

#### §611.4

#### 45 CFR Ch. VI (10–1–05 Edition)

fellows, or other persons, including research associates, where in training for the same or related employments, have one of the above purposes as a primary purpose.

(3) 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 any Executive order which supersedes it.

(4) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds 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 regulation applies, the provisions of paragraph (c)(3) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973; 68 FR 51382, Aug. 26, 2003]

#### §611.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to which this part 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 part. In the case 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 and 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 application. The responsible Foundation official shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, 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 or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the

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Foundation to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Foundation official, such a condition and right of reverter is appropriate to the statute 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 responsible Foundation official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of the General Services Administration. (41 CFR 101-6.2.)

(b) *Elementary and secondary schools.* The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) 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 (2) 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 part, and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance the responsible Official of the Department of Health, Education, and Welfare 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 part. 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.

(c) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research for a special training project, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) 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.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973; 68 FR 51382, Aug. 26, 2003]

### §611.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the programs aided by the Foundation. (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 part, as a condition of the receipt of Federal financial assistance.)

1. For support to elementary or secondary schools such as for the acquisition of equipment discrimination by the recipient school district in any of its elementary or secondary schools, or by the recipient private institution, in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustration the prohibition of discrimination in the treatment of students or other 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 grantee or other recipient.

2. In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the