

**NLWJC - Kagan**

**DPC - Box 059 - Folder-008**

**Welfare - Civil Rights Issues**

W<sub>R</sub> - civil rights

~~Cynthia/Diana/Kelua -~~

~~Sure, yes, fine. I~~

~~Think I would have had a counter-counter-suggestion a month (or more) ago when you first gave this to me, but by now I consider myself estopped.~~

~~Elena~~



Cynthia A. Rice

07/28/98 07:30:40 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Andrea Kane/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
bcc:  
Subject: Re: Follow up on NYT Story re: Minorities on Welfare

Elena -- remember that civil rights guidance HHS was trying to get us to clear? It might come up in this context. HHS had a counter-suggestion to your language... here's the text of the last email Diana sent you on the subject. What do you think?

HHS had a counter-suggestion to our suggestion. Actually, I'm not sure it's so bad. HHS's concern about our suggested language was that it appeared too much to *invite* racially neutral criteria with a disproportionate impact. But their new effort is more positive than their old. I think it's OK, although maybe I'm just getting tired. Is this OK with everyone?

Intro:

The Act imposes a 5-year limit on receipt of TANF benefits. However, a state may allow hardship exemptions from the time limit for up to 20% of its caseload.

DPC Suggestion:

A racially neutral criterion that excludes a disproportionately greater number of minorities than non-minorities is permissible, so long as there is a substantial and legitimate justification for this criterion and there is no comparably effective alternative that excludes fewer minorities.

HHS Counter-Suggestion:

States should take care in establishing the criteria for allowing such exemptions particularly where racially neutral criteria exclude a disproportionately greater number of minorities than non-minorities. Neutral criteria that cause a significantly disproportionate exclusion are permissible, only so long as there is a substantial and legitimate justification for these criteria and there is no comparably effective alternative that excludes fewer minorities.

[For those who want to cast their minds back, here is HHS's original version that we didn't like, FYI.]

HHS Original Version:

States and counties may not use a racially neutral criterion that, nevertheless, excludes a disproportionately greater number of minorities than non-minorities to determine who will be granted this exemption, unless there is a substantial and legitimate justification for this criterion. Even if there is such a justification, this criterion cannot be used if there is a comparably effective alternative to identify persons who qualify for this exemption that excludes fewer minorities.

Andrea Kane

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Diana Fortuna 06/10/98 01:30:34  
PM

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Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: Civil rights draft guidance on welfare reform

Below is the passage that raised red flags for Bruce. Please take a look at it and let me know how you'd like to proceed. It explains how existing civil rights laws would apply in the case of the new 5-year time limit. Eddie Correia of WH Counsel is OK on this; he suggested changes to an earlier draft that are reflected in this version.

The overall document is the product of civil rights experts at HHS, DOJ, and several other agencies. When we OK the document, it will go out as draft guidance for states, advocates, and civil rights groups to comment on. The general impetus is a desire to clarify how civil rights laws apply to new areas of welfare law, mostly welfare to work but also time limits. The specific impetus is that Shalala told the Leadership Conference on Civil Rights that she would do this.

Here's the current text:

"Set forth below are examples of conduct that may violate Title VI:

"...The Act imposes a 5-year limit on receipt of TANF benefits. However, a state may allow hardship exemptions from the time limit for up to 20% of its caseload. State and counties may not use a racially neutral criterion that, nevertheless, excludes a disproportionately greater number of minorities than non-minorities to determine who will be granted this exemption, unless there is a substantial and legitimate justification for this criterion. Even if there is such a justification, this criterion cannot be used if there is a comparably effective alternative to identify persons who qualify for this exemption that excludes fewer minorities."

In answer to some of the questions you may have about the foregoing:

Q: In measuring whether a criterion excludes "a disproportionately greater number of minorities", is the base the welfare caseload subject to the time limit or the population at large? A: The welfare caseload subject to the time limit.

