

§ 42.204

28 CFR Ch. I (7-1-06 Edition)

persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of supportive factual data, that the requirement has been validated as set forth in the Department of Justice Guidelines on Employee Selection Procedures, 28 CFR 50.14.

(e) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which, such will be provided under any program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination under section 815(c)(1) of the JSIA, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

(f) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, subjecting them to discrimination under, or denying them employment in connection with any program or activity to which this subpart applies; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the JSIA, the Juvenile Justice Act, or this subpart.

(g) For the purposes of this section, the disposition, services, financial aid, or benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment, or property provided with the aid of Federal financial assistance.

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section

does not limit the generality of the prohibition in paragraph (a) of this section.

(i)(1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin, or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(2) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion, national origin, or sex.

(j) Nothing contained in this subpart shall be construed as requiring any recipient to adopt a percentage ratio, quota system, or other program to achieve racial balance. The use of goals and timetables is not use of a quota prohibited by this section.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54036, Aug. 14, 1980]

§ 42.204 Applicants' obligations.

(a) Every application for Federal financial assistance to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(b) Every unit of State or local government and every agency of such unit that applies for a grant of \$500,000 or more under the JSIA or the Juvenile Justice Act, must submit a copy of its current Equal Employment Opportunity Program (if required to develop one under 28 CFR 42.301, *et. seq.*) to OJARS at the same time it submits its grant application. No application for \$500,000 or more will be approved until OJARS has approved the applicant's EEOP.

(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).