

Army Regulation 600-23

Personnel—General

Nondiscrimination in Federally Assisted Programs

**Headquarters
Department of the Army
Washington, DC
16 January 1970**

UNCLASSIFIED

SUMMARY of CHANGE

AR 600-23

Nondiscrimination in Federally Assisted Programs

This is a transitional reprint of this publication which places it in the new UPDATE format. Any previously published permanent numbered changes have been incorporated into the text.

Effective 15 March 1970

Personnel—General

Nondiscrimination in Federally Assisted Programs

By Order of the Secretary of the Army:

W. C. WESTMORELAND
General, United States Army
Chief of Staff

Official:

KENNETH G. WICKHAM
Major General, United States Army
The Adjutant General

History. This UPDATE issue is a reprint of the original form of this regulation that was

published on 16 January 1970. Since that time no changes have been issued to amend the original. This reprint originally carried a cover date of 30 October 1987.

Summary. This revision incorporates the provision of DODD 5500.11 and DODI 7730.38.

Applicability. See paragraph 2.

Supplementation. This regulation will be supplemented at the responsible department official level (para 3). Army staff agencies and major Army commands will furnish one copy of each supplement to the Deputy Chief of Staff for Personnel, ATTN: SARD, Department of the Army, Washington, DC 20310; other commands will furnish one copy of each to the next higher headquarters.

Suggested Improvements. The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) to Deputy Chief of Staff for Personnel, ATTN: DCSPER-DMPP-SARD, Department of the Army, Washington, DC 20310.

Distribution. Active Army, ARNG, USAR: D.

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*This regulation supersedes AR 600-23, 12 May 1965 and DA letter AGAM-P(M) (31 Jan 67) DCSPER-PSD, 7 February 1967, subject: Status Report on Title VI of the Civil Rights Act of 1964, RCS DD-M(Q)756.

RESERVED

1. Purpose

a. This regulation establishes responsibility and reporting procedures for implementation of the provisions of Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 241).

b. Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. The law further requires that rules, regulations, or orders of general applicability be approved by the President before they become effective.

2. Applicability

Except for the Office of Civil Defense, this regulation applies to all Department of the Army agencies, activities and Department officials involved in the development and implementation of programs receiving Federal financial assistance as defined herein. By memorandum of the Secretary of the Army of 8 April 1965, the Director of Civil Defense is designated as the responsible Department official for the programs. He has implemented DoD Directive 5500.11 as it pertains to programs administered by him.

3. Responsibility

The following are designated "responsible department officials" and will implement DoD Directive 5500.11 (app A) and DoD Instruction 7730.38 (app C) as they pertain to the programs indicated:

a. The President, National Board for Promotion of Rifle Practice—The National Program for Promotion of Rifle Practice.

b. The Chief of Research and Development—research grants and contracts with nonprofit institutions of higher education utilizing equipment purchased under authority of Public Law 85.934 (42 U.S.C.1892).

c. The Deputy Chief of Staff for Personnel—the National Defense Cadet Corps Program.

d. The Chief of Engineers—Army Corps of Engineers civil works programs and activities.

e. The Chief, National Guard Bureau—Army National Guard.

f. The Commanding General, U.S. Army Materiel Command—the donation of surplus/obsolete Army uniforms and combat items to veterans' organizations, soldiers monument associations, museums and incorporated municipalities.

g. Each Army official not referred to above who is authorized to approve financial assistance for programs of the types covered by DoD Directive 5500.11 (incl 1 of app A) is designated the "responsible department official" for programs receiving financial assistance within his approval authority.

4. Assurances required

(para VI, app A) The responsible department officials designated in paragraph 3 will require action to secure and retain assurances of compliance with DoD Directive 5500.11 (app B will be used as a guide).

5. Decisions and notices

(para XI, app A)

a. Decisions by responsible department officials that require the approval of the Secretary of Defense will be forwarded direct to The Judge Advocate General for review, staffing, and forwarding to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

b. Other decisions which do not require Department of Defense action will be referred to the Deputy Chief of Staff for Personnel, ATTN: SARD, and The Judge Advocate General, Department of the Army, Washington DC 20310, for information.

