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CLERK OF COURTS OFFICE
CLEVELAND MUNICIPAL COURT

TECHNICAL ASSISTANCE REPORT

Report Prepared By:

EQUAL EMPLOYMENT OPPORTUNITY IN THE COURTS PROJECT

National Center for State Courts

Mary Culhane, Project Associate

August, 1978

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CLEVELAND MUNICIPAL COURT

CLERK OF COURTS OFFICE

TECHNICAL ASSISTANCE REPORT

EQUAL EMPLOYMENT OPPORTUNITY IN THE COURTS PROJECT
NATIONAL CENTER FOR STATE COURTS
AUGUST, 1978

1. INTRODUCTION

Technical assistance under the Equal Employment Opportunity in the Courts Project was requested by Mr. Jerome K. Krakowski, Clerk of Courts, for the purpose of identifying what impact, if any, federal and state Equal Employment Opportunity (EEO) laws have on the current personnel policies and procedures of the Cleveland Municipal Court. Further, Mr. Krakowski requested technical assistance in developing an effective judicial EEO plan.

Prior to the on-site visit conducted by the National Center on July 11, 1978, the project staff reviewed a proposed draft for "Rules of Personal Conduct and Disciplinary Action" as prepared by the Clerk's office.

During the on-site visit, Mary Culhane, Project Associate, National Center for State Courts, met with the following persons:

- Avis Allen, Assistant Personnel Officer and EEO Coordinator, and
- Margarite Strickland, Chief Payroll Officer

The following issues and problems were discussed:

- Identification of federal and state EEO laws;
- Impact of EEO laws on the organizational structure of court personnel policies;
- Evaluating present employee status in light of EEO laws;
- Job structure and classification plans; identifying how they are impacted by EEO laws;
- Uniform, yet equitable, salary administration plan;
- Grievance procedures and the rights of individual employees;
- Objective and unbiased performance evaluations;
- Development of a comprehensive court personnel manual that identifies and defines the rights and responsibilities of support personnel; and
- The requirements for the development and implementation of a written affirmative action program.

Based on its review of the Clerk of Court's Office, the National Center:

1. Proposed recommendations and procedures for drafting an EEO plan;
2. Recommended modifications and completion of identified personnel procedures; and
3. Proposed modification and development of a personnel manual to include:
 - articulation of court personnel policies;
 - establishment of internal grievance procedures; and
 - completion of written job descriptions and classification system.

SUMMARY OF FINDINGS

Under the active leadership of Mr. Krakowski, the Clerk of Courts has initiated the following noteworthy steps towards the goal of an effective EEO Program:

1. WRITTEN PERSONNEL POLICIES AND PROCEDURES

- Completed the development and implementation of a uniform salary administration plan;
- Initiated the process of developing job-related and valid position descriptions and classification plans;
- Completed a preliminary draft governing employee conduct; and
- Initiated the development of procedures to be used for performance evaluations of support personnel.

2. COMMITMENT

The Office of the Clerk of Court should be commended for its commitment to the principle of providing equal opportunity in employment to the residents of Cleveland. This commitment is evidenced by the current efforts of the Court to develop and subsequently implement a judicial personnel management system and EEO program for court employees.

3. PROFESSIONAL AND CLERICAL SUPPORT

With the recent hiring of an Assistant Personnel Officer/EEO Coordinator, together with the clerical support, the Court should have adequate professional and clerical personnel with the necessary expertise to implement, administer, and monitor the many facets of an EEO plan.

4. COURT PERSONNEL MANUAL

While the present draft for a Court Personnel Manual does include some of the essential court personnel rules and regulations,

it is in its present form, incomplete.

5. WRITTEN EEO PLAN

Although the Court is committed to a written EEO plan, it is uncertain as to which of the federal and/or state laws and regulations are applicable to a municipal court system.

ASSESSMENT OF CURRENT SITUATION

1. JOB DESCRIPTIONS AND UNIFORM CLASSIFICATION PLAN

The National Center supports strongly the Clerk of Courts' current efforts to develop valid and job related position descriptions. This is the basic, if not the most essential, step in the creation of an equitable and rational EEO plan and personnel management system. In turn, position descriptions provide a foundation not only for job classification standards, but also for a logical and equitable wage and salary structure. Further, such descriptions define the relevant criteria necessary for subsequent recruiting, selection, training, evaluation, discipline, and upgrading of employees.

2. UNIFORM SALARY ADMINISTRATION PLAN

The recent implementation of salary bands for support personnel, together with the monetary adjustment in pay rates, should set the stage for the effective maintenance of a uniform and equitable salary administration system. However, developing and adopting a compensation plan is only the first step. Such a system must be maintained, verified, and updated on a regular basis; otherwise, it will become dysfunctional or invalid within a short period of time.

Additionally, continued vigilance must be exercised each time a rate of pay for a new employee is determined. The assignment of dissimilar salaries to persons with similar skills and experience and who are performing similar job duties, is perhaps one of the major causes for charges of discrimination based on unequal pay.

3. DEVELOPMENT OF OBJECTIVE PERFORMANCE EVALUATIONS

The National Center supports the Court's goal of developing objective performance evaluation procedures for support personnel. This is an important element of any well-designed personnel management system. If properly conducted, it can become a highly effective management resource--a blueprint for the accomplishment of the Court's goals and objectives. Further, it assures objective and equitable assessments of employees regardless of race or sex by reducing the impact of subjective evaluations on individual performance history.

Methodology and procedures used in performance evaluations can and do vary considerably among courts, depending upon the needs and structure of each individual management system. However, they all have, or should have, the following elements in common:

- Clarification of the job -

The job-specific performance criteria as defined in a position description which relate specifically to the tasks to be performed. Such roles, responsibilities, and working relationships of each member of the court staff must be accurately defined, clearly understood, and effectively communicated.

- Definition of acceptable performance -

The specification of what each member of the court staff plans to accomplish in each area of responsibility, and to set standards by which the accomplishments can be measured and evaluated. One of the functions of management is to motivate and control employee performance, to help support personnel achieve individual and court objectives, and to maintain defined standards of quality.

- Review of performance -

Experience has demonstrated that the best results are obtained through frequent, informal, on-the-job contacts with employees. At least once a year, however, a formal, yet confidential, appraisal should be conducted with each member of the court staff to review and evaluate accomplishments, to identify factors which affect performance, to reexamine and redefine job responsibilities and goals, and to look for ways of improving performance in the future.

- Plan for individual development -

The process designed to help staff members identify specific needs for growth and improvement in their work, decide which needs are most important to them and to the Court, select the best techniques to meet these needs, carry out the plans, and evaluate the results.

4. COURT PERSONNEL MANUAL

After reviewing the court's proposed "Rules of Personal Conduct and Disciplinary Actions", the National Center recommended to Avis Allen (EEO Coordinator) during the on-site visit that a more comprehensive manual be developed; one which is more inclusive of the administrative policies and procedures of the Clerk of Court.

The function of such a manual is to provide employees with appropriate information concerning the background and organization of the Clerk of Court as well as guidance regarding applicable policies, employee benefits, court procedures, and other relevant data. This information serves to interpret and explain to support personnel the administrative procedures of the court, as well as its goals and objectives. As additional material is developed, or as revisions are made, supplements should be added to the manual. In most cases, reference to such a manual by employees should clarify most questions regarding the court's administrative policies and procedures.

For convenience, a sample format of personnel rules is included in Appendix 1. This example is taken from the Multnomah County Circuit Court (Oregon), and is considered to be one of the best examples of personnel rules organization applicable to an individual trial court.

5. ASSESSMENT OF RELEVANT EEO LAWS AND REGULATIONS

Since the passage by Congress in 1964 of the Civil Rights Act, most employers, whether public or private, are often confused by the multiplicity of federal and state EEO laws, rules, and regulations. This confusion is especially evident when identifying the structure and procedural format necessary to a written EEO plan.

Further, there is additional confusion involving the two terms "equal employment opportunity" and affirmative action". Often, these designations are used interchangeably.

Equal Employment Opportunity (EEO) is essentially a concept or principle related to the employment policies of an organization. In practice, it refers to the attitudes and acts of the organization's supervisors who are authorized to make employment decisions. EEO may also be considered to be a covenant imposed by law on certain employers, or an obligation voluntarily assumed by an employer. As such, EEO is akin to a cease and desist order or a consent decree.

Affirmative Action on the other hand denotes an affirmative duty to act remedially, rather than a cessation of proscribed practices and the mere assumption of a neutral posture. The landmark decision which clarifies the distinction between the nondiscriminatory concept of Equal Employment Opportunity and the duty-to-act obligation of Affirmative Action was rendered by the U. S. Supreme Court in the case of Griggs v. Duke Power Company, 401 U. S. 424 (1971). In Griggs, the Court ruled that the effects of employment practices determine whether or not such practices are illegally discriminatory, rather than the intent of such practices. Nondiscriminatory motivation and intent does not excuse a discriminatory result.

The term "affirmative action" was used in 1969 by President Johnson in Executive Order Number 11246 (later amended by Executive Order Number 11375 [32CFR 14314]) which required private sector federal contractors to take positive steps to assure that minorities and women were reasonably represented at all levels of a covered employer's work force as conditions precedent and subsequent to the receipt of federal funds. Those requirements were extended to public sector employers by amendments in 1972 to the Civil Rights Act of 1964 (Act) (42 U.S.C. 2000).

It is important to note that different government agencies make an additional distinction between written Affirmative Action Programs (AAP) and Equal Employment Opportunity Programs (EEOP). The Law Enforcement Assistance Administration (LEAA) uses the term "Equal Employment Opportunity Program" while federal and state enforcement agencies such as the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance (OFCC), and the Ohio Civil Rights Commission use the term "Affirmative Action Program". These designations and their requirements are essentially synonymous. There is, however, one major difference--goals and timetables.

The EEOC and the OFCC requirements for Affirmative Action programs include statistical goals, presented in the form of federal job categories, for the correction of underutilization of women and minorities. Appropriate timetables, both intermediate and long term, for the achievement of these goals must be incorporated into the overall Affirmative Action program. (See Appendix 2).

Equal Employment Opportunity Programs do not require statistical goals and timetables. Rather, the recipient of federal funds must:

- 1) conduct a self-evaluation of its employment policies and practices;
- 2) identify barriers that preclude full and equal participation by women

and minorities; and 3) set forth necessary steps and methods designed to eliminate these barriers. Details of the identified corrective procedures must then be presented in narrative form.

Statistical goals and timetables are imposed by LEAA only as a corrective measure resulting from either a compliance review or as part of a conciliation agreement stemming from a charge(s) of discrimination.

For voluntary EEO programs, such as the one being developed by the Clerk of Court, the terminology used in defining its final plan or program, and the inclusion or exclusion of quantitative goals and timetables, is optional.

RECOMMENDATIONS

1. PROCEDURES FOR DEVELOPING A WRITTEN EEO PLAN

Because of the nature and purpose of the Clerk of Court's Office within the criminal justice system, the National Center recommends that the rules and regulations as promulgated by the United States Department of Justice (Title 28 - Judicial Administration) and implemented by LEAA be followed.

The guidelines for developing and implementing an Equal Employment Opportunity Program are set forth in LEAA's Equal Employment Opportunity legislation, codified as 28 CFR 42.301 et. seq., Subpart E. (See Appendix 3). The steps the Clerk of Court should take are as follows:

1. Conduct a thorough self-analysis of its internal employment profile. It should conduct this review separately as regards women and minorities, with cross-classification by sex so that the utilization of minority men and women will be reflected in its organization. (Sample chart, Appendix 4)
2. Conduct an external labor market analysis identifying the availability, by federal job category, of women and minorities in the Cleveland labor market. This information is available from the Research Division of the Ohio Department of Employment Services or the United States Census Bureau.
3. Identify by federal job categories the percentage of underutilization of minorities and women within the workforce of the Cleveland Municipal Court. (See Appendix 5 for conversion of judicial job titles to federal EEO job categories.)
4. Develop and implement specific programs to correct under-utilization as identified.
5. Issue a written Equal Employment Opportunity Policy Statement signed by the Presiding Judge and the Clerk of Courts defining the Court's commitment to the principle of equal employment opportunity.
6. Appoint a top official with responsibility and authority to implement the program. Identify his/her responsibilities, as well as those of supervisors and employees.

