Must I Review?

- a. Review all employment and business practices, including service and extension of credit. You must obtain the following information:
 - (1) BACKGROUND
 - a. History and Operations
 - b. Location(s) (as related to Minority Residence, Population and Transportation)
 - c. Business Outlook
 - (2) EMPLOYMENT PRACTICES
 - a. Recruitment and Selection
 - b. Recruitment Methods and Selection Procedures, including Application and Interview Process, Job Requirements, and Pre-Employment Testing
 - c. Current Work Force
 - d. New Hires
 - e. Separations
 - f. Pay Rates
 - g. Promotions/Job Mobility
 - h. Training
 - i. Union Agreements
 - (3) EMPLOYEE TREATMENT
 - a. Conditions/Facilities
 - b. Assignments
 - c. Adverse Actions
 - (4) CUSTOMER TREATMENT
 - a. Delivery of Services (how and where advertised)
 - b. Accessibility of Facilities
 - c. Extension of Credit

- (5) OTHER TECHNICAL CIVIL RIGHTS REQUIREMENTS
 - a. SBA Equal Opportunity Poster
 - b. Company EEO Policy Statement and Sexual Harassment Policy

- (6) Where businesses are primarily service providers, the review should focus on the extension of the service. As well as the above information, you must obtain additional information covering:
 - a. SERVICE(S) PROVIDED
 - b. LOCATION(S)
 - (i) Accessibility
 - (ii) Client recruitment area
 - c. CLIENT DATA
 - (i) Recruitment of new clients/students/patients
 - (ii) Racial/Ethnic composition
 - (iii) Gender
 - (iv) Disability
 - d. CRITERIA FOR RECEIPT OF SERVICE
 - (i) Admission policy
 - (ii) Physical test
 - (iii) Application
 - (iv) Age
 - e. EXTENSION OF CREDIT
 - f. OVERSIGHT BY OTHER FEDERAL AGENCIES

- (7) You must review SBICs and CDCs regardless of the number of employees, to ensure that they have made investments or loans without regard to race, color, religion, sex, marital status, disability, age, or national origin. When reviewing SBICs and CDCs you must obtain information covering:
 - a. BACKGROUND
 - b. PORTFOLIO COMPANIES (Client data)
 - i. Racial/Ethnic composition
 - ii. Gender
 - iii. Disability
 - c. LENDING PRACTICES
 - i. Application process
 - ii. Processing time
 - iii. Criteria

- d. CIVIL RIGHTS REQUIREMENTS
 - i. Assurances of compliance
 - ii. Documents issued at closing
 - iii. Policy/procedure for complaints against portfolio companies
- e. OUTREACH
 - i. Minorities
 - ii. Women
 - iii. Individuals with disability
- f. OTHER FEDERAL OVERSIGHT

5. What Information Must SBA Recipients Maintain and Submit?

Recipients must keep records which SBA finds necessary for a determination that the recipient is in compliance with SBA's nondiscrimination regulations.

6. What Practices by SBA Recipients Are Prohibited?

A recipient of Federal financial assistance may not discriminate against any person on the basis of race, color, religion, sex, marital status (in the extension of credit), age, disability or national origin. A recipient may not:

- a. deny services, financial aid or any other benefits provided by its business or other activity;
- b. provide any service, financial aid or other benefit in any way which limits participation in federally-assisted programs;
- c. treat an individual differently from others in determining whether that person satisfied any requirement to receive any service, financial aid or other benefit provided by the business or activity;
- d. discriminate against any individual because that person filed or reported a complaint or gave a statement to a civil rights official concerning alleged discrimination on any basis prohibited by this SOP, SBA's regulations, or applicable Federal statute; or
- e. discriminate against an applicant for employment or against an employee in terms or conditions of employment.

7. What Practices by SBA Programs and Program Offices Are Prohibited?

In dealing with a qualified individual with a disability, SBA may not:

- a. on the basis of disability, exclude from participation in, deny the benefits of, or otherwise subject such an individual to discrimination under any program or activity conducted by SBA; or
- b. discriminate in employment under any program or activity conducted by SBA.

8. What Information Must SBA Recipients Provide to Their Employees and the Public?

SBA Form 722, "Equal Opportunity Poster," informs applicants, the public, and employees of SBA recipients of their nondiscrimination rights. All recipients must display SBA Form 722 for employees, applicants for employment and services, and the public.

9. What Happens If I Find Problems in the Recipient's Program?

- a. Upon completing the on-site review, hold a closing conference with the recipient or designated official. If the closing conference is held with a subordinate official, verify that this official has the authority to implement any agreed-upon recommendations.
- b. For those deficiencies which cannot be corrected immediately, establish a timetable for completion at the time of the closing conference. Specify the problem, the proposed remedy, and the timeframe for resolution. Where appropriate, finalize any goals and timetables during the closing conference.
- c. Provide as much civil rights technical assistance or guidance as necessary, and take whatever action is needed to achieve voluntary compliance.
- d. Retain all relevant evidence, documentation, correspondence, and a "Memorandum of Conversation" of each personal and telephone contact with the persons involved.

