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 whichplaces it in the new UPDATE format. Any previously publishedpermanent numbered changes have been incorporated into the text.

*Army Regulation 600-23

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 regulationthat was

published on 16 January 1970. Since that time no changes have beenissued 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 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 copyof 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 DAForm 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:

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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 TitleVI 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 noperson in the United States shall, on the grounds of race, color, ornational origin, be excluded from participation in, be denied the benefitsof, or be otherwise subjected to discrimination under any program oractivity receiving Federal financial assistance. The law further requiresthat 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 departmentofficials" and will implement DoD Directive 5500.11 (app A) andDoD Instruction 7730.38 (app C) as they pertain to the programs indicated:

- a. The President, National Board for Promotion of Rifle Practice—TheNational 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 DefenseCadet Corps Program.
- d. The Chief of Engineers—Army Corps of Engineers civil worksprograms 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 byDoD Directive 5500.11 (incl 1 of app A) is designated the "responsibledepartment official" for programs receiving financial assistance withinhis approval authority.

4. Assurances required

(para VI, app A) The responsible department officials designated inparagraph 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 Defenseaction 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 quarter-lyreport 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 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 consolidatedreportfor submission to the Assistant Secretary of Defense (Manpower andReserveAffairs) to meet Department of Justice requirements. For purposesof efficiency and economy, programs administered by the Director of CivilDefense 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.

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," 78Stat. 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 toas the "Act") to the end that no person in the United Statesshall, 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. IIDefinitions

- 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 Defenseor other official of the Department of Defense or component thereofwho by law or by delegation has the principal responsibility withinthe 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, AmericanSamoa, 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) grantsand loans of Federal funds, (2) the grant or donation of Federalproperty and interests in property, (3) the detail of Federal personnel,(4) the sale and lease of, and the permission to use (on otherthan a casual or transient basis), Federal property or any interestin such property without consideration or at a nominal consideration,or at a consideration which is reduced for the purpose of assistingthe recipient, or in recognition of the public interest to be servedby such sale or lease to the recipient, and (5) any Federal agreement,arrangement, or other contract which has as one of its purposesthe provision of assistance.
- e. The term "program" includes any program, project, or activityfor the provision of services, financial aid, or other benefitsto individuals, or for the provision of facilities for furnishingservices, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receivingFederal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federalfinancial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made availablefor the program to meet matching requirements or other conditionswhich must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits providedin or through a facility provided with the aid of Federal financialassistance 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 subdivisionof any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, orother entity, or any individual, in any State, to whom Federalfinancial assistance is extended, directly or through another recipient, for any program,

including any successor, assign, or transfereethereof, but such term does not include any ultimate beneficiaryunder any such program.

- h. The term "primary recipient" means any recipient which isauthorized 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 Departmentofficial, 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 Federalfinancial assistance is authorized under a law administered by any component of the Department of Defense, including the Federally-assistedprograms and activities listed in inclosure 1 of this Directive.It applies to money paid, property transferred, or other Federalfinancial assistance extended under any such program after theeffective date of this Directive pursuant to approval prior tosuch effective date. This Directive does not supply to (a) any Federalfinancial assistance by way of insurance or guaranty contracts,(b) money paid, property transferred, or other assistance extendedunder any such program before the effective date of this Directive,(c) any assistance to any individual who is the ultimate beneficiaryunder any such program, or (d) any employment practice, under anysuch program, of any employer, employment agency, or labor organization. The fact that a program or activity is not listed in inclosure1 shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutesnow in force or hereinafter enacted may be added to this list bynotice 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 fromparticipation in, be denied the benefits of, or be otherwise subjected discrimination under any program to which this Directive applies.
 - b. Specific Discriminatory Actions Prohibited.
- (1) A recipient under any program to which this Directive appliesmay 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 otherbenefit provided under the program;
- (b) Provide any service, financial aid, or other benefit toan individual which is different, or is provided in, a differentmanner, from that provided to others under the program;
- (c) Subject an individual to segregation or separate treatmentin any matter related to his receipt of any service, financialaid, 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 determiningwhether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individualsmust meet in order to be provided any service, financial aid, orother benefit provided under the program;
- (f) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or affordhim an opportunity to do so which is different from that afforded others under the program.
- (2) A recipient, in determining the types of services, financialaid, or other benefits, or facilities which will be provided underany such program, or the class of individuals to whom, or the situationsin 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 effectof subjecting individuals to discrimination because of their race, color, or national