7. Establish procedures to publicize the EEO plan, both internally and externally.
8. Develop and implement the following specific programs to correct under-utilization.
 - Develop specific recruitment procedures directed toward minority and female sources and media;
 - Set forth selection standards and procedures designed to bring minorities and women into the system;
 - Develop upward mobility systems to increase the utilization of women and minorities at all job levels;
 - Identify and review fringe benefits and conditions of employment for equity;
 - Establish equitable procedures for demotions, disciplinary actions, and terminations;
 - Establish internal audit and reporting procedures to monitor and evaluate progress in each of the above aspects of the program. (See Appendix 6 for sample monitoring charts.)

For informational purposes, the procedures for developing and Affirmative Action Program are identified in Appendix 2.

II. PERSONNEL POLICIES AND PROCEDURES

1. Completion and validation of job descriptions and classification plan;
2. The continued and on-going monitoring of salary bands through the use of appropriate formats such as a chart and/or job classification lists. (See Appendix 6). Any inequities in rates of pay among support personnel should be reported promptly to the Clerk of Court and/or the Personnel officer. It is important to reemphasize the importance of monitoring the rate of pay of each new employee for equity with others similarly situated.
3. The development of an objective and equitable Performance Evaluation System.

III. COURT PERSONNEL MANUAL

The completion of a comprehensive Personnel Manual for support personnel.

IV. GRIEVANCE PROCEDURES

The development of written Grievance procedures.

The National Center recommended to Avis Allen that the Clerk of Court develop and provide some mechanism for an internal review process designed to protect employees from arbitrary or inequitable sanctions. Such a process, if appropriately developed and administered, should not only ensure fairness for all court support personnel, but also reduce or eliminate the necessity for employees to seek redress for real or perceived discrimination complaints with an outside governmental enforcement agency.

The term "grievance" may be properly expanded to include a broader range of personnel activities than disciplinary actions and terminations. For example, typical grievances may include the following:

- unsatisfactory performance evaluations
- denial of pay increases

- oral or written reprimands
- leave restrictions
- failure to promote, and
- discrimination based on the complainant's protected class status.

The procedural steps in processing a complaint should be established clearly and in enough detail for complete understanding by employees. For example, establish in writing the steps a complaint must follow in pursuing a grievance, such as:

Step 1

When an employee feels that he or she has a justified complaint, it is recommended that the employee first discuss and attempt to resolve the complaint with his or her immediate supervisor.

Step 2

In the event that a satisfactory resolution of the complaint is not achieved within five business days, the employee should present his or her complaint in writing to the department head or similar supervisor.

Step 3

Etc.

Continuing in this manner, a process should be developed compatible with the administrative structure of the court. However, this process must conclude with an appeal and final resolution. Each of these steps must be set within the context of a definite time period.

The essential characteristics of an effective grievance procedure should be simplicity, speed, and equitable resolution. This is in the best interests of the court and the employees.

CONCLUSION

The Clerk of Court of the Cleveland Municipal Court is to be commended for his commitment to the principle of equal employment opportunity as evidenced by the steps it has already taken in developing the support programs necessary for a judicial personnel and EEO management system.

The evaluation, comments, and recommendations presented in this report follow the rules and regulations as set forth under the Equal Employment Opportunity Standards of the Law Enforcement Assistance Administration, codified as 28 CFR, 42.301 et. seq., Subpart E, (See Appendix 3). It is important to note however, that state compliance agencies such as the Ohio Civil Rights Commission or the Ohio Department of Economic and Community Development could establish more restrictive compliance requirements than do the federal LEAA regulations. As of this date, we are not aware of any state requirements beyond those currently stated in Subpart E.

Prior to the completion of the final EEO plan for the Clerk of the Cleveland Municipal Court, the National Center offers its assistance in reviewing and evaluating the final draft for compliance with the aforementioned legislation.

APPENDIX 1.



CIRCUIT COURT OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
PORTLAND, OREGON 97204

PERSONNEL POLICIES FOR
EMPLOYEES OF THE CIRCUIT COURT
MULTNOMAH COUNTY

Adopted by the General Committee
June 27, 1973

OFFICE OF THE CIRCUIT COURT ADMINISTRATOR
July, 1973

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APPENDIX 2

PROCEDURES FOR DEVELOPING AN AFFIRMATIVE ACTION PROGRAM

The guidelines for developing and implementing an Affirmative Action Program (AAP) are set forth by the United States Department of Labor in Revised Order Number 4, codified as 36 F.R. 17444.

The specifications, which are similar to those defined by LEAA for Equal Employment Opportunity Programs, do require the additional element of goals and timetables.

Upon a finding(s) of discrimination, however, a federal or state administrative enforcement agency (e.g., the Equal Employment Opportunity Commission or the Ohio Civil Rights Commission) may require, as a remedy, the implementation of an Affirmative Action Program. Such a mandate would of necessity include the development of quantitative goals and timetables as defined by the Department of Labor in Revised Order Number 4.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF FEDERAL CONTRACT COMPLIANCE

PART 60-2 - AFFIRMATIVE ACTION PLANS

(Reprint from Federal Register February 14, 1974)

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60-2—AFFIRMATIVE ACTION PLANS

Miscellaneous Amendments

The following amendments to Part 60-2 of Title 41, Code of Federal Regulations are made concurrently with the adoption of Part 60-60 of this title in order to conform Part 60-2 to the rules adopted in Part 60-60. These amendments become effective April 15, 1974.

1. Section 60-2.1 is amended by revising the first sentence in the second paragraph of the section to read as follows:

§ 60-2.1 Title, Purpose and Scope.

Relief for members of an affected class who, by virtue of past discrimination, continue to suffer the present effects of that discrimination shall be provided in the conciliation agreement entered into pursuant to § 60-60.6 of this title. . . .

2. Section 60-2.10 is amended by revising the fourth sentence of the section to read as follows:

§ 60-2.10 Purpose of affirmative action program.

. . . . An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

3. Section 60-2.11 is amended by redesignating the present paragraph (a) as paragraph (b) and by inserting before such paragraph a new paragraph (a). As amended, § 60.11 reads as follows:

§ 60-2.11 Required utilization analysis.

(a) Workforce analysis which is defined as a listing of each job classification as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. For each job classification, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job classification should be given. All job classifications, including all managerial job classifications, must be listed.

(b) An analysis of all major job classifications at the facility, . . .

((5 U.S.C. 553(a) (3) (B)) 29 CFR 2.7 section 201, Executive Order 11246, 30 FR 12319, and Executive Order 11375, 32 FR 14903.)

Signed at Washington, D.C. on this 6th day of February 1974.

PETER J. BRENNAN,
Secretary of Labor.

BERNARD DeLURY,
Assistant Secretary for
Employment Standards.

PHILIP J. DAVIS,
Director, Office of
Federal Contract Compliance.

[FR Doc.74-3843 Filed 2-13-74; 8:45 am]

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE
WASHINGTON, D.C. 20210

CHAPTER 60 -- Office of Federal Contract Compliance,
Equal Employment Opportunity, Department of Labor

(Reprint from FEDERAL REGISTER, VOL 36, NO. 234—SATURDAY, DECEMBER 4, 1971)

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 60—Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor

PART 60-2—AFFIRMATIVE ACTION PROGRAMS

On August 31, 1971, notice of proposed rule making was published in the *FEDERAL REGISTER* (36 F.R. 17444) with regard to amending Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60-2, dealing with affirmative action programs. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed amendments.

Having considered all relevant material submitted, I have decided to, and do hereby amend Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60-2, reading as follows:

Subpart A—General

- Sec.
60-2.1 Title, purpose and scope.
60-2.2 Agency Action.

Subpart B—Required Contents of Affirmative Action Programs

- 60-2.10 Purpose of affirmative action program.
60-2.11 Required utilization analysis.
60-2.12 Establishment of goals and timetables.
60-2.13 Additional required ingredients of affirmative action programs.
60-2.14 Compliance status.

Subpart C—Methods of Implementing the Requirements of Subpart B

- 60-2.20 Development or reaffirmation of the equal employment opportunity policy.
60-2.21 Dissemination of the policy.
60-2.22 Responsibility for implementation.
60-2.23 Identification of problem areas by organization unit and job classification.
60-2.24 Development and execution of programs.
60-2.25 Internal audit and reporting systems.
60-2.26 Support of action programs.

Subpart D—Miscellaneous

- 60-2.30 Use of goals.
60-2.31 Preemption.
60-2.32 Supersession.

AUTHORITY: The provisions of this Part 60-2 issued pursuant to sec. 201, Executive Order 11246 (30 F.R. 12319).

Subpart A—General

§ 60-2.1 Title, purpose and scope.

This part shall also be known as "Revised Order No. 4," and shall cover non-construction contractors. Section 60-1.40 of this Chapter, Affirmative Action Compliance Programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and a contract of \$50,000 or more develop a written affirmative action compliance program for each of its establishments, and such contractors are now further required to revise existing written affirmative action programs to include the changes embodied in this order within 120 days of its publication in the *FEDERAL REGISTER*. A review of agency compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the agency review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then set forth detailed guidelines to be used by contractors and Government agencies in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity. Subparts B and C are concerned with affirmative action plans only.

Relief for members of an "affected class" who, by virtue of past discrimination, continue to suffer the present effects of that discrimination must either be included in the contractor's affirmative action program or be embodied in a separate written "corrective action" program. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60-2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

§ 60-2.2 Agency action.

(a) Any contractor required by § 60-1.40 of this chapter to develop an affirmative action program at each of his establishments who has not complied fully with that section is not in compliance with Executive Order 11246, as amended (30 F.R. 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60-2.10 through 60-2.32, the contractor is unable to comply with the equal employment opportunity clause.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance or other Government agencies, that the contractor has not developed an acceptable affirmative action program at each of his establishments, the contracting officer shall notify the Director and declare the contractor-bidder nonresponsible unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations or, unless, upon review, it is determined by the Director that substantial issues of law or fact exist as to the contractor's responsibility to the extent that a hearing is, in his sole judgment, required prior to a determination that the contractor is nonresponsible: *Provided*, That during any pre-award conferences every effort shall be made through the processes of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60-2.10 through 60-2.32 so that, in the performance of his contract, the contractor is able to meet his equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: *Provided further*, That when the contractor-bidder is declared nonresponsible more than once for inability to comply with the equal employment opportunity clause a notice setting a timely hearing date shall be issued concurrently with the second nonresponsibility determination in accordance with the provisions of § 60-1.26 proposing to declare such contractor-bidder ineligible for future contracts and subcontracts.

(c) Immediately upon finding that a contractor has no affirmative action program or that his program is not acceptable to the contracting officer, the compliance agency representative or the representative of the Office of Federal Contract Compliance, whichever has made such a finding, shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the

Director, shall immediately issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60-1.26(b), giving the contractor 10 days to request a hearing. If a request for hearing has not been received within 10 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

(2) During the "show cause" period of 30 days every effort shall be made by the compliance agency through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency, with the prior approval of the Director, shall promptly commence formal proceedings leading to the cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts under § 60-1.26(b) of this chapter.

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

Subpart B—Required Contents of Affirmative Action Programs

§ 60-2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to increase materially the utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

§ 60-2.11 Required utilization analysis.

Based upon the Government's experience with compliance reviews under the Executive order programs and the contractor reporting system, minority groups are most likely to be underutilized in departments and jobs within departments that fall within the following Employer's Information Report (EEO-1) designations: officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO-1 designations, women are likely to be underutilized in departments and jobs within departments as follows: officials

and managers, professionals, technicians, sales workers (except over-the-counter sales in certain retail establishments), craftsmen (skilled and semi-skilled). Therefore, the contractor shall direct special attention to such jobs in his analysis and goal setting for minorities and women. Affirmative action programs must contain the following information:

(a) An analysis of all major job classifications at the facility, with explanation if minorities or women are currently being underutilized in any one or more job classifications (job "classification" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability. In making the work force analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job classification the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job classification, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

§ 60-2.12 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing the size of his goals and the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in § 60-2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal setting process.