6. Status Report on Title VI of the Civil Rights Act of 1964, RCS DD-M(Q) 756

a. Responsible department officials will prepare the quarterly report in accordance with procedures contained in DoD Instruction 7730.38 (app C). Department of Justice Form CVR-40 (incl 2 of app C) will be reproduced locally on 10½ x 8 inch paper. Reports will be prepared to reach the Deputy Chief of Staff for Personnel, ATTN:

SARD, Department of the Army, Washington DC 20310, not later than 5 days after the end of the quarter covered.

b. The Deputy Chief of Staff for Personnel will prepare a consolidated report for submission to the Assistant Secretary of Defense (Manpower and Reserve Affairs) to meet Department of Justice requirements. For purposes of efficiency and economy, programs administered by the Director of Civil Defense listed in inclosure 1 of appendix A are included in the consolidated Department of the Army report.

7. Identification of additional programs

a. Department of the Army programs subject to the provisions of DoD Directive 5500.11 are listed in inclosure 1 of appendix A.

b. Each responsible department official will forward additional programs that he determines to come within the intent of DoD Directive 5500.11 through command channels to the Deputy Chief of Staff for Personnel, ATTN: SARD, Department of the Army, Washington, DC 20310, for publication in the Federal Register and subsequent inclusion in the Department of Defense Directive.

Appendix A

December 28, 1964
NUMBER 5500.11
ASD(M)

Department of Defense Directive Subject

Nondiscrimination in Federally Assisted Programs

Reference

Public Law 88-352, "The Civil Rights Act of 1964," 78 Stat. 241, July 2, 1964

I. Purpose

The purpose of this Directive is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from any component of the Department of Defense.

II. Definitions

a. "Component" means the Office of the Secretary of Defense, a military department or a Defense agency.

b. "Responsible Department official" means the Secretary of Defense or other official of the Department of Defense or component thereof who by law or by delegation has the principal responsibility within the Department or component for the administration of the law extending such assistance.

c. The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

d. The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

e. The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

f. The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

g. The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program,

including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

h. The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

i. The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request or plan.

III. Application

This Directive applies to any program for which Federal financial assistance is authorized under a law administered by any component of the Department of Defense, including the Federally-assisted programs and activities listed in inclosure 1 of this Directive. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this Directive pursuant to approval prior to such effective date. This Directive does not supply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this Directive, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization. The fact that a program or activity is not listed in inclosure 1 shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the *Federal Register*.

IV. Policy

a. *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

b. *Specific Discriminatory Actions Prohibited.*

(1) A recipient under any program to which this Directive applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

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

(b) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in, a different manner, from that provided to others under the program;

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

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

(e) 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 service, financial aid, or other benefit provided under the program;

(f) 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.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such programs, or the class of individuals to be afforded an opportunity to participate in any such 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 because of their race, color, or national

origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this Section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this Subsection does not limit the generality of the prohibition in Subsection IV.A. of this Section.

V. Responsibilities

a. The Assistant Secretary of Defense (Manpower) shall be responsible for ensuring that the policies of this Directive are effectuated throughout the Department of Defense. He may review from time to time as he deems necessary the implementation of these policies by the components of the Department of Defense.

b. The Secretary of each Military Department is responsible for implementing this Directive with respect to programs and activities receiving financial assistance from his Military Department; and the Assistant Secretary of Defense (Manpower) is responsible for similarly implementing this Directive with respect to all other components of the Department of Defense. Each may designate official(s) to fulfill this responsibility in accordance with Subsection II.B. of this Directive.

c. The Assistant Secretary of Defense (Manpower) or, after consultation with the Assistant Secretary of Defense (Manpower), the Secretary of each Military Department or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this Directive (other than responsibility for final decision as provided in Section XI.), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this Directive to similar programs and in similar situations.