Q: Is HHS prepared to give states technical assistance to define terms like "disproportionately greater" and "substantial and legitimate justification"? A: They're prepared to talk to and try to help states, but my understanding is that they won't offer any specific guidance or comfort such as "you're OK as long as your exemptions for minorities are within ± 5% of the percentage of minorities in the caseload." That's the nature of the beast and that's why it will be scary to states.

What do you think?

- ① See Q5
- ② Meet w/ BR + EK
- ③ Weekly item

May 15, 1998  
 Cynthia --

Here is the draft civil rights guidance for you to look over. The time pressure is that the Secretary promised a draft to civil rights groups in early May, and HHS is harassing me.

I have marked this up so you can just glance at sections I've marked to get a good sense of this document. As far as I can tell, just about all the legal issues have been addressed, and I am reasonably satisfied that this represents a "state of the art" statement on civil rights laws and welfare. So our question is really (1) how much will states freak out over this, and how do we get ready for that; and (2) are we sure we want to roll this out in this particular form (although I'm not sure what the alternative is).

Things to know/keep in mind:

- It consists of a 7-page overview and a 12-page technical assistance document that is meant to be a handy-dandy guide for caseworkers.
- They plan to give this simultaneously to civil rights groups and state groups.
- It will be marked "draft" and we will be explicitly asking groups for their comments.
- While the draft portrays this as a handy reference guide for those in the field, there are enough gray areas in civil rights laws that many sections sound vaguely alarming to me, and don't have enough specificity for a state worker to know which side of the line they're on. I have tried to mark examples of this throughout the document. When I raised this concern to all the civil rights types at the agencies, they didn't seem to understand what I was talking about.
- Andrea and I are both a bit confused about the scope of this document. It says this is guidance on "welfare programs." It often refers to TANF and occasionally refers to food stamps, but never mentions any other programs like Medicaid or child care. The real focus of it is "welfare to work" situations, and maybe it should say so. In that case, it probably shouldn't refer to food stamps.
- Putting this together has been a festival for civil rights lawyers in several agencies, so you should know the draft has already been widely circulated in many agencies. No leaks, though, as far as I know. I do know they're talking to advocates.

*done but have also added language to clarify that these laws apply to all fed-funded programs*

Let me know what you think -- specifically whether and how we put this before Bruce and/or Elena.

Diana

cc: Andrea

# CIVIL RIGHTS LAWS AND WELFARE REFORM - AN OVERVIEW

A variety of Federal nondiscrimination laws require that Federally assisted programs be administered in a manner that does not discriminate or have the effect of discriminating on the basis of race, color, national origin, disability, sex, age, religion and political belief.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereafter referred to as PRWORA) specifically incorporates Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. These laws, and other Federal civil rights laws, including Title IX of the Education Amendments of 1972, as amended, Title VII of the Civil Rights Act of 1964, as amended, and the Equal Pay Act of 1963 continue to apply to States and other Federally-assisted entities that provide funds, employment, training, ~~food stamps~~ and other benefits under the PRWORA.

This document reviews the general prohibitions against discrimination and is intended to assist States and welfare providers in applying these nondiscrimination laws to welfare programs. Additional examples of practices which may violate these nondiscrimination laws are provided in a document for case workers, entitled "Technical Assistance for Caseworkers on Civil Rights Laws and Welfare Reform." *which applies to all Fed. programs*

Agencies participating in the development of these technical assistance documents are: the U.S. Department of Health and Human Services, the U.S. Department of Labor, the U.S. Department of Justice, the U.S. Department of Education, the U.S. Department of Agriculture and the Equal Employment Opportunity Commission.

*These prohibitions apply to all federally-funded programs, not just welfare programs, but welfare-related examples*

Civil Rights Requirements

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. Programs that receive Federal funds cannot distinguish among individuals on the basis of race, color or national origin, either directly or indirectly, in the types, quantity, quality or timeliness of program services, aids or benefits that they provide or the manner in which they

provide them. This prohibition applies to disparate treatment, as well as to facially neutral procedures, criteria or methods of administration that have a disparate impact on individuals because of their race, color, or national origin. Policies and practices that have such an impact must be eliminated unless they have a substantial and legitimate justification. Even if there is such a justification the practice cannot continue if there is a comparably effective alternative to achieve the objective of the practice or policy and that excludes fewer minorities.