origin, or have the effect of defeating or substantiallyimpairing accomplishment of the objectives of the program as respectindividuals of a particular race, color, or national origin.

- (3) As used in this Section the services, financial aid, orother benefits provided under a program receiving Federal financialassistance shall be deemed to include any service, financial aid,or other benefit provided in or through a facility provided withthe aid of Federal financial assistance.
- (4) The enumeration of specific forms of prohibited discrimination this Subsection does not limit the generality of the prohibition Subsection IV.A. of this Section.

V. Responsibilities

- a. The Assistant Secretary of Defense (Manpower) shall beresponsible for ensuring that the policies of this Directive areeffectuated throughout the Department of Defense. He may reviewfrom 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 forimplementing 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 consultationwith the Assistant Secretary of Defense (Manpower), the Secretaryof each Military Department or other responsible Department officialdesignated by the Assistant Secretary of Defense (Manpower) mayassign 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 VIof the Act and this Directive (other than responsibility for finaldecision as provided in Section XI.), including the achievementof effective coordination and maximum uniformity within the Departmentand within the Executive Branch of the Government in the application Title VI and this Directive to similar programs and in similarsituations.

VI. Assurance Required

a. General

(1) Every application for Federal financial assistance to carryout a program to which this Directive applies, except a programto which Subsection VI.B. applies and every application for Federalfinancial assistance to provide a facility shall, as a conditionto its approval and the extension of any Federal financial assistancepursuant to the application, contain or be accompanied by an assurancethat the program will be conducted or the facility operated incompliance with all requirements imposed by or pursuant to thisDirective. In the case of an application for Federal financialassistance to provide real property or structures thereon, theassurance shall obligate the recipient, or, in the case of a subsequenttransfer, the transferee, for the period during which the realproperty or structures are used for a purpose for which the Federalfinancial 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 periodduring which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient forthe period during which Federal financial assistance is extendedpursuant to the application. In any case in which Federal financialassistance is extended without an application having been made, such extension shall be subject to the same assurances as if anapplication had been made. The responsible Department officialshall 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

shallinclude provisions which give the United States a right to seekits judicial enforcement.

