

an employer to raise the percentage of minorities in its workforce to parity with the percentage of minorities in the relevant geographical labor force.

*Section 42.213.* The full hearing will be conducted in accordance with JSIA Hearing and Appeal Procedures, 28 CFR 18.1, *et seq.*

*Section 42.215(a).* In a December 20, 1976 letter to the Administrator of LEAA, Congressman Peter Rodino, Chairman of the House Judiciary Committee, commented on the regulations proposed to implement the substantially identical nondiscrimination provisions of the Crime Control Act. He advised the Administrator that "the committee intentionally omitted the word 'refer' from the law to ensure that LEAA would always retain administrative jurisdiction over a complaint filed with them. It is not appropriate for LEAA to refer cases to the Civil Rights Division or other Federal or State agencies without monitoring the case for prompt resolution."

*Section 42.215(c)(2).* The exhaustion of administrative remedies at the end of 60 days (unless the Office has made a determination) does not limit OJARS' authority to investigate a complaint after the expiration of that period. OJARS will continue to investigate the complaint after the end of the 60-day period, if necessary, in accordance with the provisions of § 42.205.

### Subpart E—Equal Employment Opportunity Program Guidelines

**AUTHORITY:** Sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, as amended.

**SOURCE:** 43 FR 28802, June 30, 1978, unless otherwise noted.

#### § 42.301 Purpose.

The experience of the Law Enforcement Assistance Administration in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Pub. L. 90-351, 82 Stat. 197; Pub. L. 91-644, 84 Stat. 1881) has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States.

#### § 42.302 Application.

(a) *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.

(b) The obligation of a recipient to formulate, implement, and maintain an equal employment opportunity program, in accordance with this subpart, extends to State and local police agencies, correctional agencies, criminal court systems, probation and parole agencies, and similar agencies responsible for the reduction and control of crime and delinquency.

(c) Assignments of compliance responsibility for title VI of the Civil Rights Act of 1964 have been made by the Department of Justice to the Department of Health and Human Services, covering educational institutions and general hospital or medical facilities. Similarly, the Department of Labor, in pursuance of its authority under Executive Orders 11246 and 11375, has assigned responsibility for monitoring equal employment opportunity under government contracts with medical and educational institutions, and non-profit organizations, to the Department of Health and Human Services. Accordingly, monitoring responsibility in compliance matters in agencies of the kind mentioned in this paragraph rests with the Department of Health and Human Services, and agencies of this kind are exempt from the provisions of this subpart, and are not responsible for the development of equal employment opportunity programs in accordance herewith.

(d) Each recipient of LEAA assistance within the criminal justice system which has 50 or more employees and which has received grants or subgrants of \$25,000 or more pursuant to and since the enactment of the Safe Streets Act of 1968, as amended, and which has a service population with a minority representation of 3 percent or more, is required to formulate, implement and maintain an equal employment opportunity program relating to employment practices affecting minority persons and women within 120 days after either the promulgation of these amended guidelines, or the initial application for assistance is approved, whichever is sooner. Where a recipient

**§ 42.303**

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

has 50 or more employees, and has received grants or subgrants of \$25,000 or more, and has a service population with a minority representation of less than 3 percent, such recipient is required to formulate, implement, and maintain an equal employment opportunity program relating to employment practices affecting women. For a definition of "employment practices" within the meaning of this paragraph, see § 42.202(c).

(e) *Minority persons* shall include persons who are Black, not of Hispanic origin; Asian or Pacific Islanders; American Indians or Alaskan Native; or Hispanics. These categories are defined at 28 CFR 42.402(e).

(f) *Fiscal year* means the 12 calendar months beginning October 1, and ending September 30, of the following calendar year. A fiscal year is designated by the calendar year in which it ends.

[43 FR 28802, June 30, 1978, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

**§ 42.303 Evaluation of employment opportunities.**

(a) A necessary prerequisite to the development and implementation of a satisfactory equal employment opportunity program is the identification and analysis of any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion) and the evaluation of employment opportunities for minorities and women.

(b) In many cases an effective equal employment opportunity program may only be accomplished where the program is coordinated by the recipient agency with the cognizant Office of Personnel Management or similar agency responsible by law, in whole or in part, for the recruitment and selection of entrance candidates and selection of candidates for promotion.

(c) In making the evaluation of employment opportunities, the recipient shall conduct such analysis separately for minorities and women. However, all racial and ethnic data collected to perform an evaluation pursuant to the requirements of this section should be cross classified by sex to ascertain the extent to which minority women or mi-

nority men may be underutilized. The evaluation should include but not necessarily be limited to, the following factors:

(1) An analysis of present representation of women and minority persons in all job categories;

(2) An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including such things as position descriptions, application forms, recruitment methods and sources, interview procedures, test administration and test validity, educational prerequisites, referral procedures and final selection methods, to insure that equal employment opportunity is being afforded in all job categories;

(3) An analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures (lateral or vertical), and formal and informal training programs during the preceding fiscal year, in order to insure that equal employment opportunity is being afforded;

(4) A reasonable assessment to determine whether minority employment is inhibited by external factors such as the lack of access to suitable housing in the geographical area served by a certain facility or the lack of suitable transportation (public or private) to the workplace.

[43 FR 28802, June 30, 1978, as amended by Order No. 899-80, 45 FR 43703, June 30, 1980]

**§ 42.304 Written equal employment opportunity program.**

Each recipient's equal employment opportunity program shall be in writing and shall include:

(a) A job classification table or chart which clearly indicates for each job classification or assignment the number of employees within each respective job category classified by race, sex and national origin (include for example Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native). Also, principal duties and rates of pay should be clearly indicated for each job classification. Where auxiliary duties are assigned or more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made. Where the recipient operates more than one