Set forth below are examples of conduct that may violate Title VI:

- A welfare benefit provider restricts training and/or work assignments based on its clients' race or national origin by assigning minority clients to jobs that pay less or have fewer opportunities for permanent employment than work assignments given to nonminority clients.
- A predominantly minority community is provided lower benefits, fewer services, or is subject to harsher rules than a predominantly nonminority community.

• The Act imposes a 5-year limit on receipt of Temporary Assistance to Needy Families (TANF) benefits. However, a state may allow hardship exemptions from the time limit for up to 20% of its caseload. States and counties may not use a racially neutral criterion that, nevertheless, excludes a disproportionately greater number of minorities than nonminorities to determine who will be granted this exemption, unless there is a substantial and legitimate justification for this criterion. Even if there is such a justification, this criterion cannot be used if there is a comparably effective alternative to identify persons who qualify for this exemption that excludes fewer minorities.

Subject to the time limit

**B. The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq.**

The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. A provider generally may not exclude, deny, or provide different or lesser services to applicants or beneficiaries, on the basis of age.

Does "disproportionately greater" means greater than in the caseload or in the population at large?  
 If former, make clear

This is the toughest part. WH Counsel has signed off on this

Authograms prepared to define "disproportionately greater" and "substantial and legitimate justification"

Examples of conduct that may violate the Age Discrimination Act include:

- ▶ In a computer training program, trainees over 40 are discouraged from seeking referrals to computer systems jobs. These older trainees are told that the systems' jobs require travel between different job-sites, are tiring and are more suitable for the younger trainees.
- ▶ A training program for classroom aides does not admit anyone under 30. The provider believes that persons under 30 are not mature enough to work with school age children.
- ▶ A provider has a job referral arrangement with an employer who refuses to accept anyone over 30 from the provider's automotive repair training class.

### C. Civil Rights Laws Applicable to Persons with Disabilities

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504") prohibits discrimination on the basis of disability by recipients of Federal financial assistance. The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"), prohibits discrimination on the basis of disability by both public and private entities implementing a public entity's program, whether or not they receive Federal financial assistance. Providers covered by Section 504 and/or the ADA may not deny benefits or services to qualified individuals with disabilities or provide lesser benefits than they provide to others. In general, an individual with a disability is "qualified" if that person meets the essential eligibility requirements for receipt of services or participation in the program or activity with or without reasonable modification. The purpose of these laws is to ensure that covered programs are as accessible to persons with disabilities as they are to nondisabled individuals.

Persons with disabilities may be eligible under some state programs for exemptions from work requirements and/or time limits. However, program providers may not refuse to allow a person with a disability to participate in training programs or be employed because the person has a disability, and they must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to participate. This applies to persons with mental or physical disabilities. Eligibility for participation in any benefit, service or program must be based on an individual assessment of each person's ability to meet the eligibility requirements rather than on stereotypes or assumptions about the effects of a type of disability. Program providers are required to make reasonable modifications to

policies, practices and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result. If a reasonable modification to the program requirements would enable a person to meet the eligibility requirements without fundamentally altering the program, that modification must be offered.

Set forth below are examples of conduct that may violate Section 504 and the ADA:

- ▶ A benefit provider refers persons with disabilities to placement opportunities inappropriately because of the failure to properly and individually take into account a person's known disabilities.

Program providers must ensure that programs and services are provided in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity for individuals with disabilities. Programs that provide special benefits to people with disabilities are permitted, but people with disabilities cannot be compelled to participate in those programs. Even if separate programs are provided for persons with disabilities, the regular program may still be required to provide reasonable modifications.

Program providers must also ensure effective communication with individuals who have hearing, speech or visual impairments. Providers must provide such persons with auxiliary aids if necessary to ensure effective communication, but are not required to provide aids that would cause a fundamental alteration in the program or that would result in undue financial or administrative burdens. Thus, it could be a violation of Section 504 and the ADA if:

- ▶ Information about job openings is available by telephone but it is not available by other effective means for individuals with hearing impairments.
- ▶ A provider fails to provide reasonable accommodation in job training and other programs conducted by the agency. e.g. A trainee who is blind is not provided instructional materials in braille.