VI. Assurance Required

a. General

(1) Every application for Federal financial assistance to carry out a program to which this Directive applies, except a program to which Subsection VI.B. 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 Directive. In the case of an application for Federal financial assistance to provide real property 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 real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. In any case in which Federal financial assistance is extended without an application having been made, such extension shall be subject to the same assurances as if an application had been made. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance

shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of surplus real property shall be inserted in the instrument effecting the transfer of any such surplus land, together with any improvements located thereon, and shall consist of (a) a condition coupled with a right to be reserved to the component of the Department of Defense concerned to revert title to the property in the event of breach of such nondiscrimination condition during 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, and (b) a covenant running with the land for the same period. In the event a transferee of surplus 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 Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) The assurance required in the case of a transfer of surplus personal property shall be inserted in a written agreement by and between the Department of Defense component concerned and the recipient.

b. *Continuing State Programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this Directive applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this Directive, or a statement to the extent to which it is not, at the time the statement is made, so conducted, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this Directive, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under Subparagraph (1) of this Subsection will be corrected. In cases of continuing State programs in which application are not made, the extension of Federal financial assistance shall be subject to the same conditions under this Subsection as if applications had been made.

c. Assurances from Institutions.

(1) In the case of Federal financial assistance to an institution of higher education, 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, 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 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 unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

VII. Compliance Information

a. *Cooperation and Assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of

recipients in obtaining compliance with this Directive and shall provide assistance and guidance to recipients to help them comply voluntarily with this Directive.

b. Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Directive. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this Directive.

c. Access to Sources of Information. Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Directive. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

d. Information to Beneficiaries and Participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Directive and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Directive.

VIII. Conduct of Investigations

a. Periodic Compliance Reviews. The responsible Department official or his designee(s) shall from time to time review the practices of recipients to determine whether they are complying with this Directive.

b. Complaints. Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this Directive may by himself or by a representative file with the responsible Department official a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

c. Investigation. The responsible Department official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Directive. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Directive occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this Directive.

d. Resolution of Matters.

(1) If an investigation pursuant to Subsection VIII.C. indicates a failure to comply with this Directive, the responsible Department official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in Section IX. of this Directive.

(2) If an investigation does not warrant action pursuant to Subsection VIII.D.1., the responsible Department official will so inform the recipient and the complainant, if any, in writing.

e. Intimidatory of Retaliatory Acts Prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this Directive, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Directive. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this Directive, including the

conduct of any investigation, hearing, or judicial proceeding arising thereunder.

IX. Procedure for Effecting Compliance

a. General. If there appears to be a failure or threatened failure to comply with this Directive, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Directive may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law as determined by the responsible Department official. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceedings under State or local law.

b. Noncompliance with Section VI. If an applicant fails or refuses to furnish an assurance required under Section VI or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (C) of this Section. The component of the Department of Defense concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the component shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this Directive.

c. Termination of or Refusal to Grant or to Continue Federal Financial Assistance. Except as provided in Subsection IX.B. no order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding, after opportunity for a hearing, (as provided in Section X. of this Directive) of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Directive, (3) the action has been approved by the Secretary of Defense pursuant to Section XI. of this Directive, and (4) the expiration of 30 days after the Secretary of Defense has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

d. Other Means Authorized by Law. No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Assistant Secretary of Defense (Manpower), (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this Directive and to take such corrective action as may be appropriate.

X. Hearings

a. Opportunity for Hearing. Whenever an opportunity for a hearing is required by Section IX. of this Directive, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of

such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of hearing. An applicant or recipient may waive a hearing or submit written information and argument. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under Section 602 of the Act and Section IX.C. of this Directive and consent to the making of a decision on the basis of such information as is available.

b. Time and Place of Hearing. Hearings shall be held at the offices of the responsible component of the Department of Defense in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the component requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated by him.

c. Hearing Examiner. The examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who shall be a person admitted to practice law before a Federal court or the highest court of a State.

d. Right to Counsel. In all proceedings under this Section, the applicant or recipient and the responsible component of the Department shall have the right to be represented by counsel.

e. Procedures.

(1) The recipient shall receive an open hearing at which he or his counsel may examine any witnesses present. Both the responsible Department official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Directive, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

f. Consolidated or Joint Hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this Directive with respect to two or more programs to which this Directive applies, or noncompliance with this Directive and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Assistant Secretary of Defense (Manpower), the Secretary of a Military Department, or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) after consultation with the Assistant Secretary of Defense (Manpower) may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings to appropriate procedures not inconsistent with this Directive. Final decisions in such cases, insofar as this Directive is concerned, shall be made in accordance with section XI.

