

§ 101-6.000

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AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); 31 U.S.C. 1344(e)(1).

§ 101-6.000 Scope of part.

This part sets forth miscellaneous regulations regarding Federal Property Management Regulations matters which do not come within the scope of any other subchapter of chapter 101.

(5 U.S.C. 5724, and E.O. 11012, 27 FR 2983; 3 CFR, 1959-1963 Comp., p. 591)

[29 FR 15972, Dec. 1, 1964]

Subpart 101-6.1 [Reserved]

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

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

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

§ 101-6.201 Scope of subpart.

This subpart provides the regulations of the General Services Administration (GSA) under title VI of the Civil Rights Act of 1964 (52 U.S.C. 2000d-2000d-4) concerning nondiscrimination in federally assisted programs in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA.

[38 FR 17973, July 5, 1973]

§ 101-6.202 Purpose.

The purpose of this subpart is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from GSA.

§ 101-6.203 Application of subpart.

(a) Subject to paragraph (b) of this section, this subpart applies to any program for which Federal financial assistance is authorized under a law administered in whole or in part by GSA, including the laws listed in § 101-6.217. It applies to money paid, property transferred, or other Federal financial assistance extended to any

such program after the effective date of this subpart pursuant to an application approved prior to such effective date. This subpart does not apply to (1) Any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended to any such program before the effective date of this subpart, except to the extent otherwise provided by contract, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in §101-6.204-2(d). The fact that a statute which authorizes GSA to extend Federal financial assistance to a program or activity is not listed in §101-6.217 shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs involving statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

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

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

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

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

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

struments effecting the transfer of property for use as a historic monument.

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

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

[38 FR 17973, July 5, 1973]

§ 101-6.204 Discrimination prohibited.

§ 101-6.204-1 General.

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

§ 101-6.204-2 Specific discriminatory actions prohibited.

(a)(1) In connection with any program to which this subpart applies, a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

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

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

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

(v) Treat an individual differently from others in determining whether he

satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (d) of this § 101-6.204-2).

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

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

(4) This subpart does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial as-

sistance, on the ground of race, color, or national origin. Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this subpart applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(b) As used in this § 101-6.204-2 the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

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

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

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this subpart tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits

of, or to subject them to discrimination under any program to which this subpart applies, the provisions of paragraph (d)(1) of this section shall apply to the employment practices of the recipient or other persons subject to this subpart, to the extent necessary to insure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

[29 FR 16287, Dec. 4, 1964, as amended at 38 FR 17973, July 5, 1973]

§ 101-6.204-3 Special programs.

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

§ 101-6.205 Assurances required.

§ 101-6.205-1 General.

(a) Every application for Federal financial assistance to carry out a program to which this subpart 101-6.2 applies, except a program to which § 101-6.205-2 applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this subpart 101-6.2. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property, the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible GSA official 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. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) In the case of real property, structures or improvements thereon, or interests therein, which is acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by GSA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible GSA official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

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

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

[29 FR 16287, Dec. 4, 1964, as amended at 38 FR 17973, July 5, 1973]

§ 101-6.205-2 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 subpart applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (a) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this subpart, and (b) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible GSA official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this subpart.

[38 FR 17974, July 5, 1973]

§ 101-6.205-3 Elementary and secondary schools.

The requirements of §§ 101-6.205-1 and 101-6.205-2 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) Is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the

purposes of the Act and this subpart within the earliest practicable time, and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance such responsible official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this subpart. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

[38 FR 17974, July 5, 1973]

§ 101-6.205-4 Applicability of assurances.

(a) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this § 101-6.205 shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible GSA official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(c) Where an installation or facility (for example, a public airport, or park or recreation area) is comprised of real property for which application is made

under a program, and, in addition, other real property of the applicant, the assurance required under this §101-6.205 shall be applicable to the entire installation or facility.

§ 101-6.206 Illustrative applications.

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

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

(b) In the program involving the loan of machine tools to nonprofit institutions or training schools (§101-6.217(o)), discrimination by the recipient in the admission of students or trainees or in the treatment of its students or trainees in any aspect of the educational process is prohibited. In the case of an institution of higher education, the prohibition applies to the entire institution except as provided in paragraph (b) of §101-6.205-4. In the case of elementary or secondary schools, the prohibition applies to all elementary and secondary schools of the recipient school district, consistent with §101-6.205-3. In this and other illustrations the prohibition of discrimination in the treatment of students or trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the recipient.

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

(d) In the program involving the donation of personal property to eleemosynary institutions (§101-6.217(I)), the assurance will apply to applicants for admission, patients, interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the institution, and will apply to the entire institution and to facilities operated in connection therewith, subject to the provisions of §101-6.205-4(b).

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

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

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

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

(i) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under §101-6.209-4 to provide information as to the availability of the program or activity and the rights of beneficiaries under this subpart have failed to overcome these consequences,

it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will ensure that groups previously subjected to discrimination are adequately served.

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

[29 FR 16287, Dec. 4, 1964, as amended at 38 FR 17974, July 5, 1973]

§§ 101-6.207—101-6.208 [Reserved]

§ 101-6.209 Compliance information.

§ 101-6.209-1 Cooperation and assistance.

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

§ 101-6.209-2 Compliance reports.

Each recipient shall keep such records and submit to the responsible GSA official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible GSA official or his designee may determine to be necessary to enable him to ascertain whether the re-

ipient has complied or is complying with this subpart 101-6.2. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.

§ 101-6.209-3 Access to sources of information.

Each recipient shall permit access by the responsible GSA official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this subpart. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

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

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

§ 101-6.210 Conduct of investigations.

§ 101-6.210-1 Periodic compliance reviews.

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

§ 101-6.210-2 Complaints.

