

Appendix 1

Legal Background

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Section 10708 of the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 7 U.S.C. § 2279-1 (hereafter “Section 10708”) is designed to ensure transparency and accountability for socially disadvantaged farmers and ranchers in USDA programs established for farmers and ranchers. Socially disadvantaged farmers and ranchers are defined as farmers and ranchers who belong to a group “whose members have been subjected to racial and ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” See 7 U.S.C. § 2279(e)(1) and (2). The definition of “socially disadvantaged group” in the Beginning Farmers and Ranchers Act (7 USC 3319f) comes from the Agricultural Credit Administrative Provisions (7 USC 2003(e)(1)), which includes gender. Thus, socially disadvantaged groups include women, African Americans, Native Americans, Alaskan Natives, Hispanic Americans, Asian Americans and Pacific Islanders. See 7 C.F.R. § 1943.104.

In addition to the programmatic statutory requirements, USDA is required to ensure nondiscrimination in its programs and activities under its long-standing civil rights responsibilities. These responsibilities apply to virtually every USDA agency and program. For purposes of the civil rights requirements, the more than 300 programs for which USDA is responsible are divided into two categories: 1) federally assisted programs and activities funded by USDA but operated by other entities including State and local governments, universities and colleges, and private enterprises; and 2) federally conducted programs and activities funded and operated by USDA.

The federally assisted programs and activities are governed by the following statutes: (1) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.; (2) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. (applies only to federally assisted education and training programs and activities); (3) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 et seq.; and (4) Age Discrimination Act of 1975, as amended 42 U.S.C. § 6101 et seq. Together, these acts prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in any program receiving Federal financial assistance.¹ These statutes are designed to ensure that Federal dollars are not spent by third parties in a discriminatory manner and that the intended beneficiaries of the program dollars do not face discrimination in the access to or benefits of these programs or activities. One method for ensuring compliance with these statutes is the proper collection and reporting of demographic data on applicants for and participants in these programs.

¹ The Food Stamp Act of 1964 includes its own nondiscrimination provisions that prevent discrimination in the Food Stamp program on the bases of race, sex, religious creed, national origin, or political beliefs.

Although the assisted program statutes differ in the kinds of discrimination prohibited, the courts and the Federal Government apply similar compliance and enforcement procedures to all four statutes, including data collection and reporting requirements. The Supreme Court has held repeatedly that Congress intended to establish a consistent prohibition against discrimination on the basis of race, national origin, color, sex, disability, and age in federally assisted programs. See, e.g., National Collegiate Athletic Association v. Smith, 525 U.S. 459, 470, n.3 (1999); U.S. Department of Transportation v. Paralyzed Veterans, 477 U.S. 597, 600, n.4 (1986); Cannon v. University of Chicago, 441 U.S. 677, 694 (1979).

Congress furthered the principle of a consistent enforcement structure by amending the four statutes uniformly in two subsequent statutes. See Rehabilitation Act Amendments of 1986, 100 Stat. 1845 (abrogating States' Eleventh Amendment immunity under Title VI, Title IX, Section 504, and the Age Discrimination Act); Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (clarifying the definition of "programs or activities" under Title VI, Title IX, Section 504, and the Age Discrimination Act).

The President, under Executive Order 12250, has vested in the Attorney General leadership in implementing the various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. See Executive Order No. 12250, § 1-101, reprinted in 42 U.S.C. § 2000d-1. This Executive Order covers the following nondiscrimination laws: Title VI; Title IX; and Section 504. Although Executive Order 12250 does not explicitly include the Age Discrimination Act, in practice the U.S. Department of Justice (DOJ) incorporates age discrimination in its administrative structure to coordinate all of the prohibitions against discrimination in federally assisted programs.

USDA's own nondiscrimination regulations require compliance with and enforcement of the statutes listed above. See 7 C.F.R. Part 15.

There are two primary statutory provisions that apply certain nondiscrimination provisions to federally conducted programs and activities: 1) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (nondiscrimination on the basis of disability in all federally conducted programs and activities); and 2) Equal Credit Opportunity Act, 15 U.S.C. § 1691 (nondiscrimination on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract) in all credit transactions).

In addition to the above statutory requirements, USDA voluntarily established its own nondiscrimination regulations shortly after the passage of Title VI, in order to ensure nondiscrimination in its federally conducted programs. USDA's policy, adopting Title VI's principles of nondiscrimination

for programs and activities conducted by USDA, was first established in 1964 (See 29 Fed. Reg. 16966) (creating 7 C.F.R. Part 15, Subpart b, referring to nondiscrimination in direct USDA programs and activities, now found at 7 C.F.R. § 15d). The foundation and need for focus groups and CBO and AIP interviews to support the nondiscrimination provisions is supported by USDA's long-standing efforts to treat its customers equitably and assess its progress in serving all customers, regardless of race, ethnicity, sex, or disability.

The first USDA policy for assessing race, ethnicity, sex, and disability participation was established through a 1969 Secretary's Memorandum and was subsequently expanded in the Secretary's Memorandum No. 1662, on July 27, 1970. In September 1993, the provisions of the Secretary's 1969 Memorandum were updated and expanded by Departmental Regulation 4300-4, Civil Rights Impact Analysis (CRIA). The CRIA is a tool for agencies and USDA to assess the impact on all protected group members as a result of proposed regulatory and budgetary issuances as well as proposed reorganizations and advisory committee actions. The civil rights policy of the USDA requires each agency to analyze the civil rights impact(s) of policies, actions, or decisions that will affect federally conducted and federally assisted programs and activities and the USDA workforce. In order to assess the civil rights impact, information on customers' perceptions is essential.

USDA's voluntary efforts to ensure nondiscrimination in its conducted programs and activities have been further supported by Executive Order 13160, issued on June 23, 2000, and applying additional nondiscrimination requirements on all federally conducted education and training programs and activities throughout the Government. This executive order was issued to ensure that the Federal Government holds itself "to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance." See Executive Order No. 13160, § 1-101, reprinted in 42 U.S.C. § 2000d. Through this executive order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent is prohibited in federally conducted education and training programs and activities.

With the March 7, 2003, establishment of the position of Assistant Secretary for Civil Rights, USDA now has the type of leadership it needs to adequately assess customer participation in USDA programs. The Assistant Secretary for Civil Rights is charged with ensuring compliance with all civil rights laws, coordinating the Department's administration of its civil rights responsibilities, and ensuring that civil rights elements are properly incorporated in Department activities and programs. See 7 U.S.C. § 6918(d); 7 C.F.R. § 2.25. These focus groups and CBO and AIP interviews will assist

the Assistant Secretary's efforts to carry out this mandate.