XI. Decisions and Notices

a. Decision by Person Other Than the Responsible Department Official. If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a

final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

b. Decisions on Record or Review by the Responsible Department Official. Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to Section XI.A. or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

c. Decisions on Record Where a Hearing is Waived. Whenever a hearing is waived pursuant to Section X. A. a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

d. Rulings Required. Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Directive with which it is found that the applicant or recipient has failed to comply.

e. Approval by the Secretary of Defense. Any final decision of a responsible Department official which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this Directive or the Act, shall promptly be transmitted to the Secretary of Defense, who may approve such decision, may vacate it, or remitor mitigate any sanction imposed.

f. Contents of Orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Directive, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Directive, or to have otherwise failed to comply with this Directive, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Directive.

XII. Judicial Review

Action taken pursuant to Section 602 of the Act is subject to judicial review as provided in Section 603 of the Act.

XIII. Effect on Other Issuances

All issuances heretofore issued by an officer of the Department of Defense or its components which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this Directive applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this Directive, except that nothing in this Directive shall be deemed to relieve any person of any obligation assumed or imposed under any

such superseded regulation, order, instruction, or like direction prior to the effective date of this Directive. Nothing in this Directive, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and issuances thereunder, (2) the "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education, and Welfare, and of Labor 28 F.R. 734, or (3) Executive Order 11063 and issuances thereunder, or any other issuances, insofar as such Order or issuances prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this Directive is inapplicable, or prohibit discrimination on any other ground.

XIV. Implementation

The Secretary of each Military Department shall submit regulation implementing this Directive to the Assistant Secretary of Defense (Manpower).

XV. Effective Date

This Directive shall become effective on the 30th day following the date of its publication in the *Federal Register* (Effective date—January 30, 1965.)

Secretary of Defense.

Inclosure—

List of Programs to which this Directive applies

Dec 28, 64
5500.11 (Incl 1)

Programs to Which this Directive Applies

1. The Army and Air National Guard (Title 32, United States Code).
2. Various programs involving loan or other disposition of surplus property (various general and specialized statutory provisions including: 40 United States Code 483, 484, 512; 49 United States Code 1101—1119; 10 United States Code 2541, 2542, 2543, 2572, 2662, 7308, 7541, 7542, 7545, 7546, 7547).
3. National Program for Promotion of Rifle Practice (10 United States Code 4307 and annual Department of Defense Appropriation Act).
4. National Defense Cadet Corps Program (10 United States Code 3540 (b), 4651).
5. Office of Civil Defense assistance to programs of adult education in civil defense subjects (50 United States Code App. 2281 (e), (f)).
6. Office of Civil Defense radiological instruments grants (50 United States Code App. 2281 (h)).
7. Office of Civil Defense program (with Public Health Service)

for development of instructional materials on self-help (50 United States Code App. 2281 (e), (f)).

8. Office of Civil Defense university extension programs for civil defense instructor training (50 United States Code App. 2281 (e)).

9. Office of Civil Defense programs for survival supplies and equipment, survival training, emergency operating center construction, and personnel and administrative expenses (50 United States Code App. 2281 (i), 2285).

10. Office of Civil Defense Shelter Provisioning Program (50 United States Code App. 2281 (h)).

11. Office of Civil Defense assistance to students attending Office of Civil Defense schools (50 United States Code App. 2281 (e)).

12. Office of Civil Defense loans of equipment or materials from OCD stockpiles for civil defense, including local disaster purposes (50 United States Code App. 2281).

13. Navy Science Cruiser Program (See Nav Instruction 5720.19A).

14. Civil Air Patrol (10 United States Code 9441).

15. Research grants made under the authority of Public Law 85

18. Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores and beaches (33 United States Code 426e-h).

19. Public park and recreational facilities at water resource development projects under the administrative jurisdiction of the Department of the Army (16 United States Code 460d and Federal Water Project Recreation Act, Public Law 89

22. Army Corps of Engineers assistance in the construction of smallboat harbor projects (33 United States Code 540 and 577, and 47 Stat. 42, February 10, 1932).

23. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (33 United States Code 701r).

24. Assistance to States and local interests in the development of water supplies for municipal and industrial purposes in connection with Army Corps of Engineers reservoir projects (Water Supply Act of 1958, 43 United States Code 390b).

25. Army Corps of Engineers contracts for remedial works under authority of Section 111 of Act of July 3, 1958 (33 United States Code 633).

Appendix B Assurance of Compliance with the Department of Defense Directive Under Title VI of the Civil Rights Act of 1964

...(Name of Applicant-Recipient)...(hereinafter called "Applicant-Recipient") HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300, issued as Department of Defense Directive 5500.11, December 28, 1964) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from... (Component of the Department)... and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient

Figure B-1. Assurance of Compliance with the Department of Defense Directive Under the Title VI of the Civil Rights Act of 1964—Continued

by this...*(Component of the Department)*,...assurance shall obligatethe Applicant-Recipient, or in the case of any transfer of such property,any transferee, for the period during which the real property or structureis used for a purpose for which the Federal financial assistance isextended or for another purpose involving the provision of similarservices or benefits. If any personal property is so provided, thisassurance shall obligate the Applicant-Recipient for the period duringwhich it retains ownership or possession of the property. In all othercases, this assurance shall obligate the Applicant-Recipient for theperiod during which the Federal financial assistance is extended toit by...*(Component of the Department)*...THIS ASSURANCE is given inconsideration of and for the purpose of obtaining any and all Federalgrants, loans, contracts, property, discounts or other Federal financialassistance extended after the date hereof to the Applicant-Recipientby the Department, including installment payments after such dateon account of arrangements for Federal financial assistance whichwere approved before such date. The Applicant-Recipient recognizesand agrees that such Federal financial assistance will be extendedin reliance on the representations and agreements made in this assurance,and that the United States shall have the right to seek judicial enforcementof this assurance. This assurance is binding on the Applicant-Recipient,its successors, transferees, and assignees, and the person or personswhose signatures appear below are authorized to sign this assuranceon behalf of the Applicant-Recipient.

Dated ...*(Applicant-Recipient)*...

By...*(President, Chairman of Board, or comparable authorized official)*...

...*(Applicant-Recipient's Mailing Address)*...

Figure B-1. Assurance of Compliance with the Department of Defense Directive Under the Title VI of the Civil Rights Act of 1964

Appendix C

December 20, 1966
NUMBER 7730.38
ASD (M)

Department of Defense Instruction

Subject
Quarterly Status Report on Title VI of the Civil Rights Act of 1964
Reference
(a) Title VI, Public Law 88

I. Purpose and Applicability

This Instruction establishes procedures to be followed by the Military Departments in compiling statistical data on the activities listed in enclosure 1 to reference (c) and in enclosure 3 hereto, undertaken in implementation of reference (a). These data will be used to fulfill a requirement imposed by the Department of Justice pursuant to section 2 of reference (b).

II. Cancellation

Reference (d) is hereby superseded and cancelled.

III. Procedures

Each Military Department will prepare a "Title VI Status Report" (Department of Justice Form CVR Form CVR

IV. Report Control Symbol

The reporting requirement contained in this Instruction has been assigned Report Control Symbol DD

1. DoD Instructions for Completing Department of Justice Form CVR

1. Specific and brief explanations of each noncompliance situation, covering name and type of recipient, location, amount of funds involved, a brief description of the noncompliance uncovered, administrative action taken (such as deferral of funds), status of negotiations, and any other noncompliance action should be included. When there are too many incidents of noncompliance to describe each case individually, a general description should be given. If additional space is required, a separate sheet should be used.

2. The totals for the entire Military Department in each category should be entered in the first column of the reporting form.

3. Enter any changes in the programs covered or in the codes used to designate them, under "Explanatory Notes."

B. Title VI Status Report Form

1. The Department of Justice Form CVR

2. The information requested will be reported by individual program. The letter codes preceding each program description on the Program List are intended for use in the "PROGRAM" row at the top of the Title VI Status Report form to identify each program.