Any person who believes himself or any specific class of individuals to be

subjected to discrimination prohibited by this subpart 101-6.2 may by himself or by a representative file with the responsible GSA official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible GSA official or his designee.

§ 101-6.210-3 Investigations.

The responsible GSA official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart 101-6.2. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

§ 101-6.210-4 Resolution of matters.

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

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

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

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this subpart 101-6.2, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confiden-

tial except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 101-6.211 Procedure for effecting compliance.

§ 101-6.211-1 General.

If there appears to be a failure or threatened failure to comply with this subpart 101-6.2, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this subpart may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (a) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (b) any applicable proceeding under State or local law.

§ 101-6.211-2 Noncompliance with § 101-6.205.

If an applicant fails or refuses to furnish an assurance required under § 101-6.205 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of § 101-6.211-3. The GSA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under § 101-6.211-3 except that GSA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this subpart 101-6.2.

§ 101-6.211-3 Termination of or refusal to grant or to continue Federal financial assistance.

No order suspending, terminating or refusing to grant or continue Federal

financial assistance shall become effective until (a) the responsible GSA official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (b) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart 101-6.2, (c) the action has been approved by the Administrator pursuant to § 101-6.213-5, and (d) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to 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 such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

§ 101-6.211-4 Other means authorized by law.

No action to effect compliance by an other means authorized by law shall be taken until (a) the responsible GSA official has determined that compliance cannot be secured by voluntary means, (b) the recipient or other person has been notified of his failure to comply and of the action to be taken to effect compliance, and (c) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this subpart and to take such corrective action as may be appropriate.

[38 FR 17974, July 5, 1973]

§ 101-6.212 Hearings.

§ 101-6.212-1 Opportunity for hearing.

Whenever an opportunity for a hearing is required by § 101-6.211-3, reasonable notice shall be given by registered or certified mail, return receipt re-

quested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(a) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible GSA official that the matter be scheduled for hearing, or (b) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 101-6.211-3, and consent to the making of a decision on the basis of such information as is available.

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

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

[38 FR 17974, July 5, 1973]

§ 101-6.212-3 Right to counsel.

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

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

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 101-6.212-1, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart 101-6.2, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

[29 FR 16287, Dec. 4, 1964, as amended at 38 FR 17974, July 5, 1973]

§ 101-6.212-5 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute non-compliance with this subpart 101-6.2 with respect to two or more programs to which this subpart applies, or non-compliance with this subpart and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Administrator may, by agreement with such

other departments, or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this regulation. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with § 101-6.213.

§ 101-6.213 Decisions and notices.**§ 101-6.213-1 Decision by person other than the responsible GSA official.**

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

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

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

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given in writing to the applicant or recipient, and to the complainant, if any.

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

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

§ 101-6.213-4 Rulings required.

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

§ 101-6.213-5 Approval by Administrator.

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

§ 101-6.213-6 Content of orders.

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

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sponsible GSA official that it will fully comply with this subpart.

§ 101-6.213-7 Post termination proceedings.

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

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

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

[38 FR 17975, July 5, 1973]

§ 101-6.214 Judicial review.

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

§ 101-6.215 Effect on other regulations; forms and instructions.**§ 101-6.215-1 Effect on other regulations.**

All regulations, orders, or like directions heretofore issued by any officer of GSA which imposed requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this subpart 101-6.2 applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this subpart, except that nothing in this subpart shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this subpart. Nothing in this subpart, however, shall be deemed to supersede any of the following (including future amendments thereof):

(a) Executive Orders 10925, 11114, and 11246, and regulations issued thereunder.

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

[29 FR 16287, Dec. 4, 1964, as amended at 38 FR 17975, July 5, 1973]

§ 101-6.215-2 Forms and instructions.

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

§ 101-6.215-3 Supervision and coordination.

The Administrator may from time to time assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this subpart (other than responsibility for final decision as provided in § 101-6.213), including the achievement of effective coordination and maximum uniformity within GSA and within the executive branch of the Government in the application of title VI and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the responsible GSA official.

[38 FR 17975, July 5, 1973]

§ 101-6.216 Definitions.

As used in this subpart:

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

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

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

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

(e) The term *Federal financial assistance* includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the

permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purposes of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term *program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, 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 and cash or loan or other assistance to individuals), 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 shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term *facility* includes all or any portion 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.

(h) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organi-

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

(i) The term *primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term *applicant* means one who submits an application, request, or plan required to be approved by a responsible GSA official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term *application* means such an application, request, or plan.

§ 101-6.217 Laws authorizing Federal financial assistance for programs to which this subpart applies.

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

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

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

(c) Donation of property for public airport purposes (section 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g); section 23 of the Airport

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and Airway Development Act of 1970, Pub. L. 91-258).

(d)(1) Disposal of surplus real property, including improvements, for use as a historic monument (section 13(h) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(h)).

(2) Disposal of surplus real and related personal property for public park or public recreational purposes (section 203(k)(2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k)(2)).

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

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

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

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

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

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

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

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

(m) Donation of surplus Federal records (Federal Records Disposal Act of 1943, 44 U.S.C. 366-380).

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

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

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

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

(r) Payments in lieu of taxes on certain real property transferred from the Reconstruction Finance Corporation (Title VII of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 521-524).

(s) Conveyance of certain lands and property to the State of Hawaii without reimbursement (Pub. L. 88-233, 77 Stat. 472).

[29 FR 16287, Dec. 4, 1964, as amended at 38 FR 17975, July 5, 1973]

Subpart 101-6.3—Ridesharing

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

SOURCE: 49 FR 20289, May 14, 1984, unless otherwise noted.

§ 101-6.300 Federal facility ridesharing—general policy.

This section sets forth policy and procedures governing promotion by executive agencies of ridesharing at federally owned or operated facilities and provides for the establishment and administration of a nationwide system of