10. What Must the ACRD Do to Achieve Voluntary Compliance?

- a. The OCRC must attempt to bring recipients into voluntary compliance within 60 calendar days of the date the recipient is found to be in potential noncompliance. The ACRD must immediately send a letter to the recipient citing the violations and the necessary corrective actions required for compliance. Telephone calls and visits to the recipient may also be made during this period.
- b. If the recipient fails to respond to the initial deficiency letter or to make other attempts to resolve the deficiency within 30 calendar days, send a second letter by certified mail on the 31st calendar day from the initial deficiency letter to the recipient. Include a restatement of the deficiencies, corrective actions required, and portions of the applicable regulations, cite possible sanctions for noncompliance and

provide a copy of the regulations. This letter must allow the recipient an additional 15 days to achieve voluntary compliance. The ACRD will provide copies of this letter to the Director, OCRC, and the Regional Administrator, District Director and Branch Manager, where applicable.

- c. During this 15-day period, the ACRD may contact the District Director for assistance and call the recipient to stress the importance of achieving voluntary compliance.
- d. If no response to the second letter is received, the ACRD must immediately forward the case to the Director, OCRC, with an accompanying memorandum that must state:
 - (1) the name of the recipient;
 - (2) the nature of the potential noncompliance;
 - (3) the basis on which potential noncompliance was determined, including such documentation as the Report of Review and other pertinent data;
 - (4) a detailed report, including dates and locations, on the efforts of Agency personnel to achieve voluntary compliance; and
 - (5) a statement by the ACRD of how effective the negotiation process has been and an opinion as to whether or not voluntary compliance can be achieved.
- e. The ACRD shall notify the recipient in writing that his or her case is being forwarded to Headquarters for appropriate action. At the same time, the ACRD shall notify the appropriate regional and district/branch offices that the case is being forwarded.

11. What Action is Taken by Headquarters to Achieve Compliance?

- a. Upon receipt of the case, the Director, OCRC, forwards it to the Assistant Attorney General for Civil Rights, U. S. Department of Justice. If negotiations are promising, based on the opinion of the ACRD and on the case file, OCRC may request a 60 calendar day extension from the Assistant Attorney General for Civil Rights, in order to negotiate compliance.
- b. After 60 calendar days, and/or any extension of time, the Director, OCRC, determines whether compliance can be secured voluntarily. If the Director, OCRC, determines voluntary compliance cannot be secured, he/she notifies the recipient in writing that formal proceedings to secure compliance will begin within 10 calendar days if voluntary compliance is not achieved. OCRC will send the Office of General Counsel (OGC) and the Assistant Attorney General for Civil Rights copies of this letter.

- c. The OCRC will request that the OGC name an Agency representative. OCRC will assist that representative in preparing for a hearing.
- d. The Office of Hearings and Appeals shall:
 - (1) if the recipient/applicant has requested a hearing, conduct a hearing pursuant to 13 C.F.R. Part 134;
 - (2) make a recommended finding on the record, if the recipient has not requested an oral hearing;
 - (3) make a written recommendation to the Administrator for an initial decision or other appropriate disposition; and
 - (4) provide a copy of the recommendation to the Assistant Administrator for EEO & CRC (AA/EEO & CRC).

If the Administrator follows the recommendation of noncompliance, AA/EEO & CRC will prepare a full written report for the proposed termination of Federal financial assistance. This report will be sent to the Small Business Committees of the House of Representatives and the Senate. The report also will specify the sanctions, if any, to be implemented within 30 calendar days.

- e. An agreement with a noncomplying recipient achieving voluntary compliance must:
 - (1) be in writing;
 - (2) be signed by the ACRD or Director, OCRC, as appropriate and by the authorized official of the recipient;
 - (3) include all the specific steps the recipient will take to achieve voluntary compliance;
 - (4) be made available to other Federal agencies that also provide funding to that recipient; and
 - (5) be made available to the general public upon request.

12. How Must I Prepare the Written Report?

- a. You must complete Recipient Compliance Review Reports 30 calendar days from the date of the review unless you do not receive necessary documentation from the recipient in a timely manner. If the recipient delays sending the documentation, include it in your report. Handwritten reports are not acceptable.

- b. The reviewer must send a listing of deficiencies and actions to be taken, if any, to the recipient within 30 days from the date of the review. Ask for a written response to the recommendations, including the progress made in carrying out the recommendations.
- c. The review report must be done in the following format:

COMPLIANCE REVIEW REPORT
OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY AND
CIVIL RIGHTS COMPLIANCE
CODS

Name/Address of Recipient:

Trade Name:

Loan No.:

Date of Review:

Name/Address of Lender:

Principal Official's Name:

Telephone No.:

Participant(s) in Review:

Brief Summary:

Reviewer:

Date

Director:

Date

I. BACKGROUND

II. FINDINGS

III. RECOMMENDATIONS

CHAPTER 3

HOW TO HANDLE COMPLAINTS

1. Who May File a Complaint?

Any protected individual who believes he or she has been discriminated against by a recipient of SBA financial assistance may file a complaint. The complainant has the right to have a representative at all stages of the complaint procedure.

A complainant or representative may file a written complaint if he or she or a specific class of disabled persons to which they belong have been discriminated against by SBA in its delivery of services. This procedure is not intended for use by SBA employees seeking to file discrimination complaints against the Agency.