- (2) The assurance required in the case of a transfer of surplusreal property shall be inserted in the instrument effecting thetransfer of any such surplus land, together with any improvementslocated thereon, and shall consist of (a) a condition coupled with right to be reserved to the component of the Department of Defenseconcerned to revert title to the property in the event of breachof such nondiscrimination condition during the period during whichthe real property is used for a purpose for which the Federal financialassistance is extended or for another purpose involving the provisionof similar services or benefits, and (b) a covenant running withthe land for the same period. In the event a transferee of surplusreal property proposes to mortgage or otherwise encumber the realproperty as security for financing construction of new, or improvementof existing, facilities on such property for the purposes for whichthe property was transferred, the responsible Department officialmay agree, upon request of the transferee and if necessary to accomplishsuch financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so longas the lien of such mortgage or other encumbrance remains effective.
- (3) The assurance required in the case of a transfer of surpluspersonal property shall be inserted in a written agreement by andbetween the Department of Defense component concerned and the recipient.
- b. Continuing State Programs. Every application by aState or a State agency to carry out a program involving continuingFederal financial assistance to which this Directive applies shallas a condition to its approval and the extension of any Federalfinancial assistance pursuant to the application (1) contain orbe accompanied by a statement that the program is (or, in the caseof a new program, will be) conducted in compliance with all requirementsimposed by or pursuant to this Directive, or a statement of theextent to which it is not, at the time the statement is made, soconducted, and (2) provide or be accompanied by provision for suchmethods of administration for the program as are found by the responsibleDepartment official to give reasonable assurance that the applicantand all recipients of Federal financial assistance under such programwill comply with all requirements imposed by or pursuant to thisDirective, including methods of administration which give reasonableassurance that any noncompliance indicated in the statement underSubparagraph (1) of this Subsection will be corrected. In casesof 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 applicationshad 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 shallextend 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 admissionor other treatment of individuals as students of the institutionor to the opportunity to participate in the provision of servicesor other benefits to such individuals, shall be applicable to theentire 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 willin no way affect its practices in the program of the institutionfor which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistancesought 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 responsibleDepartment official shall to the fullest extent practicable seekthe 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 suchrecords and submit to the responsible Department official timely,complete and accurate compliance reports at such times, and insuch form and containing such information, as the responsible Departmentofficial may determine to be necessary to enable him to ascertainwhether the recipient has complied or is complying with this Directive.In the case of any program under which a primary recipient extendsFederal financial assistance to any other recipient, such otherrecipient shall also submit such compliance reports to the primaryrecipient as may be necessary to enable the primary recipient tocarry out its obligations imposed pursuant to this Directive.
- c. Access to Sources of Information. Each recipient shallpermit access by the responsible Department official during normalbusiness hours to such of its books, records, accounts, and othersources of information, and its facilities as may be pertinent oascertain 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 failor refuse to furnish this information, the recipient shall so certifyin 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 Actand this Directive.

VIII. Conduct of Investigations

- a. Periodic Compliance Reviews. The responsible Departmentofficial 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 anyspecific 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 officialwill 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. indicatesa failure to comply with this Directive, the responsible Departmentofficial 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 toSubsection VIII.D.1., the responsible Department official willso inform the recipient and the complainant, if any, in writing.
- e. Intimidatory of Retaliatory Acts Prohibited. No recipientor other person shall intimidate, threaten, coerce, or discriminateagainst any individual for the purpose of interfering with anyright or privilege secured by section 601 of the Act or this Directive, or because he has made a complaint, testified, assisted, or participatedin any manner in an investigation, proceeding, or hearing underthis 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 orthreatened failure to comply with this Directive, and if the noncomplianceor threatened noncompliance cannot be corrected by informal means, compliance with this Directive may be effected by the suspensionor termination of or refusal to grant or to continue Federal financialassistance 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 Justicewith a recommendation that appropriate proceedings be brought toenforce any rights of the United States under any law of the UnitedStates (including other titles of the Act), or any assurance orother contractual undertaking, and (2) any applicable proceedings under State or local law.
- b. Noncompliance with Section VI. If an applicant failsor refuses to furnish an assurance required under Section VI or otherwisefails or refuses to comply with a requirement imposed by or pursuantto that section Federal financial assistance may be refused inaccordance with the procedures of paragraph (C) of this Section.The component of the Department of Defense concerned shall notbe required to provide assistance in such a case during the pendencyof the administrative proceedings under such paragraph except thatthe component shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuantto an application therefor approved prior to the effective dateof 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 continueFederal financial assistance shall become effective until (1) theresponsible Department official has advised the applicant or recipientof his failure to comply and has determined that compliance cannotbe secured by voluntary means, (2) there has been an express finding, after opportunity for a hearing, (as provided in Section X. ofthis Directive) of a failure by the applicant or recipient to complywith a requirement imposed by or pursuant to this Directive, (3)the action has been approved by the Secretary of Defense pursuantto Section XI. of this Directive, and (4) the expiration of 30days after the Secretary of Defense has filed with the committeeof the House and the committee of the Senate having legislativejurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action tosuspend or terminate or to refuse to grant or to continue Federalfinancial assistance shall be limited to the particular politicalentity, or part thereof, or other applicant or recipient as towhom such a finding has been made and shall be limited in its effectto the particular program, or part thereof, in which such noncompliancehas been so found.
- d. Other Means Authorized by Law. No action to effectcompliance by any other means authorized by law shall be takenuntil (1) the responsible Department official has determined thatcompliance cannot be secured by voluntary means, (2) the action hasbeen approved by the Assistant Secretary of Defense (Manpower), (3)the recipient or other person has been notified of its failure tocomply and of the action to be taken to effect compliance, and (4)the expiration of at least 10 days from the mailing of such noticeto the recipient or other person. During this period of at least10 days additional efforts shall be made to persuade the recipientor other person to comply with this Directive and to take such correctiveaction as may be appropriate.

X. Hearings

a. Opportunity for Hearing. Whenever an opportunity fora hearing is required by Section IX. of this Directive, reasonablenotice shall be given by registered or certified mail, return receiptrequested, to the affected applicant or recipient. This notice shalladvise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against itis to be taken, and the matters of fact or law asserted as the basisfor this action, and either (1) fix a date nor less than 20 daysafter the date of

such notice within which the applicant or recipientmay request of the responsible Department official that the matterbe scheduled for hearing or (2) advise the applicant or recipientthat the matter in question has been set down for hearing at a statedplace and time. The time and place so fixed shall be reasonable andshall be subject to change for cause. The complainant, if any, shallbe advised of the time and place of hearing. An applicant or recipientmay waive a hearing a submit written information and argument. Thefailure of an applicant or recipient to request a hearing under thisparagraph or to appear at a hearing for which a datehas been set shall be deemed to be a waiver of the right to a hearingunder Section 602 of the Act and Section IX.C. of this Directiveand consent to the making of a decision on the basis of such informationas is available.

- b. Time and Place of Hearing. Hearings shall be held atthe offices of the responsible component of the Department of Defensein Washington, D.C., at a time fixed by the responsible Departmentofficial unless he determines that the convenience of the applicantor recipient or of the component requires that another place be selected. Hearings shall be held before the responsible Department officialor, at his discretion, before a hearing examiner designated by him
- c. Hearing Examiner. The examiner shall be a field gradeofficer or civilian employee above the grade of GS-12 (or the equivalent) who shall be a person admitted to practice law before a Federal courtor 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 Departmentshall have the right to be represented by counsel.
 - e. Procedures.
- (1) The recipient shall receive an open hearing at which he orhis counsel may examine any witnesses present. Both the responsibleDepartment official and the applicant or recipient shall be entitled introduce all relevant evidence on the issues as stated in thenotice for hearing or as determined by the officer conducting thehearing at the outset of or during the hearing.
- (2) Technical rules of evidence shall not apply to hearings conductedpursuant to this Directive, but rules or principles designed to assureproduction of the most credible evidence available and to subjecttestimony to test by cross-examination shall be applied where reasonablynecessary by the officer conducting the hearing. The hearing officermay exclude irrelevant, immaterial, or unduly repetitous evidence. All documents and other evidence offered or taken for record shallbe open to examination by the parties and opportunity shall be givento refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extentthe substance thereof is stipulated for the record. Al decisions shall be based upon the hearing record and written findings shallbe made.
- f. Consolidated or Joint Hearings. In cases in which thesame or related facts are asserted to constitute noncompliance withthis directive with respect to two or more programs to which thisDirective applies, or noncompliance with this Directive and the regulations of one or more other Federal departments or agencies issued underTitle VI of the Act, the Assistant Secretary of Defense (Manpower), the Secretary of a Military Department, or other responsible Departmentofficial 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 forthe application to such hearings to appropriate procedures not inconsistent with this Directive. Final decisions in such cases, insofar as thisDirective is concerned, shall be made in accordance with section XI.

