

Attachment 3
28 CFR Parts 42.405 - 42.408 and 42.410

Title 28: Judicial Administration

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart F—Coordination of Enforcement of Non-discrimination in Federally Assisted Programs

§42.405 Public dissemination of title VI information.

(a) Federal agencies shall make available and, where appropriate, distribute their title VI regulations and guidelines for use by federal employees, applicants for federal assistance, recipients, beneficiaries and other interested persons.

(b) State agency compliance programs (see §42.410) shall be made available to the public.

(c) Federal agencies shall require recipients, where feasible, to display prominently in reasonable numbers and places posters which state that the recipients operate programs subject to the nondiscrimination requirements of title VI, summarize those requirements, note the availability of title VI information from recipients and the federal agencies, and explain briefly the procedures for filing complaints. Federal agencies and recipients shall also include information on title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, federal agencies and recipients shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by federal law.

(d)(1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

(2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to title VI.

§42.406 Data and information collection.

(a) Except as determined to be inappropriate in accordance with paragraph (f) of this section or §42.404(b), federal agencies, as a part of the guidelines required by §42.404, shall in regard to each assisted program provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of title VI.

(b) Pursuant to paragraph (a) of this section, in conjunction with new applications for federal assistance (see 28 CFR 50.3(c) II A) and in any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance (see 28 CFR 50.3(c) II B), and at other times as appropriate, federal agencies shall require applicants and recipients to provide relevant and current title VI information. Examples of data and information which, to the extent necessary and appropriate for determining compliance with title VI, should be required by agency guidelines are as follows:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(2) The population eligible to be served by race, color and national origin;

(3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

(4) The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

- (5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;
- (6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.
- (c) Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information required in paragraph (b) of this section, federal agencies shall specify, in their guidelines or in other directives, the need to submit such data. Such additional data should be required, however, only to the extent that it is readily available or can be compiled with reasonable effort.
- (d) Pursuant to paragraphs (a) and (b) of this section, in all cases, federal agencies shall require:
- (1) That each applicant or recipient promptly notify the agency upon its request of any lawsuit filed against the applicant or recipient alleging discrimination on the basis of race, color or national origin, and that each recipient notify the agency upon its request of any complaints filed against the recipient alleging such discrimination;
- (2) A brief description of any applicant's or recipient's pending applications to other federal agencies for assistance, and of federal assistance being provided at the time of the application or requested report;
- (3) A statement by any applicant describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the review; and periodic statements by any recipient regarding such reviews;
- (4) A written assurance by any applicant or recipient that it will compile and maintain records required, pursuant to paragraphs (a) and (b) of this section, by the agency's guidelines or other directives.
- (e) Federal agencies should inquire whether any agency listed by the applicant or recipient pursuant to paragraph (d)(2) of this section has found the applicant or recipient to be in noncompliance with any relevant civil rights requirement.
- (f) Where a federal agency determines that any of the requirements of this section are inapplicable or inappropriate in regard to any program, the basis for this conclusion shall be set forth in writing and made available to the public upon request.

§42.407 Procedures to determine compliance.

- (a) Agency staff determination responsibility. All federal agency staff determinations of title VI compliance shall be made by, or be subject to the review of, the agency's civil rights office. Where federal agency responsibility for approving applications or specific projects has been assigned to regional or area offices, the agency shall include personnel having title VI review responsibility on the staffs of such offices and such personnel shall perform the functions described in paragraphs (b) and (c) of this section.
- (b) Application review. Prior to approval of federal financial assistance, the federal agency shall make written determination as to whether the applicant is in compliance with title VI (see 28 CFR 50.3(c) II A). The basis for such a determination under "the agency's own investigation" provision (see 28 CFR 50.3(c) II A(2)), shall be submission of an assurance of compliance and a review of the data submitted by the applicant. Where a determination cannot be made from this data, the agency shall require the submission of necessary additional information and shall take other steps necessary for making the determination. Such other steps may include, for example, communicating with local government officials or minority group organizations and field reviews. Where the requested assistance is for construction, a pre-approval review should determine whether the location and design of the project will provide service on a nondiscriminatory basis and whether persons will be displaced or relocated on a nondiscriminatory basis.
- (c) Post-approval review. (1) Federal agencies shall establish and maintain an effective program of post-approval compliance reviews regarding approved new applications (see 28 CFR 50.3(c) II A), applications for continuation or renewal of assistance (28 CFR 50.3(c) II B) and all other federally assisted programs. Such reviews are to include periodic submission of compliance reports by recipients to the agencies and, where appropriate, field reviews of a representative number of major recipients. In carrying out this program, agency personnel shall follow agency manuals which establish appropriate review procedures and standards of evaluation. Additionally, agencies should consider incorporating a title VI component into general program reviews and audits.
- (2) The results of post-approval reviews shall be committed to writing and shall include specific findings of fact and recommendations. A determination of the compliance status of the recipient reviewed shall be made as promptly as possible.

(d) Notice to assistant attorney general. Federal agencies shall promptly notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews or post-approval compliance reviews.

§42.408 Complaint procedures.

(a) Federal agencies shall establish and publish in their guidelines procedures for the prompt processing and disposition of complaints. The complaint procedures shall provide for notification in writing to the complainant and the applicant or recipient as to the disposition of the complaint. Federal agencies should investigate complaints having apparent merit. Where such complaints are not investigated, good cause must exist and must be stated in the notification of disposition. In such cases, the agency shall ascertain the feasibility of referring the complaint to the primary recipient, such as a State agency, for investigation.

(b) Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency or advise the complainant.

(c) Where a federal agency requires or permits recipient to process title VI complaints, the agency shall ascertain whether the recipients' procedures for processing complaints are adequate. The federal agency shall obtain a written report of each such complaint and investigation and shall retain a review responsibility over the investigation and disposition of each complaint.

(d) Each federal agency shall maintain a log of title VI complaints filed with it, and with its recipients, identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information. Each recipient processing title VI complaints shall be required to maintain a similar log. Federal agencies shall report to the Assistant Attorney General on January 1, 1977, and each six months thereafter, the receipt, nature and disposition of all such title VI complaints.

§42.410 Continuing State programs.

Each state agency administering a continuing program which receives federal financial assistance shall be required to establish a title VI compliance program for itself and other recipients which obtain federal assistance through it. The federal agencies shall require that such state compliance programs provide for the assignment of title VI responsibilities to designated state personnel and comply with the minimum standards established in this subpart for federal agencies, including the maintenance of records necessary to permit federal officials to determine the title VI compliance of the state agencies and the sub-recipient. by state and local merit systems relating to the employment practices of the same recipient.