(c) Goals should be significant, measurable and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction and turnover of and in the work force.

(g) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor.

(j) Where the contractor has not established a goal, his written affirmative action program must specifically analyze each of the factors listed in § 60-2.11 and must detail his reason for a lack of a goal.

(k) In the event it comes to the attention of the compliance agency or the Office of Federal Contract Compliance that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the compliance agency or OFCC may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the compliance agency or OFCC.

(l) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data will include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(m) Copies of affirmative action programs and/or copies of support data shall be made available to the compliance agency or the Office of Federal Contract Compliance, at the request of either, for such purposes as may be appropriate to the fulfillment of their responsibilities under Executive Order 11246, as amended.

§ 60-2.13 Additional required ingredients of affirmative action programs.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job classification.

(e) Establishment of goals and objectives by organizational units and job classification, including timetables for completion.

(f) Development and execution of action oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance or personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60-20).

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

§ 60-2.14 Compliance status.

No contractor's compliance status shall be judged alone by whether or not he reaches his goals and meets his timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of his program, the extent of his adherence to this program, and his good faith efforts to make his program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and Federal agencies should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

Subpart C—Methods of Implementing the Requirements of Subpart B

§ 60-2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officers' attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but not limited to:

(1) Recruit, hire, train, and promote persons in all job classifications, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification" has been construed very narrowly under the Civil Rights Act of 1964. Under Executive Order 11246 as amended and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

§ 60-2.21 Dissemination of the policy.

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications both minority and nonminority, men and women should be pictured.

(11) Communicate to employees the existence of the contractor's affirmative action program and make available such elements of his program as will enable such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate his policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the Equal Opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of his program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

§ 60-2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company Equal Opportunity Programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should appear on all internal and external communications on the company's Equal Opportunity Programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to, the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training programs, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in area such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of his employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(3) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

§ 60-2.23 Identification of problem areas by organizational units and job classifications.

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in § 60-2.11(d).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific work classifications.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Tests and other selection techniques not validated as required by the OFCC Order on Employee Testing and other Selection Procedures.

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60-2.24 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department, location or other organizational unit and by job category using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job classification in all locations and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women such requirements should be professionally validated to job performance.

(c) Approved position descriptions and worker specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCC Order pertaining to the validation of employee tests and other selection procedures.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment Programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights Organizations, Women's Equity Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service

groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and females.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are non-discriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

§ 60-2.25 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60-2.26 Support of action programs.

(a) The contractor should appoint key members of management to serve on Merit Employment Councils, Community Relations Boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support Vocational Guidance Institutes, Vestibule Training Programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

Subpart D—Miscellaneous

§ 60-2.30 Use of goals.

The purpose of a contractor's establishment and use of goals is to insure that he meet his affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

§ 60-2.31 Preemption.

To the extent that any State or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, we will regard them as preempted under the Executive order.

§ 60-2.32 Supersedure.

All orders, instructions, regulations, and memoranda of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent herewith, including a previous "Order No. 4" from this Office dated January 30, 1970. Nothing in this part is intended to amend 41 CFR 60-3 published in the FEDERAL REGISTER on October 2, 1971 or Employee Testing and Other Selection Procedures or 41 CFR 60-20 on Sex Discrimination Guidelines.

Effective date. This part shall become effective on the date of its publication in the FEDERAL REGISTER (12-4-71).

Signed at Washington, D.C., this 1st day of December 1971.

J. D. HODGSON,
Secretary of Labor.

HORACE E. MENASCO,
Acting Assistant Secretary
for Employment Standards.

JOHN L. WILKS,
Director, Office of
Federal Contract Compliance.

[FR Doc.71-17789 Filed 12-3-71;8:51 am]

APPENDIX 3

"S U B P A R T E"

C H E C K L I S T

SUBPART E

SEC. 42.303 - EVALUATION OF EMPLOYMENT OPPORTUNITIES

(c) Specific analyses: (required by Sec. 42.304 (g) (1))

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

(2) An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including:

1. position descriptions
2. application forms
3. recruitment methods
4. recruitment sources
5. interview procedures
6. test administration
7. test validity
8. educational prerequisites
9. referral procedures
10. final selection methods

(3) An analysis of seniority practices and provisions:

1. upgrading
2. promotional procedures
3. transfer procedures
 - lateral
 - vertical
4. training programs
 - formal
 - informal

(4) A reasonable assessment to determine whether minority employment is inhibited by external factors such as:

1. access to suitable housing
2. suitable transportation
 - public
 - private
3. other

SEC. 42.304 - WRITTEN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

- (a) A job classification table or chart which clearly indicates for each job classification or assignment the number of employees within each respective job category classified by race, sex and national origin:
1. principal duties
 2. rates of pay
 3. auxiliary duties or more than one rate of pay because of:
 - length of service
 - other factors
 4. shifts of duty
 - various locations
- (b) The number of disciplinary actions taken against employees by race, sex, and national origin within the preceding fiscal year:
1. suspension indefinitely
 2. suspension for a term
 3. loss of pay
 4. written reprimand
 5. oral reprimand
 6. other
- (c) The number of individuals by race, sex, and national origin....
1. applying for employment
 2. offered employment
 3. actually hired
- (d) The number of employees in each job category by race, sex, and national origin who made application for promotion or transfer:
1. applied for promotion
 - promoted
 2. applied for transfer
 - transferred
- (e) The number of employees by race, sex, and national origin who were terminated - identify by race, sex, and national origin which were:
1. voluntary terminations
 2. involuntary termination

- (f) Available community and area labor characteristics within the relevant geographical area including total population, workforce and existing unemployment by race, sex, and national origin:
1. Bureau of Labor Statistics, D.C.
 2. State and local services
 3. Other
- (g) A detailed narrative statement setting forth the recipient's existing employment policies and practices defined in Sec. 42.202(b) Subpart D.
1. Statement should include the recipient's detailed analysis of existing employment policies, procedures, and practices as they relate to employment or minorities and women (see Sec. 42.303) and where improvements are necessary, the statement should set forth in detail the specific steps the recipient will take for the achievement of full and equal employment opportunity. (See pg. 1 of check-list, Sec. 42.303(c)).
 2. The recipient should also set forth a program for recruitment of minority persons based on an informed judgment of what is necessary to attract minority applications--
 - (i) dissemination of posters
 - (ii) advertising media patronized by minorities
 - (iii) minority group contacts
 - (iv) community relations programs
 - (v) other
- (h) Plan for dissemination of the applicant's Equal Employment Opportunity Program to all personnel, applicants and the general public.
- (i) Specific personnel to implement and maintain EEOP.

WEDNESDAY, FEBRUARY 16, 1977

PART II



DEPARTMENT OF JUSTICE

Law Enforcement Assistance
Administration

■

NONDISCRIMINATION IN
FEDERALLY ASSISTED
CRIME CONTROL AND
JUVENILE DELINQUENCY
PROGRAMS

Title 29—Judicial Administration
CHAPTER 1—DEPARTMENT OF JUSTICE
PART 42—NONDISCRIMINATION; EQUAL
EMPLOYMENT OPPORTUNITY; POLI-
CIES AND PROCEDURES

Nondiscrimination in Federally-Assisted
Crime Control and Juvenile Delinquency
Programs

AGENCY: Department of Justice/Law
 Enforcement Assistance Administration
 (LEAA).

ACTION: Final rule.

SUMMARY: LEAA is adopting, with amendments, rules proposed on November 23, 1976 (41 FR 51762), to implement the nondiscrimination provisions of the Crime Control Act of 1976 (Pub. L. 94-503, 90 Stat. 2407) and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Pub. L. 93-415, 88 Stat. 1109, as amended by Pub. L. 94-503, 90 Stat. 2425), and to implement Section 521(d) of the Crime Control Act, requiring LEAA, within 120 days of enactment, to promulgate timetables for civil rights complaint investigations and compliance reviews.

EFFECTIVE DATE: These rules are effective immediately upon signature in order to comply with the 120-day requirement noted, *supra*.

FOR FURTHER INFORMATION CON-
TACT: Thomas J. Madden, General
 Counsel, LEAA (202) 376-3691.

SUPPLEMENTARY INFORMATION:

In the Introduction to the proposed regulations, LEAA specifically invited comment on ten issues. Several related to interpretation of the Crime Control Act, some were proposed revisions of the previous regulations, and others were policy questions concerning the administration of the Act and the regulations.

The comments received were numerous and helpful. The issues drawing the most attention were the definition of "service population" in proposed § 42.206 (b) (1), and the complaint investigation timetables proposed in § 42.205. Comments were sent by a wide variety of observers and participants in the LEAA program: State criminal justice planning agencies, public interest groups, civil rights organizations, State and local units of government, a diverse number of LEAA recipients in the criminal justice community, including many State departments of corrections, and Members of Congress. After a thorough and careful analysis of their comments and further consideration, LEAA has revised the regulations in a number of places.

An analysis of the comments and changes follows. The ten issues highlighted for comment are addressed first, followed by a section-by-section analysis of all other comments and amendments.

COMPLAINT INVESTIGATION AND
COMPLIANCE REVIEW TIMETABLES

The great majority of commenters on this issue felt the proposed complaint processing timetable was too long. After an analysis of the comments, LEAA has

substantially revised § 42.205 to shorten the complaint processing timetables by 40 days (from 255 to 215) where on-site investigation is not required, and 45 days (from 285 to 240) where an on-site investigation is required.

The reductions are largely the result of two changes in the proposed method of investigation. The first change, as reflected in the definition of "investigation" in § 42.202(d) and in the timetables, at § 42.205(c) (3) (iii), removes the implication in the proposed regulations that LEAA would engage in voluntary compliance efforts in every case and could result in an additional 30-day reduction in time. The new regulations now limit compliance efforts to a 30-day period, and specify that LEAA will attempt to negotiate compliance during that period only if it is likely to succeed and only when the recipient requests it to do so. In those cases where a determination of non-compliance is made, triggering a letter to the chief executive, voluntary compliance efforts may take place during the statutory 90-day period for securing compliance. See §§ 42.211 and 42.212.

The other change facilitating the reduction of the proposed timetables was placement of the recipient's opportunity to make a documentary submission earlier in the process. The proposed regulations provided the opportunity at the end of the investigation, after the recipient had received LEAA's recommendations for compliance. Upon review, LEAA believed that, besides prolonging the investigatory process, it would also impair the efficiency of the investigation. A recipient could render the investigation preceding the findings letter meaningless by withholding its documentary response until after receipt of the letter. To meet the statutory requirement to provide an opportunity for a documentary submission, therefore, the final regulations offer the recipient the opportunity to submit documents at any time prior to receipt of the findings letter. This change will shorten the investigative process, enhance the quality of the investigation, and provide a recipient full opportunity to rebut, deny, or otherwise respond to the allegations in the complaint.

A new processing mechanism has been established with logging and tracking procedures which will make the investigative process work with increasing efficiency. The regulations as now adopted will require investigation of all complaints to be completed within the time periods specified. In a typical case, the time periods will be used as follows:

Upon the receipt of a complaint, the complaint will be docketed and the complainant sent a letter of acknowledgment. An initial review will be made to verify funding and resolve any jurisdictional problems. Once jurisdiction is determined, the complainant and respondent will be notified. A detailed interview will be held with the complainant. Thereafter, the actual investigation will be initiated, at the maximum, within 21 days. LEAA will then draft and mail inter-

rogatories to the respondent, including notice of allegations and a notice of the right to make a documentary submission. Thereafter, the respondent will have a period of time to reply. Then, additional followup investigations, case analysis and draft of initial findings and recommendations will be accomplished. If on-site review is necessary, this investigation period may take a maximum of 175 days. Field visits may include interviews with complainant, respondent and other witnesses; statements and further documentary submissions may be required as well as a review of records and files to verify data. If an on-site review is not required, the time period will be reduced to 150 days. Upon completion of the investigation, a letter of findings and recommendations will be sent to the respondent. Thirty (30) days have been allotted for a response from the respondent to negotiate voluntary compliance. Fourteen (14) days thereafter, the Administrator of LEAA will make a determination of compliance or non-compliance and the complaint investigation will be at an end.

With the limited resources now available¹ and an inventory of approximately 325² cases, the case load for the inventory alone will be a minimum of 40.6 cases per investigator during the first seven or eight months following the issuance of these regulations. The investigation of the inventory cases must be completed within 171 days where no on-site investigation is required and 196 days where on-site work is required. This will allow an investigator to spend no more than 4.2 days (no on-site) and 4.8 days (on-site) on each case. Based on current experience, it is also estimated that an additional 160 complaints will be received during this initial eight-month period. LEAA believes that no further reduction in the time period can therefore be made at this time. Because of the many other civil rights-related functions performed by LEAA, no other qualified personnel can be allocated to complaint investigations within the near future. Civil rights-related functions include not only inves-

¹ There are currently 25 permanent positions in the LEAA Office of Civil Rights. Of these, 17 persons are assigned directly to the investigative process: There are two part-time supervisor/investigators, one full-time supervisor, and seven full-time investigators. A total of eight person years for full-time investigative capability is therefore provided. There are also two clericals who provide secretarial support; one administrative aide who docket complaints and handles initial processing; three attorneys who review complaints to resolve questions of jurisdiction and legal sufficiency and assist the investigators in preparing findings, determinations, and letters to the chief executives of the State and local governments; one clerical who provides the legal staff with secretarial support.

² This includes 283 complaints under active investigation, 28 complaints in litigation and 34 complaints which have been referred to other agencies. Pursuant to §§ 42.205(c) (6) and 42.217(a), where these complaints in litigation and referral do not result in timely resolution, the administrative investigation will be resumed.

tigations and reviews to insure compliance with civil rights requirements, but also include affirmative action, such as providing technical assistance to recipients of LEAA funds for the development of methods to assure compliance with civil rights laws, and the monitoring of recipients whose compliance has been secured. In addition, civil rights-related proposals and contracts developed by other offices of LEAA are reviewed to insure that they are in consonance with Federal civil rights policies and practices.

LEAA also conducts preaward compliance reviews, analyzing discretionary and juvenile justice grants in excess of \$500,000 to determine the existence of possible civil rights problems. Such reviews may also be conducted on grant applications of lesser amounts where warranted; where appropriate, negotiations will be conducted with prospective grantees to attach special conditions to the grants or contracts in order to resolve the civil rights problems.

LEAA will continuously monitor the new processing procedures with the view to reducing the now-established time periods. As the backlog is erased, a shortening of the time periods set forth in these regulations should occur. Within the next eight months, LEAA will reexamine the time periods and it is expected that the average time period for the complaint investigation will be significantly reduced. At that time, LEAA will have completed the first full eight months of the complaint investigating and review cycle; LEAA will, during that eight-month period, be gathering data on the person hours required to process complaints under the new procedures. This data will assist LEAA in making appropriate amendments to these regulations.

CREED AND RELIGION

No substantive comments were received on the proposal to equate the meaning of the term "religion" under the Crime Control Act with the term "creed" under the Juvenile Justice Act. The proposal to define both terms as provided in § 42.203(d) is, therefore, adopted.

HEIGHT GUIDELINE

Of the few comments received on the proposed revision of the LEAA Minimum Height Guideline, two criticized the implied presumption that all minimum height requirements, in every community, are discriminatory. LEAA is unaware of any jurisdiction where women, Asian-Americans, or Hispanics are of the same average height as white males. Nevertheless, LEAA did not intend to state the proscription in § 42.203(d) as a presumption. To remove this implication, therefore, the comma following the phrase "minimum height requirement" in the first sentence of proposed § 42.203(d) has been deleted.

Two other commenters believed that the "business necessity" test stated in *Robinson v. Lorillard*, 444 F.2d 791 (4th Cir. 1971), and adopted in the previous guideline should have been retained. As noted in the Introduction to the proposed regulations at 41 FR 51762, the courts examining the minimum height issue

have not applied this test. See *Misth v. Dothard*, 418 P. Supp. 1169 (M.D. Ala. 1976); *LULAC v. Santa Ana*, 410 P. Supp. 873 (C.D. Cal. 1978); and *Officers for Justice v. Civil Service Commission*, 393 P. Supp. 378, 380 (N.D. Cal. 1975). Accordingly, the proposed revision of the minimum height guideline is adopted as final.

In response to several other comments and after further consideration, LEAA has also specified that discriminatory minimum weight, as well as minimum height, requirements violate this subpart, unless they have been validated in accordance with the Department of Justice Guidelines on Employee Selection Procedures.

The first part of the first sentence of § 42.203(d) has, therefore, been amended to read "The use of a minimum height or weight requirement which operates to disproportionately exclude women and persons of certain national origins . . ."

COMPLIANCE WITH PRELIMINARY INJUNCTION

LEAA requested comment on whether suspended payments to a recipient should be resumed upon the recipient's compliance with a preliminary injunction. In light of the statutory requirement that payment could be resumed upon a recipient's compliance with the "final order or judgment" of a court. Several observers evidently believed their comments were requested on whether a preliminary finding of discrimination should trigger the fund termination process. In accord with the direction of the statute, LEAA will initiate that process only upon receipt of notice of those findings made after "notice and opportunity for a hearing." Findings rendered after procedures not meeting that proviso will not result in the initiation of the fund termination process.

Most comments on the issue of whether compliance with a preliminary injunction should be compliance with a "final order" for the purpose of resuming payment of suspended funds felt it should not be. The majority of commenters believed, and LEAA agrees, that the spirit of the Act dictates a policy of suspension or termination until the recipient complies with a full order of affirmative relief designed to resolve the pattern or practice of discrimination at issue.

Accordingly, only where (1) the order addresses all substantial outstanding issues, and (2) the recipient's compliance, as defined in § 42.213(b), brings it into compliance with § 518(c) of the Act, will payment of previously suspended funds resume.

SERVICE POPULATION

In proposed § 42.206(b), LEAA proposed to make the disparity between the percentage of minorities in the recipient's workforce and the percentage in its "service population" a factor in selecting recipients for compliance reviews. LEAA specifically invited comment on the definition of "service population" in this context.

This issue generated the most comment of any section of the regulations. The great majority of the departments of corrections responding to our invitation for comment asked that minority representation on their workforces be measured in the same way as minority representation on the workforces of courts and police departments. A representative of the California Correctional Officers Association and the Peace Officers' Research Association of California noted that the definition of "service population" in Subpart E shifted focus from the principle of equal employment opportunity to "a notion that the race or sex of an employee is job-related to the work the employee is performing for the service population. (This shift in focus) suggests that a particular percentage of minorities or women in the correctional officer workforce is somehow required to do an adequate job in guarding and/or supervising the inmates." No empirical evidence supporting this notion was offered to LEAA.

The director of the Virginia Department of Corrections criticized the rationale behind the previous definition:

It would appear to be more proper to assert that a staff makeup proportionate to the makeup of the general civilian population is more rational since inmates, of a protected minority or otherwise, must return someday to the general civilian population. To afford inmates the supposed benefit of a staff not representative of the real world seems destined to divide inmates into false expectations about the free world.

For the above reasons, and the reiteration by a number of commenters of the reasons listed in the Introduction to the proposed regulations (41 FR 51762), LEAA has decided to define the relevant population the same for correctional facilities, courts, and law enforcement agencies.

Opinion was divided on which population should be the relevant measure of disparity. Some observers believed the geographical area served by the agency in question should be the relevant population; others favored the population variously defined as the "relevant labor market," "applicant pool," or "recruiting area." LEAA believes that the term "relevant labor market" best describes the population to which the employer's workforce should be compared. Although this market may often be the same as the geographical area served. *LULAC v. Santa Ana*, 410 P. Supp. 873 (C.D. Cal. 1978), it is flexible enough to address those situations where recruiting is actually done in jurisdictions other than the one served by the agency in question. *Davis v. Washington*, 343 F. Supp. 15 (D.D.C. 1972). LEAA will, accordingly, define the "relevant labor market" of each recipient investigated or reviewed on a case-by-case basis.

Therefore, the term "relevant labor market" is substituted for the term "service population" in § 42.206(b) (1).

In addition, § 42.302(f) and the first sentence of § 42.306(b) in Subpart E of the LEAA Nondiscrimination Regulations, 28 CFR 42.301 et seq., are deleted.

Section 42.302(g) is redesignated § 42.302 (f):

REFERRAL TO ATTORNEY GENERAL

The Administration invited comment on whether, and in what circumstances, a matter could be referred to the Attorney General for litigation. A number of commenters took exception to the term "referral" itself, believing it connoted a relinquishment of jurisdiction. These observers, including Congressman Peter Rodino, Chairman of the House Judiciary Committee, believed that, regardless of whether LEAA requested the Attorney General to sue a recipient, it had to retain administrative jurisdiction over the matter. Chairman Rodino, in a letter dated December 20, 1978, cautioned that "it is not appropriate for LEAA to refer cases to the Civil Rights Division or other Federal or State agencies without monitoring the case for prompt resolution." If the Attorney General responds to our request and initiates suit, however, LEAA's ability to "promptly" resolve the matter administratively is, for very practical reasons, limited. The Civil Rights Division of the Department of Justice has advised us that, in many instances, the initiation of independent administrative proceedings by LEAA may jeopardize the litigation. Forcing a recipient to defend itself in two forums simultaneously would require an unnecessary delay and duplication of effort. It would, moreover, raise a substantial likelihood of a defendant's request for and the court's granting of a stay of the litigation pending the conclusion of the administrative process. Should this occur, LEAA will be forced to forego one very significant method of enforcement and will be denied the substantial equitable and legal powers available through the court that are not available to an administrative law judge.

To implement the policy of the Crime Control Act and to utilize the authority of the court, LEAA has added a new paragraph to proposed § 42.217. Section 42.217(a) reads:

The Administrator may, at any time, request the Attorney General to file suit to enforce compliance with Section 518(c)(1) or Section 262(b). LEAA will monitor the litigation through the court docket and constant liaison with the Civil Rights Division of the Department of Justice. Where the litigation does not result in timely resolution of the matter, and funds have not been suspended pursuant to § 42.217(b) or otherwise, LEAA will institute administrative proceedings pursuant to § 42.210, et seq., unless enjoined from doing so by the court.

By modifying "resolution" with the term "timely" rather than "prompt," and by recognizing our obligation to closely monitor any litigation brought by the Attorney General on our behalf, LEAA intends to inform all interested parties that, where the litigation is protracted or unlikely to resolve the matter within a reasonable time, it will initiate the fund termination process. In order to avail itself of the authority of the Attorney General and the power of the Federal courts to eliminate discrimination in LEAA-funded programs, LEAA realizes that the courts must have a reasonable

time to hear and decide. As indicated at 41 FR 51763, LEAA believes that some matters may be better suited to litigation than the administrative process for any of a number of reasons, such as the presence of novel issues, the lack of significant funding, or a prior investigation by the Civil Rights Division in a particular matter. Where such reasons do not exist, and this should be the case in the vast majority of complaints, LEAA will utilize the administrative process. In no circumstances will LEAA relinquish jurisdiction over a case the Attorney General is litigating on its behalf. LEAA believes § 42.217(a), and the Commentary on that section, best fulfills congressional intent, and the needs of a vigorous and effective civil rights compliance programs.

PENDING LITIGATION BY A PRIVATE PARTY

The comments were divided on the question of whether LEAA should initiate an investigation and proceed administratively on a complaint when the same issues involved in the complaint were being litigated by a private party at the same time. Some observers believed deferral was always appropriate, another felt it appropriate unless the litigation became protracted, and others believed LEAA could not defer.

LEAA recognizes its obligation to assure that allegations of discrimination brought to its attention are resolved in a timely fashion. Where action by the Attorney General or a private litigant will do so independent of LEAA activity, LEAA believes it would be unwise to invest its limited resources in the same matter, possibly for no practical purpose. Where, however, the efforts of others are unlikely to conclude the controversy as soon as, or more quickly than LEAA would be able to through the administrative process, LEAA should proceed. Accordingly, LEAA has stated in § 42.205 (c) (5) that:

(5) If the complainant or another party other than the Attorney General has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to LEAA, and, during LEAA's investigation, the trial of that suit would be in progress, LEAA will suspend its investigation and monitor the litigation through the court docket and contact every 30 days with the complainant. Upon receipt of notice that the court has made a finding of discrimination within the meaning of § 42.210, the Administration will institute administrative proceedings pursuant to § 42.210, et seq.

As stated in the Commentary on § 42.205(c) (5), LEAA will initiate an investigation if the litigation becomes protracted or apparently will not resolve the matter within a reasonable time.

CIVIL RIGHTS COMPLIANCE ACTIVITIES BY LEAA STATE PLANNING AGENCIES

Only two SPA's responded to our invitation for an expression of interest in a program under which the SPA's could participate in the civil rights compliance process. Of the two responding, one felt such a program was inappropriate under the new legislation, and the other believed the regulations previously pro-

posed by LEAA at 40 FR 56454 (December 3, 1975) were satisfactory.

An SPA Task Force on Civil Rights felt that the concept had merit, but needed further elaboration. Until it is clear that an agreeable system either will be or cannot be developed, LEAA will continue to reserve §§ 42.208 and 42.209 for an SPA participation program. If developed, the program will be published for comment in the FEDERAL REGISTER.

MASTER PLAN

Two of the three comments received on the Master Plan believed the plan was of questionable utility. In light of these comments and the impact of this subpart, the plan is operative only to the extent that it is not superseded by the regulations. Those portions of the plan still in effect, therefore, are the sections on pre-award desk audits, construction compliance reviews, and management by objectives.

SUBPART E

The comments received generally supported the continued use of Subpart E, without amendment, except for the definition of "service population" discussed supra, and concurred in LEAA's proposal to enforce compliance with Subpart E under Section 509 of the Act rather than Section 518(c) (2). Accordingly, with the exception of the definition of "service population," Subpart E will not be amended at this time, and non-compliance with its provisions will be enforced pursuant to Section 509.

A number of amendments were made in response to other comments as well. A section-by-section analysis follows:

1. Sections 42.201 (b) and (c). The proposed regulations did not adequately explain the applicability of the regulations to private, as well as public recipients. The revised regulation states that all private recipients are covered, but that the method of enforcing their compliance differs, depending on whether their assistance was received directly from LEAA or through a unit of State or local government. Section 509 of the Crime Control Act provides an effective fund termination procedure for failure to substantially comply with a regulation or statute.

Proposed § 42.201(b) has therefore been deleted and replaced by §§ 42.201 (b) and 42.201(c). A Commentary on § 42.201(c) has also been added.

2. Section 42.202(d). A number of commenters, including Congressman Rodino, believed LEAA was not required to engage in voluntary compliance efforts in every case. As part of the revision of the complaint investigation timetables proposed in § 42.205(c), LEAA has restricted voluntary compliance efforts to a 30-day period following notification to the recipient of the Administration's findings and recommendations, and only when the recipient asks LEAA to engage in such efforts and LEAA believes negotiation is likely to succeed.

To reflect that change, the word "both" has been deleted from the definition of "investigation" in § 42.203(d), and the phrase "pursuant to § 42.205(c),

(3)" inserted after "fact-finding efforts and." The Commentary on § 42.202(d) has also been deleted. See also the discussion of the revised complaint investigation process, *supra*.

3. Section 42.202(h). A definition of "pattern or practice," reflecting the legislative history of the phrase, has been added. For a further elaboration, see House Report 94-1155 (94th Cong., 2d Sess.), at p. 25.

4. Proposed §§ 42.202(h) (i) (j) and (k) have been redesignated §§ 42.202(l) (j) (k) and (l), respectively, to accommodate the definition of "pattern or practice" in § 42.202(h).

In addition, the Commentary on proposed § 42.202(h) has been deleted. The substance of the Commentary now appears in § 42.201(c).

5. Section 42.202(d). The phrase "directly, or" has been added following the phrase "to which Federal financial assistance is extended" to clarify that all private recipients are covered by the prohibitions in this Subpart, regardless of whether they receive assistance directly from LEAA, through another private entity, or through a unit of State or local government.

6. Section 42.203(b). A second paragraph has been added to the Commentary on this section to explain the Administration's position on individual projects which benefit a particular sex, race, or ethnic group. Such projects are not violative of Section 518(c) unless the granting agency or the recipient has engaged in an unjustified pattern of such preferential treatment.

7. Section 42.203(b) (4). The word "any" has been added before "advantage" to be consistent with Subpart C of the Department of Justice Nondiscrimination Regulations, at 28 CFR 42.104(b) (iv).

8. Section 42.203(b) (9). A reference has been added in the Commentary on this section. For those desiring a comprehensive analysis of the Federal Executive Agency Guidelines on Employee Selection Procedures, attention is directed to the Department of Justice Questions and Answers on the Guidelines, published at 42 FR 3820 (January 19, 1977).

9. Section 42.203(c). Numerous commenters questioned the meaning of the term "analogues of" in the description of the relationship between Section 518 (c) (1), Section 262(b), and Title VII of the Civil Rights Act of 1964. In response to their confusion, the phrase "consistently with" has been substituted for "as analogues of." The Commentary on this section has been retained to explain congressional intent on this issue.

In addition, the sentence in the Commentary on § 42.203(c), discussing *Washington v. Davis*, _____ U.S. _____ 96 S.Ct. 2040 (1976) has been clarified to read:

Discriminatory purpose on the part of the employer, which must be shown before the burden shifts in a Fourteenth Amendment case such as *Washington v. Davis*, _____ U.S. _____ 96 S. Ct. 2040 (1976), need not be

shown in an employment discrimination case brought under Section 518(c) (1).

10. Section 42.203(j). A reference has been added in the Commentary on this section to the discussion of goals and timetables in the Equal Employment Opportunity Coordinating Council Policy Statement on Affirmative Action Programs for State and Local Government Agencies, 41 FR 38816 (September 13, 1976).

11. Section 42.205(a). Because a violation of Title VI of the Civil Rights Act of 1964 would also be a violation of Section 518(c) or Section 262(b), the last sentence of proposed § 42.205(a) and the paragraph in the Commentary on that sentence have been deleted as superfluous.

12. Section 42.205(b). A number of comments criticized LEAA for imposing a 180-day "statute of limitations" on complaints without statutory authorization. LEAA has extended the time period to one year, and provided for a waiver of even that lengthy period for "good cause shown." As explained in the Commentary, the purpose of § 42.205(b) is to insure that LEAA will be devoting its resources to the resolution of active issues, and that necessary witnesses and evidence are likely to be available. "Good cause" will also be construed liberally, as explained in the Commentary.

"One year" has been substituted for "180 days" and the phrase "for good cause shown" has been added to the end of § 42.205(b). As noted above, a Commentary on this section has also been added.

13. Section 42.205(c). See the explanation of the revised investigation timetables, *supra*. Proposed § 42.205(c) (1-7) have been deleted and replaced by § 42.205(c) (1-8). Two paragraphs explaining the timetables and LEAA's expectations have been added to the Commentary on § 42.205(c) (3). A Commentary on § 42.205(c) (5) has also been added to indicate that LEAA will initiate an investigation of a complaint where the same issues are in litigation if the litigation becomes protracted or apparently will not resolve the matter within a reasonable time. See also the discussion under "Pending Litigation by a Private Party," *supra*.

14. Section 42.206(b). The proposed commentary on § 42.206(b), relating to LEAA's intention to first review those recipients which appear to have the most serious discrimination problems, has been deleted from the commentary and placed in the regulations as the first sentence of § 42.206(b).

As explained in the discussion of "service population" *supra*, the term "relevant labor market" has been substituted for the phrase "service population" in § 42.206(b) (1).

In addition, the disparity between the percentage of women in the relevant labor market and the percentage of women employed by the recipient has specifically been made an additional factor to be reviewed in the selection of recipients for a compliance review.

Proposed § 42.206(b) (2) has, therefore, been deleted, and the phrase "or women" added to § 42.206(b) (1) after the phrase "percentage of minorities" each place that phrase appears in § 42.206(b) (1).

Section 42.206(b) (3) has been redesignated § 42.206(b) (2) and amended to read "the percentage of women and minorities in the population receiving project benefits."

Proposed § 42.206(b) (4), (5), and (6) have been redesignated § 42.206(b) (3), (4), and (5), respectively.

The phrase "and nature" has been added to § 42.206(b) (3) after "the number." This amendment was made in response to a comment that the number of complaints alone is not a dispositive factor in selecting recipients for review.

In addition, a sentence has been added to the commentary on this section, stating "LEAA will consider data from all sources, including information provided by both internal and external auditors." This is to advise all recipients that the Administration will analyze data received by not only the LEAA Office of Civil Rights Compliance, but the LEAA Office of Audit and Inspection, and the General Accounting Office, among others, as well.

15. Section 42.206 (d) and (e). The phrase "and to the appropriate SPA" has been added to the end of both sections to insure that the appropriate SPA's are adequately informed of the progress of compliance reviews conducted in their jurisdictions.

16. Section 42.207. After review, LEAA added the sentence "A refusal to provide requested information shall be enforced pursuant to the provisions of Section 509 of the Crime Control Act" to the end of § 42.207, in order to clearly inform all recipients of the sanctions for withholding requested information. See the discussion of Section 509 under § 42.201(b) and (c), *supra*.

17. Sections 42.208 and 42.209. See the discussion under Civil Rights Compliance Activities by LEAA State Planning Agencies, *supra*.

18. Section 42.210(e). Several commenters, including the Administrative Conference of the United States, noted the procedural importance of the Administrative Procedures Act (APA) requirement that a hearing be conducted by a person not involved in the investigation or prosecution of the matter at issue. In response to these comments, and after further consideration, LEAA has decided to make this requirement and the opportunity of all parties to be represented by counsel, required procedures of any hearing purporting to be consistent with the APA. LEAA believes these procedures, and the requirements listed in the proposed regulations at § 42.210(e) will insure that an agency hearing was conducted consistent with the due process requirements of the APA, yet not make the procedural prerequisites so burdensome as to thwart the intent of Congress that the findings of administrative agencies should trigger the LEAA enforcement process.

Accordingly, the phrase "by an individual not having participated in the investigation or prosecution of the matter" has been added to the end of § 42.210 (e) (1) (II), the phrase "to the extent that the parties are unable to determine a controversy by consent" has been deleted as inapposite, and the phrase "be represented by counsel or other qualified representative" has been inserted in § 42.210 (e) (2) after "A party is entitled to."

19. *Section 42.211(a)*. A sentence has been added to the Commentary on this section, indicating that a compliance agreement may be an "agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation." This makes compliance under this section the same as compliance under § 42.213(b), which refers to resumption of suspended funds. LEAA intends to dispel any inference to the contrary that may have been in the proposed regulations.

20. *Section 42.211(b)*. A number of comments urged LEAA to send a copy of any compliance agreement reached pursuant to § 42.211 to the complainant, if any, prior to the effective date of the agreement. Although the Act would require the agreement to be sent either "on or prior to" the date of the agreement, LEAA has amended § 42.211(b) to provide that a copy will be sent to the complainant prior to the effective date. As explained in the Commentary, the agreement would be "more likely to re-

solve all concerns and discourage litigation if the complainant's views were considered before it took effect." The phrase "On or" has therefore been deleted from § 42.211(b). A paragraph on this change has been added to the commentary.

In addition, the phrase "and to the appropriate SPA" has been added to the end of § 42.211(b) to insure that the SPA is aware of the recipient's obligations under the agreement.

21. *Section 42.211(c)*. This section has been added to clarify that a recipient may come into compliance by means other than a compliance agreement. The methods listed are the same as those that would cause a resumption of suspended funds under § 42.213.

22. *Section 42.215(a)* has been amended to provide that, in the case of non-compliance with Section 262(b) of the Juvenile Justice Act, a recipient has only 30 days in which to request a hearing. This is consistent with § 42.103 of the regulations implementing Title VI of the Civil Rights Act of 1964, which requires at least a 20-day period in which a hearing can be requested. Accordingly, the phrase "or within 30 days after notification of non-compliance with Section 262(b)" has been inserted in the first sentence of § 42.215(a) after "referred to in § 42.212," and the phrase "of non-compliance with Section 518(c) (1)" has been inserted in the same sentence after "At any time after notification."