2. What Must a Complaint Contain?

If the complaint is against a recipient, or against SBA if based on a disability, it must be in writing, and must contain:

- a. complainant's name, address and telephone number;
- b. the date of the alleged discrimination;
- c. identification of the person(s) responsible for the alleged discrimination;
- d. a detailed description of the alleged discrimination;
- e. a list of the names, addresses and telephone numbers of all witnesses, if any; and
- f. a list of all documents in complainant's possession, or of which complainant has knowledge, which relate to the alleged discrimination.

3. What Are the Time Limits for Filing a Complaint?

A complainant must file with OCRC within 180 calendar days from the date the alleged discrimination occurred, unless the time for filing is extended, in writing, by the Director, OCRC. Complaints are deemed filed on the date received by SBA.

4. What Happens If OCRC Does Not Have Jurisdiction in the Complaint?

- a. When the OCRC determines that complaints should be processed by other agencies, it will forward those complaints to the appropriate agencies.
- b. The OCRC is required to refer complaints against recipients which allege employment discrimination under Title VII and/or the Equal Pay Act to the EEOC.

- c. Recipients must forward to the OCRC all civil rights complaints filed with them regarding their activities. SBA recipients who choose to process civil rights complaints lodged against them first must obtain the OCRC approval of their proposed procedures for processing complaints.
- d. The OCRC will refer complaints filed under the Age Discrimination Act to the Federal Mediation and Conciliation Service for a 60 calendar-day mediation period prior to investigation by SBA.

5. How Does the OCRC Transfer or Refer Employment Complaints?

a. Transfers

- (1) Within 30 calendar days, the ACRD must decide the disposition of the complaint. If the respondent is not an SBA recipient, the ACRD must transfer the complaint immediately to EEOC. This action ends SBA's responsibility.
- (2) The ACRD must notify the complainant and the respondent of the transfer, giving the reason for it, the location of the EEOC office to which the complaint has been transferred, and inform the parties that the date SBA received the complaint will be deemed the date it was received by EEOC.

b. Referrals

If the respondent is an SBA financial assistance recipient, the ACRD must decide within 30 calendar days whether SBA or EEOC will handle the complaint.

6. What Does the OCRC Do If the Complaint Is Filed Under Title VII or the Equal Pay Act of 1963?

The ACRD must refer the complaint to EEOC unless one of the following applies:

- (a) SBA is already conducting a compliance review of the respondent and determines that it can handle the complaint expeditiously; or
- (b) the complaint alleges a pattern or practice of discrimination.

7. What Does the OCRC Do When It Retains a Case?

If the case is retained, the ACRD must determine whether the complainant has filed a similar charge with EEOC. If complainant has filed such a charge with EEOC, the ACRD must request EEOC to defer its investigation pending an SBA investigation. If there has not been a dual filing, SBA may investigate.

8. What Is Required in an OCRC Referral to EEOC?

- a. The following must be included in the referral:
 - (1) whether SBA wants to receive advance notice of conciliation negotiations;
 - (2) whether SBA wants EEOC to investigate the facts concerning the relationship between the alleged discrimination and the recipient's federally-assisted programs or activities;
 - (3) whether the primary objective of the financial assistance is to provide employment; and
 - (4) the relevant civil rights provisions applicable to the employment practices of the recipient.
- b. The ACRD must notify the complainant and the respondent of all referrals, including:
 - (1) the reason for the referral;
 - (2) the location of the EEOC office to which the complaint has been referred;
 - (3) the identity of the civil rights provisions involved and the delegated investigative authority of EEOC under 29 C.F.R. Part 1691;
 - (4) that the date SBA received the complaint will be deemed the date it was received by EEOC; and
 - (5) whether SBA is going to investigate.

9. What Happens When There Is a Settlement?

- a. When EEOC negotiates a settlement prior to SBA's decision, EEOC shall notify SBA that the complaint is settled.
- b. After settlement, SBA will not process the complaint further, but may consider the existence of the complaint when scheduling the recipient for a review under the Agency's regulations.

10. What Happens When There Is a Dismissal?

- a. EEOC must notify the parties of the dismissal, the reason for it, and the effect it will have on the complainant's rights under relevant civil rights provisions of SBA regulations. EEOC will send its file to SBA and issue a Notice of Right to Sue under Title VII to the complainant.

- b. If the dismissal is based on "charge is not timely under Title VII, but complaint is timely under Title VI," SBA should give little weight to the EEOC dismissal.
- c. If the dismissal is based on "no reasonable cause to believe the allegations of employment discrimination are true," SBA should give great weight to EEOC's dismissal.
- d. EEOC will also dismiss if the respondent has less than 15 employees, and the complainant fails to state a claim or does not cooperate.
- e. Within 30 calendar days, SBA must decide what action, if any, to take, and notify the parties of its decision. If SBA decides to act on a complaint for which EEOC has found "no reasonable cause," SBA is required to justify its decision, in writing, to the Assistant Attorney General for Civil Rights and the Chairperson of the EEOC.

