

§ 42.202

race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under either the Justice System Improvement Act or the Juvenile Justice Act by the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics. These regulations also implement Executive Order 12138, which requires all Federal agencies awarding financial assistance to take certain steps to advance women's business enterprise.

(b) The regulations in this subpart apply to the delivery of services by, and employment practices of recipients administering, participating in, or substantially benefiting from any program or activity receiving Federal financial assistance extended under the Justice System Improvement Act of 1979, or the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(c) Where a private recipient which receives such assistance through a unit of government is engaged in prohibited discrimination, the Office of Justice Assistance, Research, and Statistics will invoke the enforcement procedures of this subpart (§ 42.208, *et seq.*) against the appropriate unit of government for failure to enforce the assurances of nondiscrimination given it by the private recipient pursuant to § 42.204(a). Where a private recipient receives assistance either directly from the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics or through another private entity which receives funds directly from one of those agencies, compliance will be enforced pursuant to section 803(a) of the Justice System Improvement Act.

§ 42.202 Definitions.

(a) *JSIA* means the Justice System Improvement Act of 1979, Public Law 96-157, 42 U.S.C. 3701, *et seq.*

(b) *Juvenile Justice Act* means title I and II of the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, as amended by Public Law 94-503 and Public Law 95-115.

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(c) *OJARS* or *Office* means the Office of Justice Assistance, Research, and Statistics.

(d) *LEAA* means the Law Enforcement Assistance Administration.

(e) *NIJ* means the National Institute of Justice.

(f) *BJS* means the Bureau of Justice Statistics.

(g) *Employment practices* means all terms and conditions of employment including but not limited to, all practices relating to the screening, recruitment, referral, selection, training, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rate of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

(h) *Investigation* includes fact-finding efforts and, pursuant to § 42.205(c)(3), attempts to secure the voluntary resolution of complaints.

(i) *Compliance review* means a review of a recipient's selected employment practices or delivery of services for compliance with the provisions of section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(j) *Noncompliance* means the failure of a recipient to comply with section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(k) *Program or activity* means the operation of the agency or organizational unit of government receiving or substantially benefiting from financial assistance awarded, e.g., a police department or department of corrections.

(l) *Pattern or practice* means any procedure, custom, or act affecting or potentially affecting, more than a single individual in a single or isolated instance.

(m) *Religion* includes all aspects of religious observance and practice as well as belief.

(n) *Recipient* means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended directly, or through such government or agency, but such term does not include any ultimate beneficiary of such assistance.

(o) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands;

(p) *Unit of local government* means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the U.S. Government performing law enforcement functions in and for the District of Columbia;

(q) *Combination* as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program or project;

(r) *Criminal justice council* or *CJC* means the agency designated by a State to perform the functions listed in section 402(b)(1) of the Justice System Improvement Act.

(s) All masculine terms such as *he*, *his*, and *him* should be construed to mean their respective feminine counterparts, *she*, *hers*, and *her*, where appropriate.

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

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act.

(b) A recipient may not, directly or through contractual or other arrangements, on the grounds set forth in paragraph (a) of this section:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided

in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, or financial aid or benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program 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;

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

(8) Subject any individual to physical abuse or summary punishment, or deny any individual the rights guaranteed by the Constitution to all persons;

(9) Subject any individual to discrimination in its employment practices in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act;

(10) Use any selection device in a manner which is inconsistent with the Department of Justice Uniform on Employee Selection Guidelines, 28 CFR 50.14.

(c) In matters involving employment discrimination, section 815(c)(1) of the JSIA shall be interpreted by the Office consistently with title VII of the Civil Rights Act of 1964, Public Law 88-352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Public Law 92-261, 87 Stat. 103, and the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076.

(d) The use of a minimum height or weight requirement which operates to disproportionately exclude women and