3. The Department of Justice recognizes that it may be difficult to fit every program into the framework provided. In an attempt to overcome this problem, ample space has been left on each page of the form for clarification of the numerical data requested. In this way, differences between individual programs can be highlighted without necessitating an overly cumbersome report form.

4. A detailed explanation of each entry on the Form CVR "A. ASSURANCES:" In programs which require or accept plans for eliminating discrimination instead of (or along with) assurances from recipients which are not state agencies, the plans or statements will be counted as assurances, not statements of compliance. Enter the number of such plans and the type of recipient submitting them (including general geographical location, where available) in the "Explanatory Notes."

Total Number

(1) *Due* - Enter the number of assurances requested in each program but not received by the end of this reporting period. (Enter in "Explanatory Notes" why these have not been received.)

(2) *Received* - Enter the number of assurances actually received.

(3) *Accepted* - Enter the number of assurances which have been reviewed, found satisfactory, and accepted.

(4) *Unacceptable* - Enter the number of assurances currently (i.e., as of the end of the reporting period) judged not acceptable submitted, including assurances rejected and returned to the applicant, and/or currently in process of review or negotiation, as well as those in which the applicant has indicated no further desire to negotiate, barring any unusual cases (to be explained in the "Explanatory Notes"), this entry (A.4.), added to the total number of assurances accepted (A.3.) should equal the total number of assurances received (A.2.).

(5) *Refusals* - Enter the number of recipients refusing to submit assurances, including those cases in which there is still a possibility of settlement through negotiation. As indicated on the first page of these instructions, a brief explanation of the circumstances of each refusal to submit an assurance (category A.5.) and each unacceptable assurance (Category A.4.) will be entered in the "Explanatory Notes."

(6) *Sub-recipients* - Enter the number (or estimated number) of assurances which may have been received by recipients (including State agencies) from sub-recipients or vendors of services in

addition to those received. Data on sub-recipients should be included with data on recipients for all categories.

"B. STATEMENTS OF COMPLIANCE"

Total Number

(1) *Due* - Enter the number of statements of compliance requested but not received. The only recipients (applicants) which will be included in this category are States and State agencies. Plans for eliminating discrimination by all other types of recipients will be counted in the "Assurance" column with an appropriate explanation.

(2) *Received* - Enter the number of statements of compliance received.

(3) *Accepted* - Enter the number of statements of compliance reviewed, found satisfactory and accepted.

(4) *Currently Unacceptable* - Enter the number of statements of compliance judged not acceptable as submitted. Include in this category any statements of compliance, rejected and returned to the applicant, those currently in process of review or negotiation, and those in which the application has indicated no further desire to negotiate. Barring any unusual cases (which will be explained in "Explanatory Notes"), this entry added to the total number of statements of compliance accepted (B.3.) should equal the total number of statements of compliance received (B.2.)

(5) *Refusals* - Enter the number of recipients refusing to submit statements of compliance, including those cases of refusal which are still under negotiation. (Briefly describe incidents of noncompliance (i.e., refusals to submit statements (category B.5.) and unacceptable statements (category B.4.) in "Explanatory Notes.")

(b) Page 2

"C. COMPLIANCE REPORTS"

Total Number

(1) *Due* - Enter the number of compliance reports requested but not received. (Indicate briefly in "Explanatory Notes" why these have not yet been received.)

(2) *Received* - Enter the number of compliance reports received. (If this number differs from the number of recipients submitting reports, explain under "Explanatory Notes".)

(3) *In process of review* - Enter the number of compliance reports still under review.

(4) *Indicating compliance* - Enter the number of compliance reports on which review has been completed, and in which the recipient has been judged to be in compliance with Title VI.

(5) *Indicating noncompliance* - Enter the number of compliance reports on which review has been completed, and in which the recipient has been judged to be in noncompliance with Title VI. (Briefly describe the noncompliance cases in "Explanatory Notes.")

"D. COMPLIANCE FIELD REVIEWS"

Total Number

(1) *Initiated* - Enter the number of field reviews begun. (NB: Complaint investigations should NOT be included under the totals for compliance field reviews.) In the "Explanatory Notes", give, where available, a brief description of the type of recipient and the geographical area to be covered. Under all categories, field reviews conducted by State agencies should *not* be included in the statistical data. However, enter the number of such reviews and other information in "Explanatory Notes."

