

### § 1.3

any ultimate beneficiary under any such program or activity.

(g) The term *applicant* means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term *application* means such an application, contract, request, or plan.

#### § 1.3 Application of part 1.

This part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department, including any program or activity assisted under the statutes listed in appendix A of this part 1. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This part 1 does not apply to: (a) Any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in § 1.4(c). The fact that certain financial assistance is not listed in appendix A shall not mean, if title VI of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

#### § 1.4 Discrimination prohibited.

(a) *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 or activity to which this part 1 applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this part 1 applies may not, directly or through contractual or other arrangements, on

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the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

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

(2)(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the

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

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 *et seq.*), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) of this section, this part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or 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 part 1 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 part 1.

(4) As used in this part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

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

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular 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 part 1 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 purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its

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employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to part III of Executive Order 11246 or any executive order which supersedes or amends 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 part 1 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 part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

### § 1.5 Assurances required.

(a) *General.* (1) Every contract for Federal financial assistance to carry out a program or activity to which this part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the

period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, 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 or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, 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. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

(b) *Preexisting contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry