

Small Business Administration

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may not, directly or through contractual or other arrangements, on ground of race, color or national origin:

(i) Deny an individual any services, financial aid or other benefit provided by the business or other activity;

(ii) Provide any service, financial aid or other benefit to an individual which is different or is provided in a different manner, from that provided to others by the business or other activity;

(iii) Subject an individual to segregation or separate treatment in any manner related to his receipt of any service, financial aid or other benefit from the business or other activity;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit from the business or other activity;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid or other benefit provided by the business or other activity.

(2) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(3) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior

discriminatory practice or usage, and to accomplish the purposes of the Act.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

§ 112.4 Discrimination in employment.

Small business concerns and development companies which apply for or receive any financial assistance of the kind described in § 112.2(a) (1) and (2), including concerns which are identifiable beneficiaries of loans made under § 112.2(a)(2), may not discriminate on the grounds of race, color, or national origin in their employment practices. Such assistance is deemed to have as a primary objective the providing of employment. Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of § 112.7(a) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity and non-discriminatory treatment.

[38 FR 17934, July 5, 1973]

§ 112.5 Discrimination in providing financial assistance.

Development companies and small business investment companies which apply for or receive any of the financial assistance described in § 112.2(a) may not discriminate, on the ground of race, color or national origin, in providing financial assistance to small business concerns.

§ 112.6 Discrimination in accommodations or services.

Small business concerns which apply for or receive any financial assistance of the kind described in § 112.2(a)(1), concerns which are identifiable beneficiaries of loans made under § 112.2(a)(2), and physicians, hospitals, schools, libraries, and other individuals

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or organizations which apply for or receive financial assistance of the kind described in §112.2(a)(5), may not discriminate in the treatment accommodations or services they provide to their patients, students, visitors, guests, members, passengers, or patrons in the conduct of such businesses or other enterprises, whether or not operated for profit.

[31 FR 2374, Feb. 4, 1966]

§ 112.7 Illustrative applications.

(a) *Employment.* The discrimination prohibited by §112.4 includes but is not limited to any action (taken directly or through contractual or other arrangements) which subjects an individual to discrimination on the ground of race, color or national origin in any employment practice, including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities.

(b) *Financial assistance.* The discrimination prohibited by §112.5 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to extend a loan or equity financing to him or to any business concern of which he is an owner or employee; or, in the case of financing which has actually been extended, the failure or refusal, because of the race, color, or national origin of the borrower or of an owner or employee of the borrower, to accord the borrower fair treatment and the customary courtesies regarding such matters as default, grace periods and the like.

(c) *Accommodations or services.* The discrimination prohibited by §112.6 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to accept him on a nonsegregated basis as a patient, student, visitor, guest, member, customer, passenger or patron.

(d) *Affirmative action.* (1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under §112.3(b)(3) to provide information as to the availability of equal op-

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portunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal opportunity fully available to racial and nationality groups previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial or nationality groups. In such circumstances a recipient may properly give special consideration to race, color, or national origin to make opportunity more widely available to such groups.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

§ 112.8 Assurances required.

An application for any of the financial assistance described in §112.2(a) shall, as a condition to its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. Such an assurance shall contain provisions authorizing the acceleration of the maturity of the recipient's financial obligation to the SBA in the event of a failure to comply, and provisions which give the United States a right to seek judicial enforcement of the terms of the assurance. SBA shall specify the form of the foregoing assurance for each program, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors in interest, and other participants in the program.

§ 112.9 Compliance information.

(a) *Cooperation and assistance.* SBA shall to the fullest extent practicable seek the cooperation of applicants and recipients in obtaining compliance with this part and shall provide assistance and guidance to applicants and recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each applicant or recipient shall keep such records and submit to SBA timely, complete and accurate compliance reports at