(2) *In process* - Enter the number of compliance field review reports which have been received but are still under review.

(3) *Completed* - Enter the number of compliance field reviews concluded and for which an outcome has been determined.

(4) *Indicating compliance* - Enter the number of compliance field reviews from which the agency has determined that the recipient is in compliance with Title VI.

(5) *Indicating noncompliance* - Enter the number of compliance reviews from which the agency has determined that the recipient is not in compliance with Title VI. Briefly describe each case of noncompliance in "Explanatory Notes."

(6) *Scheduled (for the next reporting period)* - Enter the number of field reviews scheduled for the next reporting period. Briefly describe the type of recipient and the geographical area to be covered in "Explanatory Notes."

(c) Page 3

"E. COMPLAINTS"

Total Number

(1) *Received* - Enter the number of complaints which the agency has received.

(2) *Awaiting investigation* - Enter the number of complaints received, but not investigated. All complaints awaiting investigation should be reported even if they were not originally received in the reporting period. (Under "Explanatory Notes," indicate the number of complaints awaiting investigation which are more than thirty (30) days old; sixty (60) days old; and ninety (90) days old.

(3) *Being investigated* - Enter the number of complaints received and in the process of investigation. (NB: Complaint investigations should *not* be included under the totals for compliance field reviews.)

(4) *Investigated and found invalid* - Enter the number of complaints on which investigation was completed which were found to be invalid.

(5) *Found valid* - Enter the number of complaints on which investigation was completed and which were found to be valid. (Briefly describe valid complaints in "Explanatory Notes.")

(d) Page 4

"F. NONCOMPLIANCE ACTION"

Total Number

(1) *Incidents of noncompliance* - Enter the totals of categories A.4. (assurances unacceptable); A.5. (refusals to submit assurances); B.4. (statements of compliance not accepted); B.5. (refusals to submit statements of compliance); C.5. (compliance reports indicating noncompliance); D.5. (field reviews indicating noncompliance); E.5. (complaints found valid). The figure may not be the exact sum of all these, as a recipient may have been found to be in noncompliance through more than one method. (*This entry will include all active noncompliance cases, not just those discovered during the reporting period.*)

(2) *Voluntary compliance achieved* - Enter the number of cases in which the recipient has agreed voluntarily to remedy a original noncompliance. (Cases included in this category would not normally be included in category F.1.)

(3) *Still Negotiating* - Enter the number of cases in which efforts are still being made to bring the recipient/applicant into voluntary compliance. This entry will include all cases currently under negotiation, not just those discovered during the reporting period.

(4) *Other action* - Enter the number of cases where a decision has been made to use administrative action, such as deferral of funds or "other means authorized by the law" to bring the recipient/applicant into compliance as it is assumed that the individual cases of noncompliance have already been explained under the earlier headings, there is no need to explain each case under this section.

(e) Page 5

"G. HEARINGS" With the exceptions of G.2., G.3., and G.6, this category will include only those changes in the status of a given hearing which have taken place during this reporting period. For example, G.1., "Noticed", will reflect only those recipients noticed for hearing; G.2., G.3. and G.6. will include *all* cases which are still in one of these three (3) categories as of the last day of the reporting period. (In all categories, if any hearings have been or are being held which concern discriminatory practices rather than failure to submit an assurance, enter the number held because of discriminatory practices and the number held because of failure to submit an assurance or statement of compliance under "Explanatory Notes.")

Total Number

(1) *Noticed* - Enter the number of cases in which a notice of hearing, or of opportunity for hearing has been sent. (Hearings which have been dismissed should be included, but their number separately indicated in "Explanatory Notes.")

(2) *In process* - Enter the number of active hearing cases, i.e., all hearings for which notices have been sent and which have not been dismissed, but which have not yet reached the stage described in category G.3. below.

(3) *Awaiting examiner recommendation* - Enter the number of

hearings conducted which are currently awaiting only the examiner's decision, i.e., those in which all testimony, arguments, and briefs have been submitted, but in which no decision has yet been entered by the hearing examiner.