- ▶ Printed information is available to participants but such information is not available on audiotape or in braille, or other effective means for persons with visual impairments.
- ▶ Information is provided orally but a sign language interpreter or other form of effective communication is not provided for hearing impaired participants.

Finally, providers may not exclude individuals with disabilities because their buildings are inaccessible. A provider is not required to make structural changes in existing facilities where other methods are effective in achieving equal access. In choosing among other methods, priority must be given to those that offer programs in the most integrated setting. However, providers are not required to take any action that would result in a fundamental alteration in the nature of the program or in undue financial or administrative burden. New construction and alterations to existing facilities must be made accessible and usable by persons with disabilities.

D. Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et. seq. (Title IX)

Title IX prohibits discrimination on the basis of sex in educational programs and activities that receive or benefit from Federal financial assistance. Generally, a provider may not exclude, deny or provide different or lesser services to applicants or beneficiaries on the basis of sex.

Set forth below are examples of conduct that may violate Title IX:

- ▶ A provider offers job training opportunities in electrical repair work, but has accepted no women into the training program even though several women have requested admission.
- ▶ Equal numbers of men and women are admitted into a provider's cosmetology training program. However, few of the men are referred to jobs in the cosmetology area, while many of the women are.
- ▶ In a culinary training program, men are placed in a variety of food preparation classes taught by chefs, while women are placed in meal planning and serving classes taught by less qualified teachers.

### E. Federal Employment Discrimination Laws

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. ("Title VII"), the Age Discrimination in Employment Act of 1967, as amended, 42 U.S.C. Section 621 et. seq. (ADEA) and the Equal Pay Act of 1963, 29 U.S.C. Section 206 (d) (EPA), are Federal employment discrimination laws that offer civil rights protection to all workers, including TANF beneficiaries who participate in work activities.

*Supposed to change this to: "make the transition from welfare to employment"*

Title VII prohibits both employers and employment agencies with 15 or more employees from discriminating on the basis of race, color, sex (including pregnancy), religion or national origin in all aspects of an employment relationship, including hiring, discharge, compensation, assignments, and other terms, conditions and privileges of employment. The ADEA prohibits employers with 20 or more employees, and state and local governments from discriminating against persons 40 or older because of age. The EPA requires payment of equal wages to men and women performing substantially the same work unless the pay discrepancy is based on a seniority or merit system, a system that measures quantity or quality of production, or a factor other than sex. The EPA applies to employers of any size. Each of these laws prohibit retaliation against individuals because they oppose practices that they reasonably believe are unlawful under the employment discrimination statutes or because they participate in proceedings under the employment discrimination statutes.

Title I of the ADA is another statute that offers protection to TANF beneficiaries engaged in work activities. Title I prohibits private and State and local government employers with 15 or more employees from discriminating in employment, on the basis of disability. It also prohibits retaliation for opposing disability discrimination or participating in the complaint process. Title I applies to all employers who are covered by Title VII and prohibits discrimination based on disability in all aspects of the employment relationship.

Set forth below are examples of conduct by welfare agencies that assign TANF participants to work activities and the employers to whom they are assigned that may violate Title VII:

- ▶ Denying employment opportunities to a TANF participant because he looks "foreign" or has an accent.
- ▶ Prohibiting an employee from wearing religious clothing would be religious discrimination unless this would pose an undue hardship for the employer, e.g. a young Muslim woman who wears a shawl covering her head in keeping with Muslim teachings, or a young man who wears a turban in keeping with Sikh religious teachings.

The Federal agencies will continue to work with you and other benefit providers as welfare reform is implemented. Attached are addresses and telephone numbers of the Federal agencies as a helpful reference for questions related to civil rights and welfare reform. Each agency has provided a toll free number for your convenience and is available to provide technical assistance, and answer questions. Please share this information with your colleagues, constituents and other interested organizations.