11. What Happens When There Is Conciliation?

- a. If EEOC finds reasonable cause, it issues a letter of determination to the complainant, the respondent, and SBA, and attempts to resolve the complaint informally.
- b. Upon EEOC's or SBA's request, SBA shall participate in conciliation attempts after a "reasonable cause" determination, but not during settlement negotiations.
- c. EEOC must provide advance notice of any conciliation attempts upon request.
- d. When EEOC finds "reasonable cause" and is unable to conciliate, it issues a Notice of Failure of Conciliation.
- e. If EEOC decides to bring suit under Title VII against the recipient, it must issue a Notice of Right to Sue under Title VII to the complainant.
- f. Within 30 calendar days after receiving the "reasonable cause" and Notice of Failure of Conciliation, SBA must determine whether the recipient has violated any applicable civil rights provisions which SBA has the responsibility to enforce.
- g. If the recipient has violated a civil rights provision that SBA must enforce, SBA shall notify the complainant, the recipient, EEOC, and the DOJ of the basis for its decision, and determine if further efforts to obtain voluntary compliance are warranted.
- h. If further efforts to obtain voluntary compliance are not warranted, or if such further efforts fail, SBA shall initiate appropriate enforcement proceedings pursuant to its own regulations.

- i. If SBA determines the recipient has not violated any applicable civil rights provisions, SBA shall notify, in writing, the complainant, recipient, Assistant Attorney General for Civil Rights, and the Chairperson of EEOC of the basis for that determination.
- j. DOJ and EEOC will notify SBA of any intended legal action against a recipient because of unlawful employment practices. The notification will contain the proposed action and the substance of the allegations.

12. How Is a Preliminary Inquiry Conducted?

- a. The OCRC must conduct a preliminary inquiry on all retained complaints to determine whether there is probable cause to believe discrimination occurred.

The appropriate OCRC field office must:

- (1) request all files and/or other pertinent information from program offices, in the case of a complaint based on disability, or recipients named in the complaint;
 - (2) request additional information, if necessary, from the complainant. If additional information is not received within 30 calendar days, a second letter must be sent advising that if the information is not received within an additional 15 days, a decision on discrimination will be made based on the available information; and
 - (3) decide whether there is probable cause to believe the allegation(s) of discrimination has merit.
- b. The decision must be based on the facts developed by the preliminary inquiry. The theories of discrimination are a guide to determine whether there is probable cause to believe discrimination occurred. (See EEOC's management directive on "Theories of Discrimination.")
 - c. When no legitimate, management reasons for the alleged discriminatory action are asserted, or the reasons may be considered a pretext for discrimination, a recommendation to conduct an investigation should be made by the ACRD to the Director, OCRC. The Director, OCRC, will determine if an investigation is required, and if so, will assign it to an OCRC field office.
 - d. If the ACRD determines there is no discrimination or decides not to investigate further, he/she must send a certified letter to the complainant advising of the finding and justification for such finding on each allegation of discrimination. (The ACRD must cite Agency SOPs, the regulations or applicable federal statute to substantiate a finding of no discrimination.)

- e. The letter must advise the complainant of his/her right to appeal the decision to the Director, OCRC, within 30 days. If the Director, OCRC, affirms the finding of no discrimination, he/she must notify the complainant of the decision and the right to appeal within 30 days to the AA/EEO&CRC. The complainant has the right to submit any additional information that supports the appeal.

13. How Must I Prepare for a Complaint Investigation?

- a. Develop a written investigative plan prior to conducting the investigation to ensure that all relevant aspects of the case are investigated. This plan can be the basis for reviewing the report of investigation.
- b. The investigative plan must address the following as applicable:
 - (1) All aspects of the allegations: who, when, where, what, why, and how.
 - (2) What type of evidence is needed to substantiate or refute the allegations?
 - (3) What key tasks need to be performed?
 - (4) What witnesses must be interviewed and why? Include specific questions to ask each witness. (Remember, don't ask leading questions [i.e., answerable with a yes or no] but, instead, ask open-ended questions requiring the witness to explain. These questions should begin with who, what, where, when, why or how.)
 - (5) What documents and physical evidence are available or required? Where are they, and who has custody?
 - (6) What places must be visited?
 - (7) What facilities and space are required?
 - (8) What information is already available to clarify matters?
 - (9) What are the various courses of action which may be followed? Which is the best course of action?
 - (10) How much time will be required to complete the investigation? (Establish a step-by-step chronology of events by date in conducting the investigation.)
 - (11) Develop questionnaires, checklists, or outlines used to facilitate note-taking.

14. What Happens During a Complaint Investigation?

- a. The Director, OCRC, selects the investigator(s) for each complaint and issues a letter of authority to conduct each investigation. The Director, OCRC, will make

other notifications as applicable. An ACRD will be the lead investigator in all investigations.

- b. The designated investigators will conduct and complete investigations within 90 calendar days of the date of the letter of authority.

15. What Does the Lead Investigator Do?

- a. The lead investigator approves the investigative plan and conducts the investigation of recipients by:
 - (1) reviewing the applicable laws and regulations which are alleged to have been violated;
 - (2) interviewing the complainant(s) and official(s) of the recipient against whom the complaint(s) is lodged and other relevant witnesses;
 - (3) examining employment, personnel, payroll, and customer records for evidence of discriminatory practices;
 - (4) determining the recipient's recruitment sources and selection practices;
 - (5) determining if the recipient's facilities contain provisions or accommodations for persons with a disability;
 - (6) determining if recipient's goods and services are available to, and usable by, all persons; and
 - (7) determining if testing is used for hiring and upgrading. If testing is used, determine if the test is job-related and/or otherwise validated.
- b. Conducts the investigation of SBA program offices, in cases of a complaint based on disability by:
 - (1) interviewing complainant(s);
 - (2) interviewing SBA official(s) against whom the complaint has been lodged, their supervisor(s), if any, and other relevant witnesses;
 - (3) examining files or other documents to determine the validity of the complaint;
 - (4) interviewing knowledgeable persons concerning the SBA program area about which the complaint has been lodged;
 - (5) writing the preliminary Investigation Report, including a summary of the major facts and issues; and

- (6) writing a preliminary Final Decision containing findings of fact, analyses of the issues, and a recommended decision.
- c. Forwards the completed Investigation Report to the Director, OCRC.