23. *Section 42.217(a)*. See the discussion under "Referral to Attorney General," *supra*. A paragraph quoting Con-

gressman Rodino's letter has been added to the commentary.

24. *Proposed §§ 42.217 (a) and (b)* have been redesignated §§ 42.217 (b) and (c), respectively to accommodate the addition of § 42.217(a).

25. *Section 42.217(b) (1)*. LEAA believes that any suit filed by the Attorney General that alleges conduct which, if proven, would be a violation of Section 518(c) should trigger the 45-day suspension provision, whether or not a violation of Section 518(c) is specifically alleged. This position is especially appropriate in light of Congress's intention that Section 518(c) be interpreted consistently with Title VII of the Civil Rights Act of 1964, as amended, the principal statute under which the Department of Justice brings its employment discrimination suits.

Accordingly, the phrase "or would violate" has been inserted after "the conduct allegedly violates" in § 42.217(b) (1).

26. *Section 42.217(b) (2)*. This section has been added to state LEAA's expectation that a recipient seeking to enjoin the suspension of funds under § 42.217 (b) (2) should have the burden of showing that it is likely to prevail on the merits. The hearing should be analogous to a pre-suspension administrative preliminary hearing conducted under § 42.214, where the sole issue is whether the recipient is likely to prevail on the merits.

Accordingly, Subpart D of 23 CFR Part 42 is revised as follows:

Subpart D—Nondiscrimination in Federally-Assisted Programs—Implementation of Section 518(c) of the Crime Control Act of 1976 and Section 252(b) of the Juvenile Justice and Delinquency Prevention Act of 1974

- Sec.
- 42.201 Purpose and application.
 - 42.202 Definitions.
 - 42.203 Discrimination prohibited.
 - 42.204 Assurances required.
 - 42.205 Complaint investigation.
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 - 42.210 Notice of noncompliance.
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 - 42.213 Resumption of suspended funds.
 - 42.214 Preliminary hearing.
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 - 42.216 Judicial review.
 - 42.217 Other actions authorized under the Crime Control Act.

AUTHORITY.—Secs. 501, 518(c), and 521(d) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 94-415, and Pub. L. 94-503 (October 15, 1976)) and sec. 252 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415, 88 Stat. 1109).

Subpart D—Nondiscrimination in Federally-Assisted Programs—Implementation of Section 518(c) of the Crime Control Act of 1976 and Section 252(b) of the Juvenile Justice and Delinquency Prevention Act of 1974

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to implement the provisions of section 518(c) of the Crime Control Act of 1976, Pub. L. 94-503, 90 Stat. 2407, and section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109, to the end that no person in any State shall on the ground of race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, or be denied employment in connection with any program or activity funded in whole or in part with funds made available by LEAA under either Act.

(b) The regulations in this subpart apply to the delivery of services by, and employment practices of recipients administering, participating in, or substantially benefiting from any program or activity receiving Federal financial assistance extended under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, or the Juvenile Justice and Delinquency Prevention Act of 1974.

(c) Where a private recipient which receives such assistance through a unit of government is engaged in prohibited discrimination, the Administration will invoke the enforcement procedures of this subpart (§ 42.210, et seq.) against the appropriate unit of government for failure to enforce the assurances of nondiscrimination given it by the private recipient pursuant to § 42.204(a). Where a private recipient receives assistance either directly from LEAA, or through another private entity which receives funds di-

rectly from LEAA, the Administration will enforce compliance pursuant to section 509 of the Crime Control Act.

§ 42.202 Definitions.

(a) "Law enforcement," "State," and "unit of general local government" shall have the meanings set forth in section 601 of the Crime Control Act.

(b) "Crime Control Act" means Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

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

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

(e) "Juvenile Justice Act" means Titles I and II of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109.

(f) "Noncompliance" means the failure of a recipient to comply with section 518(c) (1) of the Crime Control Act, section 262(b) of the Juvenile Justice Act, or this subpart.

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

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

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

(j) "Religion" or "creed" includes all aspects of religious observance and practice as well as belief.

(k) "State planning agency" or "SPA" means the criminal justice State planning agency created to implement the Crime Control Act and, where authorized by State law, the Juvenile Justice Act within each State.

(l) "Compliance review" means a review of a recipient's selected employment practices or delivery of services for compliance with the provisions of section 518 (c) (1) of the Crime Control Act, section 262(b) of the Juvenile Justice Act, and this subpart.

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from

participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the Crime Control Act or the Juvenile Justice Act.

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

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

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

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

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

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

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

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

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

(9) Use any selection device in a manner which is inconsistent with the Department of Justice Guidelines on Employee Selection Procedures, 28 CFR Part 50.

(c) In matters involving employment discrimination, section 518(c) (1) of the Crime Control Act and section 262(b) of the Juvenile Justice Act shall be interpreted by the Administration consistently with Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 87 Stat. 103.

(d) The use of a minimum height or weight requirement which operates to disproportionately exclude women and persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of supportive factual data, that the requirement has been

validated as set forth in the Department of Justice Guidelines on Employee Selection Guidelines, 28 CFR Part 50.

(e) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under 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 under section 518(c)(1) of the Crime Control Act or section 262(b) of the Juvenile Justice Act, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

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

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

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

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

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

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

§ 42.204 Assurances required.

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

(b) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit or agency thereof, the recipient will forward a copy of the finding to the cognizant State planning agency and to LEAA.

§ 42.205 Complaint investigation.

(a) The Administration shall investigate complaints that allege a violation of:

(1) Section 518(c)(1) of the Crime Control Act;

(2) Section 262(b) of the Juvenile Justice Act; or

(3) This subpart.

(b) No complaint will be investigated if it is received more than one year after the date of the alleged discrimination, unless the time for filing is extended by the Administrator for good cause shown.

(c) The Administration shall conduct investigations of complaints as follows:

(1) Within 21 days of receipt of a complaint, the Administration shall:

(i) Ascertain whether it has jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iii) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and, with the written consent of the complainant, the identity of the complainant;

(ii) The programs or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of the Administration's findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate SPA.

(3) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the investigation, the Administration shall advise the complainant, the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate S2A of:

(i) Its preliminary findings;

(ii) Where appropriate, its recommendations for compliance, and

(iii) If it is likely that satisfactory resolution of the complaint can be obtained, the opportunity to request the Administration to engage in voluntary compliance negotiations prior to the Administrator's determination of compliance or non-compliance.

(4) If, within 30 days, the Administration's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Administrator for a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day period. If the Administrator makes a determination of non-compliance with section 518(c) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act, the Administration shall institute administrative proceedings pursuant to § 42.210, et seq.

(5) If the complainant or another party, other than the Attorney General, has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to LEAA, and, during LEAA's investigation, the trial of that suit would be in progress, LEAA will suspend its investigation and monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination within the meaning of § 42.210, the Administration will institute administrative proceedings pursuant to § 42.210, et seq.

(6) The time limits listed in paragraphs (c)(1) through (c)(5) of this section shall be appropriately adjusted where LEAA requests another Federal agency or another branch of the Department of Justice to act on the complaint. LEAA will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, LEAA will institute appropriate proceedings pursuant to this section.

§ 42.206 Compliance reviews.

(a) The Administration shall periodically conduct compliance reviews of selected recipients of LEAA assistance.

(b) The Administration shall seek to review those recipients which appear to have the most serious equal employment opportunity problems, or the greatest disparity in the delivery of services to the white and non-white, or male and female communities they serve. Selection for review shall be made on the basis of:

(1) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient;

(2) The percentage of women and minorities in the population receiving project benefits;

(3) The number and nature of discrimination complaints filed against a recipient with LEAA or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Administration against a recipient; and

(5) The amount of assistance provided to the recipient.

(c) Within 15 days after selection of a recipient for review, the Administration shall inform the recipient that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of the Administration's findings, a documentary submission responding to the Administration, explaining, validating, or otherwise addressing the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate SPA.

(d) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the review, the Administration shall advise the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate SPA, of:

(1) Its preliminary findings;

(2) Where appropriate, its recommendations for compliance; and

(3) The opportunity to request the Administration to engage in voluntary compliance negotiations prior to the Administrator's determination of compliance or non-compliance.

(e) If, within 30 days, the Administration's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Administrator for a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day negotiation period. If the Administrator makes a determination of non-compliance with section 518(c) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act, the Administration shall institute administrative proceedings pursuant to § 42.210, et seq.

§ 42.207 Compliance information.

(a) The provisions of § 42.106, addressing the maintenance, availability, and submission of compliance information are hereby incorporated in this subpart. A refusal to provide requested information shall be enforced pursuant to the

provisions of section 509 of the Crime Control Act.

(b) Each recipient receiving a grant or subgrant of \$250,000 or more shall provide the Administration with a copy of its current Equal Employment Opportunity Program and any subsequent revisions or supplements. The Administration shall maintain a file of these plans, which shall be available for inspection.

§§ 42.208-42.209 [Reserved]

§ 42.210 Notice of noncompliance.

Whenever the Administration has:

(1) Received notice of a finding, after notice and opportunity for a hearing by:

(i) A Federal court (other than in an action brought by the Attorney General under Section 518(c) (3) of the Crime Control Act);

(ii) A State court; or

(iii) A Federal or State administrative agency (other than the Administration under paragraph (a) (2) of this section); to the effect that there has been a pattern or practice of discrimination in violation of section 518(c) (1) of the Crime Control Act; or

(2) Made a determination after an investigation by the Administration pursuant to § 42.205 or § 42.206 that a State government or unit of general local government is not in compliance with this subpart, section 518(c) (1) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act;

the Administration shall, within 10 days after such occurrence, notify the chief executive of the affected State and, if the action involves a unit of general local government, the chief executive of such unit of general local government, that such program or activity has been so found or determined not to be in compliance with this subpart or section 518(c) (1) of the Crime Control Act or section 262(b) of the Juvenile Justice Act and shall request each chief executive notified under this section with respect to such violation to secure compliance.

(b) For the purposes of this section, notice means:

(1) Publication in:

(i) Employment Practices Decisions, Commerce Clearinghouse, Inc.;

(ii) Fair Employment Practices, Bureau of National Affairs, Inc.;

(iii) The United States Law Week, Bureau of National Affairs, Inc.;

(iv) Federal Supplement, Federal Reporter, or Supreme Court Reporter, West Publishing Company; or

(v) National Reporter System, West Publishing Company; or

(2) Receipt by the Administration of a reliable copy of a finding from any source.

(c) When the Administration receives a finding which has been made more than 120 days prior to receipt, the Administration will not be considered to be in receipt of notice of such finding until it is determined that the finding is currently applicable.

(1) In determining the current applicability of the finding, the Administra-

tion will contact the clerk of the court and the office of the deciding judge (or the appropriate agency official) to determine whether any subsequent orders have been entered.

(2) If the information is unavailable through the clerk or the office of the judge (or the appropriate agency official), the Administration will contact the attorneys of record for both the plaintiff and defendant to determine whether any subsequent orders have been entered, or if the recipient is in compliance.

(3) If, within 10 days of receipt of notice, it is not determined through the procedures set forth in paragraphs (c) (1) and (2) of this section, that the recipient is in full compliance with a final order of the court (or agency) within the meaning of § 42.213(b), the Administration will notify the governor of the recipient's noncompliance as provided in § 42.210(a).

(d) For purposes of paragraph (a) (1) (iii) of this section a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of Chapter 5, Title 5, United States Code (the Administrative Procedures Act).

(e) The procedures of a Federal or State administrative agency shall be deemed to be consistent with the Administrative Procedure Act (APA) if:

(1) The agency gives all interested parties opportunity for:

(i) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(ii) Hearing and decision on notice by an individual not having participated in the investigation or prosecution of the matter.

(2) A party is entitled to be represented by counsel or other qualified representative, to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination, as may be required for a full and true disclosure of the facts; and

(3) The record shows the ruling on each finding, conclusion, or exception presented. All decisions, including initial recommended, and tentative decisions, shall be a part of the record and shall include a statement of:

(i) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(ii) The appropriate rule, order, sanction, relief, or denial thereof.

(f) If within 10 days of receipt of notice the Administration cannot determine whether the finding was rendered pursuant to procedures consistent with the APA, it shall presume the APA procedures were applied, and send notification under § 42.210(a) to the appropriate chief executive(s).