Attachment: Federal Agency Listing

### TECHNICAL ASSISTANCE FOR CASEWORKERS ON CIVIL RIGHTS LAWS AND WELFARE REFORM

*in any federally funded program, including 5/6/98 welfare programs,*

Welfare providers and employees face many new responsibilities and challenges as a result of welfare reform, particularly in implementing the Temporary Assistance for Needy Families program (TANF). The purpose of this document is to give welfare providers (recipients) and employees an overview of Federal laws that prohibit discrimination and to alert them to stereotypes or other actions that, even if unintended, may violate Federal laws. The examples of discriminatory conduct provided in this document are illustrative, and are not an exhaustive list of all potential violations of laws prohibiting discrimination.

*Weird*

#### I. What Federal Nondiscrimination Laws Apply to TANF Programs?

Federal laws that prohibit discrimination in federally funded programs and activities on the basis of race, color, national origin, sex, disability, and age apply to the TANF program, Welfare-to-Work (WtW), ~~food stamps~~, and other welfare programs and the actions of welfare providers. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) specifically incorporates Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990 (ADA). These laws, and other Federal civil rights laws, including Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA) continue to apply to States and other recipients that provide funds, employment, training, ~~food stamps~~, and other benefits under the PRWORA.

*just as they do other federally-funded programs + providers*

*still checking this*

The purpose of these laws is to ensure that programs operated with Federal money do not exclude or deny benefits or services to persons, or provide different, lesser benefits to persons on any of these prohibited bases. In addition, employers are subject to the same Federal laws that prohibit discrimination when they employ welfare participants as when they employ other individuals.

#### II. Who Is Covered by Federal Nondiscrimination Laws?

Public agencies and private businesses that administer welfare, WtW, ~~food stamp~~, and other programs and activities that receive Federal money or other forms of Federal assistance are subject to several nondiscrimination statutes, including Title VI, Title IX (in education programs), Section 504 and the Age Discrimination Act.<sup>1</sup>

~~federally funded programs including TANF~~

<sup>1</sup> For ease of reading, all references in this section to "nondiscrimination statutes" should be understood to include Title VI, Section 504, the Age Discrimination Act and, when concerning education programs, Title IX. In addition, all references to "employment discrimination statutes" should be understood to include Title VII, the ADEA, the ADA, and

All public agencies of any size, businesses with 15 or more employees, and employment agencies are subject to Title VII and the ADA whether or not they receive Federal financial assistance.

All public agencies, businesses with 20 or more employees, and employment agencies are subject to the ADEA.

Most employers and public agencies are subject to the EPA.

As discussed above, the **nondiscrimination statutes** prohibit discrimination on the basis of race, color, national origin, age, and disability in programs or activities that receive or benefit from Federal financial assistance, and prohibit discrimination on the basis of sex in education and training programs that receive Federal financial assistance. The **employment discrimination statutes** prohibit discrimination on the basis of race, color, religion, national origin, sex, age, and disability in private and public sector employment.

Examples of who these laws apply to are:

- State agencies that receive Federal money through a block grant to conduct welfare programs are subject to the nondiscrimination statutes.
- County and town offices that assist in job training as part of a welfare program are subject to the nondiscrimination statutes.
- Private businesses hired by States to identify who is eligible to receive welfare benefits are subject to the nondiscrimination statutes.
- Private businesses that help welfare participants find jobs or training are subject to the nondiscrimination statutes.
- County offices that distribute food stamps receive Federal money and are subject to the nondiscrimination statutes.
- Local offices that operate federally funded child nutrition programs (for example, National School Lunch Program and Women, Infants and Children) are subject to the nondiscrimination statutes.

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the EPA.