(4) *Recommendation: in compliance* - Enter the number of cases in which the hearing examiner has found compliance.

(5) *Recommendation: noncompliance* - Enter the number of cases in which the hearing examiner has found noncompliance.

(6) *Awaiting agency decision* - Enter the number of cases in which the hearing examiner has made a recommendation but in which the Secretary of Defense has not yet made a final decision.

(7) *Decision: in compliance* - Enter the number of cases in which

the Secretary of Defense has made a decision that the applicant/recipient is in compliance.

(8) *Decision: noncompliance* - Enter the number of cases in which the Secretary of Defense has made the final decision that the applicant/recipient is not in compliance with Title VI.

(9) *Notice to Congress* - Enter the number of cases in which noncompliance has been found and notice has been sent to the Congress, as required by Title VI, but on which the statutory 30-day waiting period has not expired as of the end of the reporting period.

(10) *Final termination* - Enter the number of cases in which all Title VI procedures (including hearing, notice to the Congress, and expiration of 30-day waiting period) have been completed and assistance finally terminated.

UNITED STATES DEPARTMENT OF JUSTICE

7730.38 (Encl 2)
Dec 20, 66

TITLE VI STATUS REPORT:

AGENCY	PROGRAM	Total												

- A. Assurances
- B. Statements of Compliance

AGENCY _____ DATE _____

Total Number of Recipients:

A. ASSURANCES														
Total number:														
1. Due														
2. Received														
3. Accepted														
4. Unacceptable														
5. Refusals														
6. Sub-recipients														
B. STATEMENTS OF COMPLIANCE														
Total number:														
1. Due														
2. Received														
3. Accepted														
4. Currently unacceptable														
5. Refusals														

EXPLANATORY NOTES

TITLE VI STATUS REPORT:		AGENCY	Total										
C. Compliance Reports		PROGRAM											
D. Compliance Field Reviews													
AGENCY	DATE												
C. COMPLIANCE REPORTS													
Total number:													
1. Due													
2. Received													
3. In process of review													
4. Indicating compliance													
5. Indicating noncompliance													
D. COMPLIANCE FIELD REVIEWS													
Total number:													
1. Initiated													
2. In process													
3. Completed													
4. Indicating compliance													
5. Indicating noncompliance													
6. Scheduled (for next 90 days)													

EXPLANATORY NOTES

TITLE VI STATUS REPORT:		AGENCY	Total										
E. Complaints		PROGRAM											
AGENCY _____	DATE _____												
E. COMPLAINTS													
Total number:													
1. Received													
2. Awaiting investigation													
3. Being investigated													
4. Investigated and found invalid													
5. Found valid													

EXPLANATORY NOTES

TITLE VI STATUS REPORT:		AGENCY	Total										
F. Noncompliance Action		PROGRAM											
AGENCY _____	DATE _____												
F. NONCOMPLIANCE ACTION													
Total number:													
1. Incidents of noncompliance													
2. Voluntary compliance achieved													
3. Still negotiating													
4. Other action													

EXPLANATORY NOTES

TITLE VI STATUS REPORT:		AGENCY	Total															
G. Hearings		PROGRAM																
AGENCY	DATE																	
G. HEARINGS																		
Total number:																		
1. Noticed																		
2. In process																		
3. Awaiting examiner recommendation																		
4. Recommendation: in compliance																		
5. Recommendation: noncompliance																		
6. Awaiting agency decision																		
7. Decision: in compliance																		
8. Decision: noncompliance																		
9. Notice to Congress																		
10. Final termination																		

EXPLANATORY NOTES

PROGRAM LIST: DEPARTMENT OF DEFENSE

- A. Army and Air National Guard
- B. OCD financial assistance to continuing State and local programs
- C. Loan or disposition of surplus property
- D. National Program for Promotion of Rifle Practice
- E. National Defense Cadet Corps
- F. Office of Civil Defense assistance for adult education and medical self-help
- G. Naval Science Cruiser Program
- H. Civil Air Patrol
- I. Research grants and contracts
- J. Corps of Engineers civil works programs

Figure C-2. Program List: Department of Defense

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