(g) Each notification under § 42.210 (a) shall advise the appropriate chief executive of:

(1) The program or activity determined to be in noncompliance;

(2) The general legal and factual basis for its determination;

(3) The Administration's request to secure compliance;

(4) The action to be taken and the provisions of law under which the proposed action is to be taken should the chief executive fail to secure compliance; and

(5) The right of the recipient to request a preliminary hearing, pursuant to § 42.214, if the determination is of non-compliance with section 518(c)(1), and a full hearing, pursuant to § 42.215.

§ 42.211 Compliance secured.

(a) In the event a chief executive secures compliance after notice pursuant to § 42.210, the terms and conditions with which the affected State government or unit of general local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of general local government), and by the Administrator.

(b) Prior to the effective date of the agreement, the Administration shall send a copy of the agreement to each complainant, if any, with respect to such violation, and to the appropriate SPA.

(c) The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of general local government) shall file semi-annual reports with the Administration detailing the steps taken to comply with the agreement.

(d) Within 15 days of receipt of such reports, the Administration shall send a copy to each complainant, if any.

(e) The Administrator shall also determine a recipient to be in compliance if it complies fully with the final order or judgment of a Federal or State court, pursuant to § 42.213(a)(2) and § 42.213(b), or is found by such court to be in compliance with section 518(c)(1).

§ 42.212 Compliance not secured.

(a) If, at the conclusion of 90 days after notification of noncompliance with section 518(c)(1):

(1) Compliance has not been secured by the chief executive of that State or the chief executive of that unit of general local government; and

(2) An administrative law judge has not made a determination under § 42.214 that it is likely the State government or unit of local government will prevail on the merits;

the Administration shall notify the Attorney General that compliance has not been secured and suspend further payment of any funds under the Crime Control Act to the specific program or activity in which the noncompliance has been found.

(b) If a hearing is requested pursuant to § 42.215, suspension of funds made available under the Crime Control Act shall be effective for a period of not more

than 30 days after the conclusion of the hearing, or in the absence of a hearing under § 42.215, funds shall be suspended for not more than 120 days, unless there has been an express finding by the Administrator after notice and opportunity for such a hearing, that the recipient is not in compliance with this subpart or section 518(c)(1) of the Crime Control Act.

(c) Paragraphs (a) and (b) of this section do not apply to funds made available under the Juvenile Justice Act. If compliance is not secured within 90 days after notification of noncompliance with section 262(b), the Administrator may suspend approval of new applications for assistance to the program or activity determined to be in noncompliance for a period of up to 90 days pending a hearing under § 42.215.

§ 42.213 Resumption of suspended funds.

(a) Payment of suspended funds made available under the Crime Control Act shall resume only if:

(1) Such State government or unit of general local government enters into a compliance agreement signed by the Administrator in accordance with § 42.211;

(2) Such State government or unit of general local government:

(i) Complies fully with the final order or judgment of a Federal or State court, if that order or judgment covers all matters raised by the Administrator in the notice pursuant to § 42.210, or

(ii) Is found to be in compliance with section 518(c)(1) of the Crime Control Act by such court;

(3) After a hearing, the Administrator pursuant to § 42.215 finds that non-compliance has not been demonstrated; or

(4) An administrative law judge has determined, under § 42.214, that it is likely that the State government or unit of local government will prevail on the merits.

(b) Full compliance with a court order, for the purposes of paragraph (a)(2) of this section, includes the securing of an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

§ 42.214 Preliminary hearing.

(a) Prior to the suspension of funds under § 42.212(a), but within the 90-day period after notification under § 42.210, the State government or unit of local government may request an expedited preliminary hearing by an administrative law judge (ALJ) in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under § 42.215, prevail on the merits on the issue of the alleged noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of request. The ALJ shall make his finding within 15 days after the conclusion of the preliminary hearing.

§ 42.215 Full hearing.

(a) At any time after notification of non-compliance with section 518(c)(1) under § 42.210, but before the conclusion of the 120-day suspension period referred to in § 42.212, or within 30 days after notification of non-compliance with section 262(b), a State government or unit of general local government may request a full hearing to consider the findings or determination of non-compliance made under § 42.210. The Administration shall initiate the hearing within 60 days of request.

(b) Within 30 days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the 120-day period referred to in § 42.212, the Administrator shall make a finding of compliance or non-compliance.

(1) If the Administrator makes a finding of non-compliance, the Administrator shall:

(i) Notify the Attorney General in order that the Attorney General may institute a civil action under section 518(c)(3) of the Crime Control Act;

(ii) Terminate the payment of funds under the Crime Control Act and/or the Juvenile Justice Act; and

(iii) If appropriate, seek repayment of funds.

(2) No order of the Administrator terminating, or refusing to grant or continue, assistance to a recipient for non-compliance with section 262(b) of the Juvenile Justice Act shall be effective until the expiration of 30 days after the Administration has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action.

(3) If the Administrator makes a finding of compliance, payment of the suspended funds and reconsideration of applications shall resume.

§ 42.216 Judicial review.

Any State government or unit of general local government aggrieved by a final determination of the Administration under § 42.215 may appeal such determination as provided in section 511 of the Crime Control Act, in the case of funds made available under that Act, or in accordance with the procedures set forth in section 603 of the Civil Rights Act of 1964, as amended, in the case of funds made available under the Juvenile Justice Act.

§ 42.217 Other actions authorized under the Crime Control Act.

(a) The Administrator may, at any time, request the Attorney General to file suit to enforce compliance with section 518(c)(1) or section 262(b). LEAA will monitor the litigation through the court docket and liaison with the Civil Rights Division of the Department of Justice. Where the litigation does not result in timely resolution of the matter, and funds have not been suspended pursuant to § 42.217(b), LEAA will institute

administrative proceedings unless enjoined from doing so by the court.

(b) (1) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under the Crime Control Act and the conduct allegedly violates or would violate the provisions of this subpart or section 518(c)(1) of the Crime Control Act and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may otherwise be available by law, the Administrator shall suspend further payment of any funds under the Crime Control Act to that specific program or activity alleged by the Attorney General to be in violation of the provisions of section 518(c)(1) of the Crime Control Act until such time as the court orders resumption of payment.

(2) The Administration expects that preliminary relief authorized by this subsection will not be granted unless the party making application for such relief meets the standards for a preliminary injunction.

(c) (1) Whenever a State government or unit of local government or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by section 518(c)(1) of the Crime Control Act, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction.

(2) Administrative remedies shall be deemed to be exhausted upon the expiration of 60 days after the date the administrative complaint was filed with the Administration, or any other administrative enforcement agency, unless within such period there has been a determination by the Administration or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(3) The Attorney General, or a specifically designated assistant for or in the name of the United States may intervene upon timely application in any civil action brought to enforce compliance with section 518(c)(1) if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

COMMENTARY

Section 42.201(c). The compliance enforcement mechanism of section 518(c)(2) applies by its terms to State and local governments. The prohibitions in section 518(c)(1), however, apply to all recipients of LEAA assistance. Accordingly, where a private entity which has received LEAA assistance through a State or local unit of government is determined by LEAA to be in non-compliance, LEAA

will invoke the section 518(c)(2) mechanism against the appropriate unit of government for its failure to enforce the assurances of compliance given it by the private recipient, unless the unit has initiated its own compliance action against the private recipient. The fund termination procedures of section 509 will be invoked against non-complying private recipients which receive assistance directly from LEAA or through another private entity.

Section 42.202(g). Section 518(c) of the Crime Control Act limits suspension and termination of assistance in the event of noncompliance to the "specific program or activity" in which the noncompliance is found.

House Report No. 94-1155 (94th Congress, 2d Session), at p. 25, explained this provision as follows:

"Suspension may be limited to the specific program or activity found to have discriminated, rather than all of the recipient's LEAA funds.

For example, if discriminatory employment practices in a city's police department were cited in the notification, LEAA may only suspend that part of the city's payments which fund the police department. LEAA may not suspend the city's LEAA funds which are used in the city courts, prisons, or juvenile justice agencies.

This passage makes it clear that LEAA need not demonstrate a nexus between the particular project funded and the discriminatory activity. See *Lau v. Nichols*, 414 U.S. 563, 566 (1974).

Sections 42.203(b) and 42.203(e-f). These provisions are derived from 28 CFR 42.104(b) of Subpart C of the Department of Justice Nondiscrimination Regulations. Where appropriate, "sex" and "religion" have been added as prohibited grounds of discrimination, and "denial of employment" as another activity within the scope of sections 518(c)(1) and 262(b).

Individual projects benefitting a particular sex, race, or ethnic group are not violative of section 518(c), unless the granting agency or the recipient has engaged in a pattern of granting preferential treatment to one such group, and cannot justify the preference on the basis of a compelling governmental interest, in the case of racial or ethnic discrimination, or a substantial relationship to an important governmental function, in the case of sex discrimination.

Section 42.203(b)(9). On November 17, 1976, the Department of Justice adopted as official policy the selection guidelines proposed by the Equal Employment Opportunity Coordinating Council (EEOCC) in 41 FR 29016 (July 14, 1976), with modification. Since LEAA is a component of the Department, these guidelines are now applicable to the selection procedures of LEAA recipients. See the Department of Justice Questions and Answers on the Federal Executive Agency Guidelines on Employee Selection Procedures in 42 FR 3820 (January 19, 1977) for a detailed commentary on the Guidelines.

Section 42.203(c). In the Conference Report on the Crime Control Act, the

managers stated that "In the area of employment cases brought under this section (518(c)(1)), it is intended by the conferees that the standards of Title VII of the Civil Rights Act of 1964 apply." H. Rept. No. 94-1723 (94th Cong., 2d Sess.) at p. 32.

This section makes the LEAA standards of employment discrimination consistent with those used by the Civil Rights Division of the Department of Justice. It further clarifies that the burden shifts to the employer to validate its selection procedures once LEAA has demonstrated that those procedures disproportionately exclude an affected class. Discriminatory purpose on the part of the employer, which must be shown before the burden shifts in a Fourteenth Amendment case such as *Washington v. Davis*, _____ U.S. _____, 98 S. Ct. 2040 (1978), need not be shown in an employment discrimination case brought under section 518(c)(1).

LEAA will give substantial weight to the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 29 CFR 1604.1, et seq., Discrimination Because of Religion, 29 CFR 1605.1, and Discrimination Because of National Origin, 29 CFR 1606.1.

Section 42.203(f). Section 518(b) of the Crime Control Act reads:

Notwithstanding any other provision of law nothing contained in this title shall be construed to authorize the Administration (1) to require, or condition the availability or amount of a grant upon, the adoption by an applicant or grantee under this title of a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance in any law enforcement agency, or (2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this title to adopt such a ratio, system, or other program.

In commenting on the Crime Control Act of 1976, Senator Roman Hruska of Nebraska explained the difference between quotas and goals and timetables as follows:

Section 518(b) of the act prohibits the setting of quotas. This provision was unchanged, and this provision will still bind the Administration.

LEAA does have an affirmative obligation under this law to seek to eliminate discriminatory practices, voluntarily, if possible, prior to resorting to fund termination. LEAA can request that a recipient eliminate the effect of past discrimination by requiring the recipient to commit itself to goals and timetables. The formulation of goals is not a quota prohibited by section 518(b) of the act. A goal is a numerical objective fixed realistically in terms of the number of vacancies expected and the number of qualified applicants available. Factors such as a lower aspiration rate than expected, bona fide fiscal restraints, or a lack of qualified applicants would be acceptable reasons for not meeting a goal that has been established and no sanctions would accrue under the program. Cong. Rec. S. 17320 (September 30, 1976, daily ed.).

See also the Equal Employment Opportunity Coordinating Council Policy Statement on Affirmative Action Programs for State and Local Government Agencies, 41 FR 28316 (September 13, 1976).

Section 42.204. All grantees and subgrantees must make the assurances found in paragraph (a). Only State and local units of government and agencies thereof must make the assurance found in paragraph (b), since, as explained in the commentary on § 42.202(h), the enforcement provisions of section 518(c)(2) apply only to governmental recipients.