- All businesses or public agencies that hire welfare participants are subject to the employment discrimination statutes if they have the requisite number of employees. (Of course, if they receive Federal assistance, they are also covered by the nondiscrimination statutes.)
- State agencies that refer welfare participants to businesses or public agencies for employment are subject to the employment discrimination statutes.
- Private businesses that contract with States to provide job referral services for welfare participants are subject to the employment discrimination statutes. *for their referrals only?*

### III. What Conduct Is Prohibited In Federally Funded Programs and Activities?

Entities that receive Federal financial assistance may not discriminate against people on the basis of race, color, national origin, disability, or age in how they run their program or activity, or on the basis of sex in education programs. (Section V specifically addresses nondiscrimination on the basis of disability.)

Programs *may not exclude or deny welfare benefits* to persons based on their race, color, national origin, or age, or on the basis of sex in education programs.

#### Examples:

- Welfare workers may not assume that a person is not eligible for benefits because he is or appears to be an African-American, Hispanic, Asian, American Indian, Alaskan Native, or a member of another racial or ethnic minority.
- County employees may not make an assumption regarding a person's citizenship and/or eligibility for welfare or food stamp benefits based on the person's last name.
- A TANF contractor's employees may not deny benefits to persons who are not fluent in English because they assume persons who are or appear to be from other countries, and are not English proficient, are not eligible for such benefits.

Programs *may not impose different standards or procedures to determine who may receive benefits* on the basis of race, color, national origin, or age, or on the basis of sex in education programs.

Examples:

- Employees may not require an African-American male to submit additional or different documents than what is asked of a white male to establish his legal status and eligibility for welfare benefits in the absence of evidence to warrant further inquiry.
- If a local welfare office accepts a particular INS Form to establish a white woman's eligibility for welfare benefits, the welfare office cannot require a Hispanic male applicant who submits the same form to provide additional proof of his legal status and eligibility for welfare benefits in the absence of evidence to warrant further inquiry.
- An employee of a contractor hired by a State may not delay a review of applications from older individuals (over age 40) until after she evaluates applications from younger persons, including applications from younger individuals that are submitted after a person over 40 years.
- Employees should not question the authenticity of documents submitted by applicants who are or appear to be Hispanic, in the absence of independent evidence to warrant such inquiry. All documents should be presumed to be authentic and legitimate, if they appear genuine on their face.
- A welfare office may not refuse to provide translated written materials to applicants when a significant proportion or number of eligible persons are limited English proficient. *better*
- If States choose to impose drug testing on participants, they must do so without regard to race, color, or national origin. For example, if a sample of the participant population is tested, the race and ethnicity of members in this sample may not be disproportionate to the race and ethnicity of participants overall. Further, States must ensure that the consequences of positive tests are not imposed differently based on the race or ethnicity of the participant.

Programs *may not provide different benefits* to persons on the basis of their race, color, national origin, or age, or on the basis of sex in education programs.

Examples:

- Employees must provide complete information to all persons that ask questions about the type of benefits, including job training assistance, placement, and other services, and not fail or refuse to provide the same, complete information on opportunities to persons who are or appear to be Asian.
- A county employee may not deny job training benefits to persons because they are or appear to be Hispanic.
- A contractor's employee may not enroll a male participant in a computer training program and deny a female participant an opportunity for the same program, (where both participants do not have a high school diploma), because the employee assumes the woman is not smart enough to learn the computer skills.
- A welfare agency employee may not assume, because a welfare participant is over 50 years, that he is too weak for certain training classes for manual labor, or too old to be placed in computer training classes, while younger welfare participants and with the same background, are placed in these training classes.
- A welfare office must provide written materials that describe all of the benefits and services offered to applicants and participants in appropriate languages other than English when a significant number or proportion of the population to be served has limited English proficiency.

#### IV. What Type of Conduct Is Prohibited in Employment Settings?

Employment discrimination laws protect workers and prospective workers from discrimination based on race, color, national origin, religion, sex, age, or disability. These laws apply to both individual employers and employment agencies, including welfare agencies and contractors that provide job placement services for welfare participants. The laws prohibit discrimination in all aspects of the employment process: hiring and discharge, compensation, assignments, and all other terms, conditions, and privileges of employment. These laws also protect all workers who are in an employment relationship — where the employer has the right to control the "means and manner" of the individual's work, whether or not the employer pays the individual's salary.