XI. Decisions and Notices

a. Decision by Person Other Than the Responsible DepartmentOfficial. If the hearing is held by a hearing examiner suchhearing 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

finaldecision, and a copy of such initial decision or certification shallbe mailed to the applicant or recipient. Where the initial decisionis made by the hearing examiner the applicant or recipient may within30 days of the mailing of such notice of initial decision file withthe responsible Department official his exceptions to the initialdecision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within45 days after the initial decision serve on the applicant or recipienta notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Departmentofficial shall review the initial decision and issue his own decisionthereon 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 DepartmentOfficial. Whenever a record is certified to the responsibleDepartment official for decision or he reviews the decision of ahearing examiner pursuant to Section XI.A. or whenever the responsibleDepartment official conducts the hearing, the applicant or recipientshall be given reasonable opportunity to file with him briefs orother written statements of its contentions, and a copy of the finaldecision of the responsible Department official shall be given inwriting to the applicant or recipient and to the complainant, ifany.
- c. Decisions on Record Where a Hearing is Waived. Whenevera hearing is waived pursuant to Section X. A. a decision shall be madeby 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 officeror responsible Department official shall set forth his ruling oneach 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 suspensionor termination of, or the refusal to grant or continue Federal financialassistance, or the imposition of any other sanction available underthis Directive or the Act, shall promptly be transmitted to the Secretaryof Defense, who may approve such decision, may vacate it, or remitor mitigate any sanction imposed.
- f. Contents of Orders. The final decision may provide forsuspension or termination of, or refusal to grant or continue Federalfinancial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as areconsistent with and will effectuate the purposes of the Act and this-Directive, including provisions designed to assure that no Federalfinancial assistance will thereafter be extended under such programto the applicant or recipient determined by such decision to be indefault in its performance of an assurance given by it pursuant tothis Directive, or to have otherwise failed to comply with this Directive, unless and until it corrects its noncompliance and satisfies theresponsible 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 hertofore issued by an officer of the Departmentof Defense or its components which impose requirements designed toprohibit any discrimination against individuals on the ground ofrace, color, or national origin under any program to which this Directiveapplies, and which authorize the suspension or termination of orrefusal to grant or to continue Federal financial assistance to anyapplicant for or recipient of such assistance under such programfor 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 supersededregulation, order, instruction, or like direction prior to the effectivedate of this Directive. Nothing in this Directive, however, shallbe deemed to supersede any of the following (including future amendmentsthereof): (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 suchOrder 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 otherground.

XIV. Implementation

The Secretary of each Military Department shall submit regulationsimplementing 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 surplusproperty (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 StatesCode 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 educationin civil defense subjects (50 United States Code App. 2281 (e), (f).
- 6. Office of Civil Defense radiological instruments grants (50 UnitedStates Code App. 2281 (h).
 - 7. Office of Civil Defense program (with Public Health Service)

fordevelopment of instructional materials on self-help (50 United StatesCode App. 2281 (e), (f)).

- 8. Office of Civil Defense university extension programs for civildefense 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 personneland administrative expenses (50 United States Code App. 2281 (i),2285).
- 10. Office of Civil Defense Shelter Provisioning Program (50 UnitedStates Code App. 2281 (h)).
- 11. Office of Civil Defense assistance to students attending Officeof 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 worksfor the restoration and protection of shores and beaches (33 UnitedStates Code 426e-h).
- 19. Public park and recreational facilities at water resource developmentprojects under the administrative jurisdiction of the Department of the Army (16 United States Code 460d and Federal Water ProjectRecreation 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 Corpsof Engineers for protection of highways, bridge approaches, and publicworks (33 Unites States Code 701r).
- 24. Assistance to States and local interests in the development ofwater supplies for municipal and industrial purposes in connectionwith Army Corps of Engineers reservoir projects (Water Supply Actof 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 theDepartment of
Defense DirectiveUnder Title VI of the Civil
RightsAct of 1964