Section 42.205(a). Where information available to the Administration clearly and convincingly demonstrates that the complaint is frivolous or otherwise without merit, the complaint will not be investigated, and the complainant will be so advised.

Section 42.205(b). A one-year statute of limitations is imposed to ensure that LEAA will be devoting its resources to the resolution of active issues, and to maximize the possibility that necessary witnesses and evidence are still available.

Examples of good cause which would clearly warrant an extension of the filing period are a statement from the complainant stating that he or she was unaware of the discrimination until after a year had passed, or that he or she was not aware that a remedy was available through LEAA.

Section 42.205(c)(1). Jurisdiction exists if the complaint alleges discrimination on a ground prohibited by section 518(c)(1) or section 262(b), and the respondent named in the complaint is a current recipient of LEAA assistance.

Section 42.205(c)(3). The timetables set forth in § 42.205(c)(3) are intended to apply not only to future complaints received by LEAA, but a backlog of approximately 300 complaints as well. Every complaint in the backlog will be treated as received on the date these regulations are published as final. LEAA anticipates that, once the backlog is fully disposed of, the timetables will be significantly reduced further.

Prior to a determination of non-compliance, LEAA will attempt to negotiate voluntary compliance only during the 30-day period following receipt of the Administration's preliminary findings, and only at the request of the recipient, as provided in § 42.205(c)(3). If a determination of non-compliance is made, LEAA will participate in voluntary compliance efforts during the 90-day period following the letter sent to the chief executive(s) under § 42.210.

Sections 42.205(c)(3) and (4) and 42.206(e). LEAA proposes to notify the appropriate chief executive(s) of its recommendations during the voluntary resolution phase of both the complaint investigation and compliance review process. LEAA expects that the early involvement of the chief executive will often expedite the resolution of issues.

Section 42.205(c)(5). LEAA will initiate an investigation if the litigation discussed in this subparagraph becomes protracted or apparently will not resolve the matter within a reasonable time.

Section 42.205(c)(6). In order to effectively utilize the resources of other agencies, and to avoid duplication of effort, LEAA may request another agency to act on a particular complaint. LEAA expects

this practice to be limited, and will attempt to ensure that any cooperative agreement reached with another agency is consistent with the timetables set forth in § 42.205(c).

Section 42.206(a). LEAA recognizes the practical impossibility of reviewing the compliance of each of its more than 39,000 recipients. The regulations seek to expedite the review process by reducing its length and narrowing its focus. Compliance reviews may, in some instances, be limited to specific employment practices, or other functions of a recipient, that appear to have the greatest adverse impact on an affected class.

LEAA will also continue its practice of making pre-award desk audits of all discretionary grants awarded by LEAA which amount to \$500,000 or more. If the audit reveals a significant potential for discrimination in employment or services, the recipient will be scheduled for a compliance review.

Section 42.206(b). The factors listed will be considered cumulatively by LEAA in selecting recipients for reviews. LEAA will consider data from all sources, including information provided by both internal and external auditors.

Section 42.207. Section 42.106 of Subpart C requires, among other things, that a recipient must keep such records, and submit such reports as the granting agency may determine to be necessary in order to evaluate the recipient's compliance. Each recipient must also permit access by responsible officials during normal business hours to such records as may be pertinent to an evaluation of compliance.

Section 42.210(a)(2). Section 262(b) of the Juvenile Justice Act requires the non-discrimination provision of the Act to be enforced "in accordance with Section 603 (sic: 602)" of Title VI of the Civil Rights Act of 1964. That section provides a different enforcement procedure than section 518(c)(2) of the Crime Control Act. Where possible, the regulations have made the two procedures consistent. Where they cannot be harmonized, the regulations explain the separate requirements. See, e.g., § 42.212(c) and § 42.215(b)(2).

The enforcement procedure for non-compliance with section 262(b) will be initiated by a determination of non-compliance by the Administration (after an investigation) and a letter to the appropriate chief executive(s). See § 42.210(a)(2). A finding by a Federal or State court or Federal or State administrative agency will not trigger the notification letter. The contents of the notification letter are set forth in § 42.210(f).

Compliance will be secured in the same manner as compliance with section 518(c)(1). See § 42.211.

Pending a full hearing on the issue of non-compliance, LEAA cannot suspend active funding to a recipient of Juvenile Justice Act funds. LEAA may only suspend approval of new applications for assistance to the program or activity determined to be in non-compliance, for up to 90 days pending the

hearing. See § 42.212(c). Because active funding is not suspended, the opportunity to request a preliminary hearing is not provided to Juvenile Justice Act recipients.

After a full hearing, if requested within 30 days after notification of non-compliance, the Administrator will make a final determination of compliance or non-compliance. If a determination of non-compliance is made, no funding can be terminated until the expiration of 30 days after the Administration files a full written report of the circumstances and grounds for the determination with the appropriate Congressional committees. This provision is mandated by section 602 of Title VI of the Civil Rights Act of 1964. See § 42.215(b)(2).

The final determination may be appealed, as provided in section 603 of Title VI (see § 42.216).

Section 42.210(b). Upon receipt of the publications listed, LEAA will review the case reports for findings that may be violations of section 518(c)(1). In the case of the West Publishing Company reporters, LEAA will consult the topic "Civil Rights" in the Key Number Digests contained in the advance sheets.

Section 42.210(c). This subsection sets forth the minimum procedural safeguards that LEAA would require of an administrative hearing to assure that the process was consistent with the Administrative Procedure Act. The sufficiency of other procedures that may vary in form but insure due process and the same opportunity for a fair hearing of both parties' evidence will be determined by LEAA on a case-by-case basis.

The Administration will compile a list of State agencies whose procedures have been found consistent with the Administrative Procedure Act, and a list of State agencies whose procedures have been found inconsistent. When a finding of an agency not on either list is received, the Administration will attempt to reliably determine the procedures used to render the findings.

Section 42.211(a). Although the signature of the appropriate chief executives are ultimately required on the compliance agreement, these regulations do not preclude them from delegating the responsibility for securing compliance during the 90-day period following notification, to State or local administrative or human rights agencies under their respective authority. A compliance agreement may be an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

Section 42.211(b). The regulations require that a copy of the proposed compliance agreement be sent to the complainant, if any, before the effective date of the agreement. Although the Act would permit a copy to be sent as late as the effective date, LEAA believes the compliance agreement would be more likely to resolve all concerns and discourage litigation if the complainant's views were considered before it took effect.

Section 42.213(b). An example of a case where compliance would require an extended period of time for implementation would be a court order setting a goal of five years for an employer to raise the percentage of minorities in its workforce to parity with the percentage of minorities in the relevant geographical labor force.

Section 42.215. The full hearing will be conducted in accordance with the LEAA Administrative Review Procedures, 28 CFR 18.1, et seq.

Section 42.217(a). Congressman Peter Rodino, Chairman of the House Judiciary Committee, indicated in his com-

ments on the proposed regulations in a letter to the LEAA Administrator dated December 20, 1976, that "the Committee intentionally omitted the word 'refer' from the law to ensure that LEAA would always retain administrative jurisdiction over a complaint filed with them. It is not appropriate for LEAA to refer cases to the Civil Rights Division or other Federal or State agencies without monitoring the case for prompt resolution."

Section 42.217(c)(2). The exhaustion of administrative remedies at the end of 60 days (unless the Administration has made a determination) does not limit

LEAA's authority to investigate a complaint after the expiration of that period. LEAA will continue to investigate the complaint after the end of the 60-day period, if necessary, in accordance with the provisions of Section 42.205.

The provision for attorney's fees in section 518(c)(4)(B) of the Crime Control Act is not recited in the regulations because it does not affect the authority or actions of the Administration.

RICHARD W. VELDE,
Administrator.

[FR Doc. 77-4951 Filed 2-11-77; 4:32 pm]

APPENDIX 4

DATE _____

MALE . FEMALE

[illegible][illegible][illegible]

SUMMARY

CLASSI-
FICATION

FEMALE

MALE

White	Black	Span. Sur.	Amer.	Other
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White	Black	Span. Sur.	Amer.	Other
-------	-------	---------------	-------	-------

	Total	White
Number of cases	60	59
Age group		
Under 18	17	17
18-24	10	10
25-34	10	10
35-44	10	10
45-54	10	10
55-64	10	10
65+	10	10
Sex		
Male	30	30
Female	30	29
Ethnicity		
Caucasian	50	50
African American	10	9
Hispanic	10	10
Asian/Pacific Islander	10	10
Native American	10	10
Religion		
Protestant	30	30
Catholic	20	20
Jewish	10	10
Muslim	10	10
Other	10	10
Marital status		
Single	30	30
Married	20	20
Divorced	10	10
Widowed	10	10
Education level		
High school or less	30	30
Some college	20	20
Bachelor's degree	10	10
Master's degree	10	10
PhD	10	10
Income level		
Less than \$10,000	30	30
\$10,000-\$20,000	20	20
\$20,000-\$30,000	10	10
More than \$30,000	10	10

Total	Black
-------	-------

Total	
<u>Span.</u>	
Sur.	
Amer.	

Total	Other
100	100

SUMMARY

JOB CATEGORY	CLASSI- FICATION

[illegible]

DISTRIBUTION BY JOB CATEGORY

[illegible]

APPENDIX 5

CONVERSION OF COURT JOB TITLES TO FEDERAL EEO JOB CATEGORIES

OFFICIALS AND MANAGERS

Court Administrators
Directors
Clerks of Court (non-elected)

PROFESSIONALS

Attorneys	Analysts
Law Clerks (degreed)	Personnel Technicians
Supervisors (general)	Law Librarians
Court Related Counselors	Law Librarian Assistants
Masters, law trained	Systems Analysts
Magistrates, law trained	Psychologists
Justices of the Peace, law trained	Psychiatrists
Commissioners	Statisticians
Referees, law trained	Accountants
Court Planners	Budget Officers
Continuing Legal Education	

TECHNICIANS

Court Reporters	Programmers
Computer Operators	Microfilm Processors/Developers

PROTECTIVE SERVICE

Security Guards	Marshals
Bailiffs	Process Servers

PARA PROFESSIONALS

Law Clerks (non degreed)	Magistrates (non degreed)
Research Assistants	Appraisers
Justice of the Peace (non degreed)	Examiners
Referees (non degreed)	Assignment Officers
Masters (non degreed)	Legal Secretaries

OFFICE/CLERICAL

Deputy Clerks of Court	Clerk Typists
Court Transcribers	Stenographers
Criers	Secretaries
Bookkeepers	Statistical Clerks
Office Machine Operators	EDP Clerks
Microfilm Clerks	Key Punch Operators
Personnel Aides	

SKILLED CRAFTS

Mechanics
Repair Workers
Maintenance Supervisors
Building Operators

SERVICE/MAINTENANCE

Library Aides
Drivers/Chauffeurs
Maintenance Workers
Janitorial Personnel

Storekeepers
Stock Clerks
Groundskeepers

APPENDIX 6

FROM

TO

DATE

JOB CATEGORY	MALE						FEMALE					
	White	Black	Span. Sur. Amer.	Asian Amer.	Amer. Indian	Other	White	Black	Span. Sur. Amer.	Asian Amer.	Amer. Indian	Other
Officials/ Administrators												
Professionals												
Technicians												
Protective Service												
Para-Professional												
Office/Clerical												
Skilled Craft												
Service/ Maintenance												

TOTAL

FROM _____ TO _____

DATE _____

JOB CATEGORY	MALE						FEMALE					
	White	Black	Span. Sur. Amer.	Asian Amer.	Amer. Indian	Other	White	Black	Span. Sur. Amer.	Asian Amer.	Amer. Indian	Other
Officials/ Administrators												
Professionals												
Technicians												
Protective Service												
Para-Professional												
Office/Clerical												
Skilled Craft												
Service/ Maintenance												

TOTAL

FROM _____ TO _____

DATE _____

JOB CATEGORY	MALE						FEMALE					
	White	Black	Span. Sur. Amer.	Asian Amer.	Amer. Indian	Other	White	Black	Span. Sur. Amer.	Asian Amer.	Amer. Indian	Other
Officials/ Administrators												
Professionals												
Technicians												
Protective Service												
Para-Professional												
Office/Clerical												
Skilled Craft												
Service/ Maintenance												

TOTAL