Examples:

- Individuals who refer welfare participants to an employer may not make assignments on the basis of race, color, national origin, religion, sex, age, or disability. Thus, for example, a job placement service for welfare participants

may not assign African-Americans to janitorial and sanitation positions and whites with similar backgrounds to entry-level office positions.

- Employers and those referring welfare participants to employers may not retaliate against participants because they opposed practices that they reasonably believed were unlawful under the employment discrimination statutes or because they participated in proceedings under the employment discrimination statutes.
- Employers and those referring welfare participants to employers may not discriminate on the basis that a person looks "foreign" or has an accent.
- Employers and those referring welfare participants to employers may not make hiring or referral decisions on an assumption that participants over the age of 50 are too weak for manual labor.
- Employers must accommodate an employee's or welfare participant's religious practices unless doing so would create an undue hardship. For example, people must normally be permitted to wear religious attire unless doing so would create a safety hazard. Furthermore, a welfare agency may not refuse to refer an individual for employment because of his or her need for religious accommodation.
- A contractor that provides job training or referral services may not use a high school diploma requirement for participation in training programs, or use another requirement that excludes disproportionate numbers of minorities, unless such a requirement is job related and consistent with business necessity. Further, such a requirement may not be used if there is available to the contractor an alternative that would exclude fewer minorities and also serve the contractor's legitimate interest in efficient and trustworthy job performance.
- Employers may not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the payment of wages. Also, employers must pay equal wages to women and men who perform substantially equal work, unless the pay discrepancy is based on a seniority system, a merit system, a system that measures quantity or quality of production, or on a factor other than sex.
- Employers may not place female welfare participants in office positions while male welfare participants are placed in manual labor positions based on assumptions of the individual's skills or strength.

*Here it is again*



## V. What Conduct on the Basis of Disability Is Prohibited?

### Programs and Services

Public entities (and private contractors implementing a public entity's program) may not discriminate against any qualified individual with a disability in providing services or administering any program or activity, whether or not the program receives Federal financial assistance. In general, an individual with a disability is "qualified" if that person meets the essential eligibility requirements for receipt of services or participation in the program or activity. Program providers may not refuse to allow a person with a disability to participate because the person has a disability, and they must eliminate unnecessary eligibility standards or rules that deny an individual with a disability an equal opportunity to participate.

#### Examples:

- The director of a county day care program for the children of welfare participants who are attending employment training programs may not refuse to accept children who use wheelchairs into the program.
- A community college offering job-training for welfare participants may not require students with disabilities to provide medical histories if such histories are not required of all students.
- A welfare office may not refuse to permit guide dogs and other service animals assisting individuals with disabilities to accompany those individuals into the office.
- A welfare office may not exempt individuals with disabilities from work activities based on assumptions that such individuals are not qualified to participate in training or work.

Program providers are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.

#### Examples:

- A job-training course for welfare participants must extend testing time when a person with a learning disability requests extra time to complete the test because of his or her disability. The course provider may ask the individual who is

seeking extra time to provide reasonable documentation of the learning disability and the additional time that is required.

- A welfare program with a complicated application will need to simplify its application form or provide someone to help fill out the form when a person with a mental disability is unable to complete the form.

Program providers must ensure that programs and services are provided in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity for individuals with disabilities. Programs that provide special benefits to people with disabilities are permitted, but people with disabilities can not be compelled to participate in those programs.

Examples:

- A county social service center that provides a hot lunch program for senior citizens may not require people with HIV to be served in a separate room from the other participants.
- A county vocational training program may offer special training opportunities for people with vision impairments, but it may not require people with vision impairments to participate in the special program or refuse to permit them to participate in courses open to other program participants.

Program providers must ensure effective communication with individuals who have hearing, speech, or vision impairments. Programs must provide auxiliary aids and services (such as Braille material, sign language interpreters, readers, or text telephones (TTY's)) when necessary to ensure effective communication but they are not required to provide auxiliary aids that will result in a fundamental alteration of the program or service or that will result in undue financial and administrative burdens.