16. What Happens When the Director, OCRC, Reviews the Report?

The Director, OCRC will:

- a. Review and approve the determination of whether discrimination was found, based on the preliminary Investigation Report and the preliminary Final Decision;
- b. Consult with the lead investigator in reviewing the preliminary Investigation Report and the preliminary Final Decision; and
- c. Forward the investigative file to OGC, if there is a finding of discrimination.

17. What Happens If OGC Finds the Final Decision Factually or Legally Insufficient?

- a. OGC will review and clear the Final Decision for legal sufficiency. If OGC finds the Final Decision legally or factually insufficient, it will issue written comments to OCRC detailing any legal or factual deficiencies. The OCRC will make the necessary changes based on OGC's review, and will return the revised Final Decision to OGC for final clearance.
- b. Upon a written clearance from OGC, the Director, OCRC, will send a certified letter to the complainant, recipient, or official of the SBA office or affiliate, informing them of his/her Final Decision. The letter must inform the complainant of his or her right to appeal to the AA/EEO&CRC within 30 calendar days.

18. What Happens If the ACRD Receives a Written Request For Information?

- a. In response to written requests for information concerning an investigation, the ACRD will treat the request as a Freedom of Information Act request, and must provide a disclosure determination within 20 working days of receipt. The ACRD must forward copies of the request and response letters to the Director, OCRC. If the OCRC denies the request in part or in full, or if there are no responsive records, the ACRD's letter informing the complainant of the decision must contain appeal rights to the Chief, Freedom of Information/Privacy Act Office, SBA, on any information withheld. Both the Privacy Act and the Freedom of Information Act may apply to any written requests for information and are not limited to information requests in connection with investigations. (See SOP 40 03 2, "Disclosure of Information," and SOP 40 04 1, "Privacy Act Procedures.")

19. How Do I Write the Report of Investigation?

You must prepare the Report of Investigation as follows:

A. INTRODUCTION

This section will identify the complainant(s), the respondent(s), how and when the complaint arrived at the OCRC, and the dates of the investigation.

B. ALLEGATIONS

This section will identify each allegation made and include the details on the issue, the basis, and the time, place and participants involved in each allegation.

C. BACKGROUND

This section contains a chronological narrative about the complainant from his/her initial contact with the recipient or with SBA, in the case of a complaint against an SBA program or program office based on disability.

D. FINDINGS

This section contains the response to each allegation using the evidence available. The response/findings presents evidence which determined whether disparate treatment occurred, whether the complainant was a victim of adverse impact, or whether the allegation of discrimination was substantiated.

In analyzing the findings, use the following three-step procedure for determining whether a finding of disparate treatment, adverse impact, or discrimination occurred:

- (1) the analysis must show that a prima facie case of discrimination was established by the complainant(s);
- (2) the SBA program office, official or recipient must show that even with a prima facie showing, there was a legitimate nondiscriminatory reason for the particular action; and
- (3) the purported legitimate nondiscriminatory reason articulated was examined to determine if such reason or rationale was in actuality a pretext for discrimination.

E. DECISIONS

This section contains a decision and rationale on whether each allegation was substantiated.

F. RECOMMENDATIONS

This section contains specific recommendations based on the decisions and findings related to the allegations.

20. What Happens If I Find Discrimination?

- a. When a recipient is found to have discriminated, the recipient must take any remedial action specified by the SBA to overcome the effects of the discrimination. If a person receiving assistance through a recipient has discriminated, both parties may be required to take remedial action.
- b. For information on achieving voluntary compliance see Chapter 2, Paragraph 9.
- c. If an effort to resolve the matter through negotiation is unsuccessful, then the Director, OCRC, will notify the recipient, in writing, of SBA's intention to pursue the matter formally and that the recipient may lose its SBA assistance as a result.
- d. Non-compliance may result in suspension, termination, or refusal of any financial assistance approved, but not yet disbursed, to a recipient of financial assistance. In the case of loans partially or fully disbursed, non-compliance may result in calling, canceling, terminating, accelerating repayment of, or suspending in whole or in part, the loan.
- e. The Director, OCRC, will determine that a recipient was in violation only after the recipient has an opportunity to contest the initial adverse finding of OCRC to the AA/EEO & CRC. The recipient has 30 calendar days to appeal OCRC's determination to the AA/EEO & CRC and contest the revocation or suspension of Federal financial assistance.
- f. No order suspending, terminating, calling, canceling or accelerating any SBA assistance is effective until the initial decision of OCRC is final. That decision is final if no appeal is filed with the AA/EEO & CRC and 30 days has passed since the recipient was advised of the initial decision. If an appeal is filed, the determination of the AA/EEO & CRC is the final decision of SBA.
- g. The SBA may take any other action authorized by law to obtain compliance by recipients, including referring the matter to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States, or referring to any other Federal, State or local government agency that may have authority to correct any violation found by the SBA, provided that:
 - (1) The SBA has determined it cannot obtain the recipient's voluntary compliance;

- (2) The Administrator or designee approved the determination;
- (3) The SBA notified the recipient of its failure to comply and of SBA's proposed action to obtain compliance; and
- (4) A period of at least 10 calendar days has passed from the mailing of such notice to the recipient. During this 10-day period, the SBA will continue its efforts to obtain the recipient's compliance.