...(Name of Applicant-Recipient)...(hereinafter called "Applicant-Recipient") HEREBY AGREESTHAT it will comply with title VI of the Civil RightsAct of 1964 (P.L. 88-352) and all requirements imposed by or pursuantto the Directive of the Department of Defense (32 CFR Part 300, issuedas Department of Defense Directive 5500.11, December 28, 1964) issuedpursuant to that title, to the end that, in accordance with titleVI of that Act and the Directive, no person in the United States shall,on the ground of race, color, or national origin be excluded fromparticipation in, be denied the benefits of, or be otherwise subjected discrimination under any program or activity for which theApplicant-Recipient receives Federal financial assistancefrom...(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...(Componentof the Department),...assurance shall obligate the 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 is extended or for another purpose involving the provision of similarservices or benefits. If any personal property is so provided, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to the 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 financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such dateon account of arrangements for Federal financial assistance whichwere approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of 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 assurance on 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 Actof 1964 Reference

(a) Title VI, Public Law 88

I. Purpose and Applicability

This Instruction establishes procedures to be followed by theMilitary Departments in compiling statistical data on the activitieslisted 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 Justicepursuant 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 hasbeen assigned Report Control Symbol DD

- 1. DoD Instructions for Completing Department of Justice FormCVR
- I. 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 categoryshould 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 topof the Title VI Status Report form to identify each program.
- 3. The Department of Justice recognizes that it may be difficult of fit every program into the framework provided. In an attempt toovercome this problem, ample space has been left on each page of theform for clarification of the numerical data requested. In this way, differences between individual programs can be highlighted withoutnecessitating an overly cumbersome report form.
- 4. A detailed explanation of each entry on the Form CVR "A. ASSURANCES:" In programs which require or accept plansfor 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. Enterthe 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 eachprogram but not received by the end of this reporting period. (Enterin "Explanatory Notes" why these have not been received.)
 - (2) Received Enter the number of assurances actually received.
- (3) Accepted Enter the number of assurances whichhave 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 acceptableas submitted, including assurances rejected and returned to the applicant, and/or currently in process of review or negotiation, as well as thosein 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 refusingto submit assurances, including those cases in which there is stilla possibility of settlement through negotiation. As indicated on thefirst page of these instructions, a brief explanation of the circumstancesof each refusal to submit an assurance (category A.5.) and each unacceptableassurance (Category A.4.) will be entered in the "Explanatory Notes.")
- (6) Sub-recipients Enter the number (or estimatednumber) of assurances which may have been received by recipients (includingState agencies) from sub-recipients or vendors of services in

additionto those received. Data on sub-recipients should be included withdata on recipients for all categories.

"B. STATEMENTS OF COMPLIANCE"

Total Number

- (1) *Due* Enter the number of statements of compliancerequested but not received. The only recipients (applicants) whichwill be included in this category are States and State agencies. Plansfor eliminating discrimination by all other types of recipients willbe counted in the "Assurance" column with an appropriate explanation.
- (2) Received Enter the number of statements of compliancereceived.
- (3) Accepted Enter the number of statements of compliancereviewed, found satisfactory and accepted.
- (4) Currently Unacceptable Enter the number of statements of compliance judged not acceptable as submitted. Include in thiscategory any statements of compliance, rejected and returned to the theapplicant, those currently in process of review or negotiation, and those in which the application has indicated no further desire tonegotiate. 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 refusingto submit statements of compliance, including those cases of refusalwhich are still under negotiation. (Briefly describe incidents ofnoncompliance (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 requestedbut not received. (Indicate briefly in "Explanatory Notes" why thesehave not yet been received).
- (2) Received Enter the number of compliance reportsreceived. (If this number differs from the number of recipients submittingreports, explain under "Explanatory Notes".)
- (3) In process of review Enter the number of compliancereports still under review.
- (4) *Indicating compliance* Enter the number of compliancereports on which review has been completed, and in which the recipienthas been judged to be in compliance with Title VI.
- (5) Indicating noncompliance Enter the number of compliancereports on which review has been completed, and in which the recipienthas been judged to be in noncompliance with Title VI. (Briefly describethe 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 totalsfor compliance field reviews.) In the "Explanatory Notes", give, where available, a brief description of the type of recipient andthe 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 fieldreview reports which have been received but are still under review.
- (3) Completed Enter the number of compliance fieldreviews concluded and for which an outcome has been determined.
- (4) *Indicating compliance* Enter the number of compliancefield reviews from which the agency has determined that the recipientsis in compliance with Title VI.
- (5) *Indicating noncompliance* Enter the number of compliance reviews from which the agency has determined that the recipient isnot in compliance with Title VI. Briefly describe each case of noncompliancein "Explanatory Notes."
- (6) Scheduled (for the next reporting period) Enterthe number of field reviews scheduled for the next reporting period.Briefly describe the type of recipient and the geographical area tobe covered in "Explanatory Notes."

