

§ 42.205

28 CFR Ch. I (7-1-05 Edition)

(c) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit, or agency, the recipient will forward a copy of the finding to the appropriate CJC and to OJARS.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54037, Aug. 14, 1980]

§ 42.205 Complaint investigation.

(a) The Office shall investigate complaints filed by or on behalf of an individual claiming to be aggrieved, that allege a violation of section 815(c)(1) of the JSIA, or this subpart.

(b) No complaint will be investigated if it is received more than one year after the date of the alleged discrimination, unless the time for filing is extended by the Director of OJARS for good cause shown.

(c) The Office shall conduct investigations of complaints as follows:

(1) Within 21 days of receipt of a complaint, the Office shall:

(i) Ascertain whether it had jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iii) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and, with the written consent of the complainant, the identity of the complainant;

(ii) The programs or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of the Office's preliminary findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(3) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the investigation, the Office shall advise the complainant, the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC of:

(i) Its investigative findings;

(ii) Where appropriate, its recommendations for compliance; and

(iii) If it is likely that satisfactory resolution of the complaint can be obtained, the recipient's opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or non-compliance.

(4) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Director of OJARS for a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day period. If the Director makes a determination of non-compliance with section 815(c)(1) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208 *et seq.*

(5) If the complainant or another party, other than the Attorney General, has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to OJARS, and, during OJARS' investigation, the trial of that suit would be in progress, OJARS will suspend its investigation and monitor the litigation through the court docket and, where necessary, contacts with the complainant. Upon receipt of notice that the court has made a finding of a pattern or practice of discrimination within the meaning of § 42.208, the Office will institute administrative proceedings pursuant to § 42.208, *et seq.* Upon receipt of notice that the court has made a finding affecting only the complainant, the Office will adopt the findings of the court as its investigative findings pursuant to § 42.205(c)(3).

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(6) The time limits listed in paragraphs (c)(1) through (c)(5) of this section shall be appropriately adjusted where OJARS requests another Federal agency or another branch of the Department of Justice to act on the complaint. OJARS will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, OJARS will institute appropriate proceedings pursuant to this section.

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.206 Compliance reviews.

(a) The Office shall periodically conduct:

(1) Pre-award compliance reviews of all applicants requesting a grant from LEAA, NIJ, or BJS for \$500,000 or more; and

(2) Post-award compliance reviews of selected recipients of LEAA, NIJ, or BJS assistance.

(b) *Pre-award reviews.* The Office shall review selected formula, discretionary, and national priority applications for \$500,000 or more in order to determine whether the application presents a possibility of discrimination in the services to be performed under the grant, or in the employment practices of the applicant. In those instances where it finds such a possibility, the Office shall special condition, disapprove or take other action with respect to the application to assure that the project complies with section 815(c)(1) of the JSIA.

(c) *Post-award reviews.* The Office shall seek to review those recipients which appear to have the most serious equal employment opportunity problems, or the greatest disparity in the delivery of services to the minority and non-minority or male and female communities they serve. Selection for review shall be made on the basis of:

(1) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient;

(2) The percentage of women and minorities in the population receiving program benefits;

(3) The number and nature of discrimination complaints filed against a

recipient with OJARS or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Office against a recipient or by a pre-award compliance review; and

(5) The amount of assistance provided to the recipient.

(d) Within 15 days after selection of a recipient for review, the Office shall inform the recipient that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of the Office's investigative findings, a documentary submission responding to the Office, explaining, validating, or otherwise addressing the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(e) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the review, the Office shall advise the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC, of:

(1) Its investigative findings;

(2) Where appropriate, its recommendations for compliance; and

(3) The opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or noncompliance.

(f) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the Director of OJARS shall make a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day negotiation period. If the Director makes a determination of non-compliance with