21. What Happens If I Do Not Find Discrimination?

If the ACRD determines there is no discrimination or decides not to investigate further, he/she will notify the complainant in writing of the finding for each allegation of discrimination, along with an appropriate justification for each finding. (The ACRD should cite Agency SOPs, the regulations, and applicable Federal law to substantiate the finding of no discrimination.)

The letter should advise the complainant of the right to appeal the decision to the Director, OCRC, within 30 days. If the Director, OCRC, affirms the finding of no discrimination, he/she must notify the complainant of:

- (a) the decision;
- (b) the right to appeal within 30 calendar days to the AA/EEO & CRC; and
- (c) the right to submit any additional information that supports the appeal. Appeals should contain any such additional information.

CHAPTER 4

REQUIREMENTS FOR INTERAGENCY COOPERATION AND DELEGATIONS

1. What Are the Legal Requirements for Interagency Cooperation?

- a. As required by Executive Orders 12067 and 12250, when two or more agencies provide Federal financial assistance to a recipient or class of recipients, the agencies must cooperate and coordinate their activities to prevent unnecessary compliance-related burdens on the recipient. The Assistant Attorney General for Civil Rights may designate one of the agencies as the lead agency for civil rights compliance purposes. Those agencies shall enter into a written delegation agreement, which will be approved by the Assistant Attorney General for Civil Rights and published in the Federal Register. The OCRC must seek interagency coordination and cooperation in the monitoring and enforcement of civil rights activities.
- b. When the SBA conducts or intends to conduct a compliance review or investigates a complaint of an alleged civil rights violation, OCRC shall notify any other affected agency of its intent to review, investigative findings, and any corrective action taken. Such reviews or investigations may be conducted jointly by the respective agencies to prevent duplication and overlap of compliance activities.

2. What Are OCRC's Coordination Responsibilities?

- a. The AA/EEO&CRC, is responsible for interagency coordination.
- b. The Director, OCRC, has been delegated the primary responsibility for:
 - (1) coordinating and monitoring enforcement activities with other agencies;
 - (2) formulating policy and guidance on a national basis; and
 - (3) initiating, coordinating, and clearing Memoranda of Understanding with other agencies on a national level, and for clearing Memoranda of Understanding initiated between OCRC field offices, and State and local civil rights entities.
- c. The ACRDs may initiate and coordinate Memoranda of Understanding with State and local civil rights entities. However, the Director, OCRC, must clear and approve all such Memoranda of Understanding before they are implemented.
- d. The OCRC field office civil rights officials shall coordinate civil rights activities informally with other agencies' field offices on issues of mutual concern.

3. How Are Delegations to or From Other Agencies Handled?

- a. Written Memoranda of Understanding must be executed by the SBA and other agencies, when:
 - (1) compliance responsibilities are delegated to or from other agencies; and
 - (2) one of the Federal agencies is designated as the lead compliance agency.
- b. A copy of each written agreement must be provided by the agency to the Assistant Attorney General for Civil Rights and must be published in the Federal Register.

CHAPTER 5

OCRC'S TECHNICAL ASSISTANCE PROGRAM

1. What Is the Purpose of OCRC's Technical Assistance Program?

The Civil Rights Technical Assistance Program is designed to provide individuals, small businesses, and SBA personnel with information and assistance in complying with civil rights requirements. Such technical assistance may be provided through a cosponsorship, consistent with the requirements of SOP 90-75, "Cosponsorship."

2. What Are OCRC's Responsibilities for the Technical Assistance Program?

The OCRC has the responsibility for providing formal and informal civil rights technical assistance.

Upon request, OCRC will provide information and will give presentations to minority, female, advocacy organizations for individuals with disability, business and community organizations and others, describing the availability of SBA civil rights technical assistance.

If an SBA official learns of the need for civil rights technical assistance, he or she will forward notification to the Director, OCRC, or to the appropriate ACRD.

CHAPTER 6

RECORDS AND REPORTS

1. What Civil Rights Compliance Records Must Be Maintained?

The OCRC will maintain records to facilitate effective management of the Civil Rights Compliance Program. The OCRC will maintain active, inactive, and closed review files for recipients. Additionally, the OCRC will maintain files for complaints, investigations and office reviews.

2. What Civil Rights Compliance Reports Is OCRC Responsible for Completing?

The OCRC is responsible for completing the following reports:

- (1) the "Agency Implementation Plan," which describes the civil rights enforcement activities of the SBA and is required by and filed with the Department of Justice each fiscal year;
- (2) the annual report to the Board of Governors of the Federal Reserve System, which provides data on SBA civil rights compliance activities concerning the Equal Credit Opportunity Act of 1974; and
- (3) the annual report to the Department of Health and Human Services, which provides data concerning the OCRC's enforcement of compliance with the Age Discrimination Act of 1975, as amended.