- (c) Page 3
- "E. COMPLAINTS"

Total Number

- (1) Received Enter the number of complaints whichthe agency has received.
- (2) Awaiting investigation Enter the number of complaints received, but not investigated. All complaints awaiting investigationshould be reported even if they were not originally received in thereporting 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 fieldreviews.)
- (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 onwhich 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 ofcategories A.4. (assurances unacceptable); A.5. (refusals to submitassurances); B.4. (statements of compliance not accepted); B.5. (refusalsto 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 allthese, as a recipient may have been found to be in noncompliance throughmore than one method. (This entry will include all active noncompliancecases, 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 anoriginal noncompliance. (Cases included in this category would not normally be included in category F.1.)
- (3) Still Negotiating Enter the number of cases inwhich efforts are still being made to bring the recipient/applicantinto voluntary compliance. This entry will include all cases currentlyunder negotiation, not just those discovered during the reportingperiod.
- (4) Other action Enter the number of cases where adecision has been made to use administrative action, such as deferralof funds or "other means authorized by the law" to bring therecipient/applicant into compliance as it is assumed that the individualcases of noncompliance have already been explained under the earlierheadings, 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, thiscategory will include only those changes in the status of a givenhearing which have taken place during this reporting period. For example,G.1., "Noticed", will reflect only those recipients noticed forhearing; G.2., G.3. and G.6. will include *all* cases whichare still in one of these three (3) categories as of the last dayof the reporting period. (In all categories, if any hearings havebeen or are being held which concern discriminatory practices ratherthan failure to submit an assurance, enter the number heldbecause of discriminatory practices and the number held because offailure to submit an assurance or statement of compliance under "Explanatory Notes.") Total Number
- (1) *Noticed* Enter the number of cases in which a noticeof hearing, or of opportunity for hearing has been sent. (Hearingswhich have been dismissed should be included, but their number separatelyindicated in "Explanatory Notes.")
- (2) *In process* Enter the number of active hearingcases, i.e., all hearings for which notices have been sent and whichhave not been dismissed, but which have not yet reached the stagedescribed in category G.3. below.
 - (3) Awaiting examiner recommendation Enter the number of

hearings conducted which are currently awaiting only the examiner'sdecision, i.e., those in which all testimony, arguments, and briefshave been submitted, but in which no decision has yet been enteredby 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 casesin which the hearing examiner has made a recommendation but in whichthe Secretary of Defense has not yet made a final decision.
 - (7) Decision: in compliance Enter the number of casesin which

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

- (8) *Decision: noncompliance* Enter the number of casesin which the Secretary of Defense has made the final decision thatthe applicant/recipient is not in compliance with Title VI.
- (9) Notice to Congress Enter the number of cases inwhich noncompliance has been found and notice has been sent to the Congress, as required by Title VI, but on which the statutory 30-daywaiting period has not expired as of the end of the reporting period.
- (10) *Final termination* Enter the number of cases inwhich all Title VI procedures (including hearing, notice to the Congress, and expiration of 30-day waiting period) have been completed and assistancefinally terminated.

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EXPLANATORY NOTES

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Page 1

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Figure C-1A. Form CVR-40 page 1

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EXPLANATORY NOTES

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Figure C-1B. Form CVR-40 page 2

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EXPLANATORY NOTES

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Figure C-1C. Form CVR-40 page 3

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EXPLANATORY NOTES

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Figure C-1D. Form CVR-40 page 4

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EXPLANATORY NOTES

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Figure C-1E. Form CVR-40 page 5

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