APPENDIX 1

What Definitions and Terms Do I Need to Know?

1. Active Recipient Compliance Files--Files on which some OCRC action has been taken or is contemplated to be taken within 2 calendar years.
2. Administrative Deficiency--The failure by a recipient or program office (regarding individuals with disabilities) to comply fully with the SBA's nondiscrimination provisions, without sufficient evidence to establish discrimination or noncompliance; e.g., a recipient that has not displayed the nondiscrimination poster but does provide benefits and services in a non-discriminatory manner.
3. Applicant--(1) One who requests any assistance or benefit provided by or through the Agency, whether he/she files a formal application or whether the SBA accepts it, or (2) one who applies for employment, assistance, service, or benefit from an SBA recipient.
4. Assurance of Compliance--An assurance provided by the applicant or recipient that the recipient of the SBA's financial assistance will be in compliance with the SBA's nondiscrimination requirements.
5. Civil Rights Technical Assistance--Assistance provided to recipient and nonrecipient small businesses, potential business owners and SBA officials that helps them comply voluntarily with Federal, State, and local nondiscrimination requirements.
6. Closed Loan Files--Loan files that have been liquidated, charged-off, or paid in full.
7. Complainant--An individual or group of individuals who allege discrimination.
8. Complaint--A complaint is a written statement that alleges discrimination and includes names of the parties involved; the date(s) of the alleged violation; the basis for the alleged violation; the date the complainant first had knowledge of the alleged violation; a general description of the action or practice complained of; and is signed by the complainant or representative of the complainant.
9. Compliance--Full satisfaction of the requirements of the SBA's nondiscrimination regulations by an SBA program office (regarding individuals with disabilities), recipient, or subrecipient.
10. Disparate Impact--Policies and practices which are applied in an evenhanded manner to all employees and applicants, but which disproportionately exclude or otherwise adversely affect persons on the basis of their race, sex, color, religion, national origin, physical or mental disability, or age (40 and over).

11. Federal Financial Assistance--includes, but is not limited to:
 - (a) grants and loans of Federal funds;
 - (b) the grant or donation of Federal property and interests in property;
 - (c) the assignment of Federal personnel;
 - (d) 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 that 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;
 - (e) any Federal contract, grant, cooperative agreement, arrangement, or certification, which has as one of its purposes the provision of assistance; and
 - (f) the provision of a service or anything of value.

12. Goals and Timetables--A written plan to achieve voluntary compliance.

13. Good Faith Effort--Proactive actions taken by a recipient or subrecipient to comply with civil rights requirements or to achieve voluntary compliance.

14. Inactive Files--Files of recipients who are financially obligated to the SBA but on which no future civil rights action is contemplated.

15. Noncompliance--The status of a recipient determined by the Administrator, after opportunity for a hearing before OHA, to have discriminated in its business or employment practices.

16. Potential Noncompliance--The status of a recipient, SBA program or office, when evidence exists to establish a prima facie case of discrimination or noncompliance.

17. Preponderance of the Evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

18. Prima Facie Case--Evidence which, if not rebutted, could be the basis for a finding of discrimination.

19. Individual with Disability--Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.
20. Qualified Individual with Disability--
 - (a) With respect to employment, is an individual with disability who, with reasonable accommodation, can perform the essential functions of the job in question.
 - (b) With respect to applicants for and recipients of programs, activities, or services, is an individual with disability who meets the essential eligibility requirements to participate in activities or receive such services or benefits.
21. Reasonable Accommodation--Steps taken to enable an individual with disability to perform the essential functions of a job or to partake of the service, benefit or activity provided. It does not include modifying the fundamental nature of a job or program or requiring steps that would impose an undue financial hardship upon the business or entity asked to provide reasonable accommodation.
22. Recipient--A person or business receiving any Federal assistance administered by the SBA. A recipient may be authorized or required to extend Federal financial assistance to another recipient to carry out an SBA program or activity. The term "recipient" shall include subrecipients of SBA assistance. A "lender" identified as such pursuant to 13 CFR 120 is a recipient of Federal financial assistance.
23. Service Provider--A business whose primary function is the provision of a service, i.e., healthcare, legal, financial service providers, day care centers, health clubs and rehabilitation facilities.
24. Subrecipient--A business or entity that receives Federal financial assistance from another recipient, (e.g., through an SBIC or CDC.)
25. Voluntary Compliance--When an SBA recipient, official or office, found to be administratively deficient or in potential noncompliance, takes satisfactory corrective action without formal compliance proceedings.

APPENDIX 2

What Are the Authorities for My Work?

SBA's compliance and civil rights technical assistance policy is authorized by the following:

1. Statutes

- (a) Title VI of the Civil Rights Act of 1964, as amended, P.L. 88-352, 42 U.S.C. §2000d to 2000d-4, prohibits discrimination in any program or activity receiving Federal financial assistance, except guaranteed loans, on the basis of race, color, or national origin.
- (b) Title VII of the Civil Rights Act of 1964, as amended, P.L. 88-352, 42 U.S.C. §2000e et seq., prohibits employment discrimination by employers, including Federal agencies, employment agencies, or labor organizations on the basis of race, color, religion, sex, or national origin.
- (c) The Age Discrimination in Employment Act of 1967, as amended, P.L. 92-202, 29 U.S.C. §621 et seq., prohibits discrimination in employment by employers and labor unions on the basis of age, and protects applicants and employees age 40 and above from discrimination.
- (d) Title VIII of the Civil Rights Act of 1968, P.L. 90-284, 42 U.S.C. §3601 et seq., makes it unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin. The 1988 Amendments to the Fair Housing Act of 1968 P.L. 100-430, 42 U.S.C. §3601 et seq., extend this coverage to prohibit discrimination against individuals with disabilities and families with children.
- (e) Title IX of the Education Amendments of 1972, P.L. 92-318, 20 U.S.C. §1681 et seq., prohibits discrimination on the basis of sex or severely impaired vision or blindness in any educational program or activity receiving Federal financial assistance.
- (f) Section 504 of the Rehabilitation Act of 1973, as amended, P.L. 93-112, 29 U.S.C. §794, prohibits discrimination against otherwise qualified individuals with disabilities, solely by reason of disability, in any program or activity receiving Federal financial assistance. The 1978 amendments of §504 of the Rehabilitation Act of 1973, P.L. 95-602, 29 U.S.C. § 701, subject Federal agencies to the provisions of the Act.
- (g) The Equal Credit Opportunity Act of 1974, P.L. 90-321, 15 U.S.C. § 1691, 12 C.F.R. §202, prohibits discrimination against any applicant for credit with respect to any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract),

because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

- (h) The Age Discrimination Act of 1975, as amended, P.L. 94-478 and 42 U.S.C. §6101 et seq., prohibits discrimination on the basis of age in the delivery of services, programs or activities receiving Federal assistance.
- (i) The Civil Rights Restoration Act of 1987, P.L. 100-259, amends Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d-1, Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and the Age Discrimination Act of 1975, 42 U.S.C. §6101, to provide coverage of an entire institution or entity, if any part of it receives Federal financial assistance.
- (j) The Americans with Disabilities Act of 1990, P.L. 101-336, 42 U.S.C. §12101 et seq., prohibits discrimination in employment, services, transportation and public accommodation on the basis of disability.
- (k) Section 4(b)(1) of the Small Business Act, as amended, P.L. 93-237, 15 U.S.C. §633, prohibits discrimination by SBA on the basis of sex or marital status.
- (l) The Equal Pay Act, 29 USC §206(d), which prohibits employers, including SBA, from paying employees of one sex less than employees of the other sex for equal work.
- (m) The Federal Fair Housing Act, 42 USC § 3601, et seq., which prohibits discrimination by any person or entity, including SBA, in the sale, rental or financing of housing on the basis of race, color, religion, sex, national origin, handicap, or familial status (having minor children in the household). It applies to SBA activities such as the sale of housing taken as collateral and subsequently transferred to the SBA and the making of disaster home loans, as well as to recipients of SBA assistance who engage in housing-related activities. See 13 CFR, Part 113.
- (n) The Disaster Relief Act of 1974, as amended, P.L. 93-288, 42 U.S.C § 5121, prohibits discrimination in the disaster relief program during and following a major disaster, on the basis of race, color, religion, sex, age, disability, nationality and economic status.

2. Executive Orders

- (a) Executive Order 11246 (1965), as amended, coordinated by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL), prohibits contractors and subcontractors participating in federally-assisted construction work from discriminating against any employee or applicant for

employment on the basis of race, color, religion, sex, disability, national origin, or Vietnam era veteran status.

- (b) Executive Order 12067 (1978), requires the Equal Employment Opportunity Commission (EEOC) to provide leadership and coordination of Federal EEO programs that require equal employment opportunity without regard to race, color, religion, sex, national origin, age, or disability.
 - (c) Executive Order 12250 (1980), authorizes the Attorney General to coordinate and implement the enforcement of various nondiscrimination provisions of:
 1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.;
 2. Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.;
 3. Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794; and
 4. any other Federal statutory law that provides that no person in the United States shall, on the grounds of race, color, national origin, disability, be denied participation in, the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.
 - (d) Executive Order 13166 (2000), coordinated by the Civil Rights Division of the Department of Justice (DOJ), requires Federal agencies to improve access to federally assisted and conducted programs and activities for limited English proficient persons.
 - (e) Executive Order 13160 (2000), coordinated by the Civil Rights Division of the Department of Justice, prohibits discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in federally conducted education and training programs.
3. Regulations
- (a) 28 C.F.R. § 42.401 et seq., Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs by DOJ implements Executive Order 12250.
 - (b) 13 C.F.R. Part 112, Nondiscrimination in Federally Assisted Programs of SBA implements Title VI of the Civil Rights Act of 1964.
 - (c) 13 C.F.R. Part 113, Nondiscrimination in Financial Assistance Programs of SBA, implements policies of Federal Government and SBA Administrator.
 - (d) 13 C.F.R. Part 117, Nondiscrimination in Federally Assisted Programs of SBA, implements the Age Discrimination Act of 1975, as amended.

- (e) 13 C.F.R. Part 136, Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Small Business Administration, implements the 1978 Amendment to Section 504 of the Rehabilitation Act.