Examples:

- A municipal job placement program that makes information about job openings available by telephone must ensure that the information is available to users of TTY's.
- A city welfare office that provides printed information about eligibility requirements to applicants must ensure that the same information is provided on audiotape or in Braille for people who have vision impairments.

- Job training programs for welfare participants must provide sign language interpreters for deaf students when it is necessary to ensure effective communication for those students.

Program providers may not exclude individuals with disabilities from programs and activities because buildings are inaccessible, but the providers are not required to take any action that would result in a fundamental alteration in the nature of the program or activity, or in undue financial and administrative burdens. This means that providers need not remove physical barriers, such as stairs, in existing buildings, as long as they make their programs accessible to individuals with disabilities in other locations or through other methods, such as home visits.

Examples:

- A welfare office that is located on the second floor of a building that has no elevator may make its services accessible to a applicant who uses a wheelchair by meeting with that applicant in an accessible ground floor office. However, if all the other participants met together for discussions on the second floor and they could not meet on the ground floor, the limited access would be insufficient.
- A food stamp office located in an inaccessible space may make its services accessible to a person with a mobility impairment by alternative methods. For example, a food stamp office may mail an application to an applicant and conduct a home visit to determine eligibility, or interview the applicant's designated representative at the office. Food stamps may also be mailed to that person's residence or picked up by the representative.
- A job training program that usually offers classes in an inaccessible second-floor classroom may make its program accessible by relocating the class to an accessible classroom in another building.

Program providers must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities. Covered entities are not required to retrofit existing buildings to eliminate barriers, but when alterations are undertaken, the altered elements must be made accessible. However, if program access cannot be provided without structural modifications, structural modifications must be made.

## Employment

The ADA prohibits employment discrimination against any qualified individual with a disability because of that individual's disability in regard to job application procedures, the hiring and discharge of employees, employee compensation, advancement, job training, or any other terms, conditions, or privileges of employment. For purposes of employment, an individual with a disability is "qualified" if that individual, with or without reasonable accommodation, can perform the essential functions of the job in question.

Employers and those referring welfare participants to employers may not impose qualification standards that screen out any individual with a disability or a class of individuals with disabilities unless such standards are shown to be job related and consistent with business necessity. Even if the standard is job related and consistent with business necessity, the employer or referring entity that imposes the standard must consider whether there is a reasonable accommodation that will enable a welfare participant with a disability to meet the standard.

### Examples:

- In an interview, an employer may not ask if an applicant has a disability.
- If an applicant has a known disability, the employer may not ask about the disability itself. However, if the applicant has a known disability that may prevent the individual from performing the essential functions of the job, the employer may ask how, with or without reasonable accommodation, the applicant would perform the specific tasks required. However, if the known disability will not interfere with the performance of a job-related function, the employer may request a description or demonstration only if the employer makes the same inquires of all applicants. *Contradiction?*
- An employer may want to require that all job applicants have a driver's license. This requirement may exclude an individual with epilepsy or blind people as a group. If driving is an essential function of the position, for example, a bus driver's job, no change in this policy would be required. However, if an applicant is seeking a position for which having a driver's license is merely convenient — for example, a secretarial position, the employer would be required to modify this policy unless the employer could demonstrate undue hardship.

Employers are required to provide reasonable accommodations to employees to enable them to perform the essential functions of the job unless the employer can demonstrate

that providing a reasonable accommodation would cause an undue hardship to the employer. An "undue hardship" is an action requiring significant difficulty or expense. "Reasonable accommodation" includes, but is not limited to, modifying existing facilities to make them accessible, acquiring or modifying equipment, providing readers or sign language interpreters, offering part-time or modified work schedules, or restructuring the duties of the job.

**Examples:**

- An employer normally requires all employees to have a driver's license. A secretary employed by the company develops epilepsy, and, as a result, is unable to renew his license. The employer would be required to provide a reasonable accommodation for the employee by waiving the driver's license requirement unless the employer could demonstrate undue hardship.
- A job training program offered by an employer may be required to provide sign language interpreters for deaf employees when it is necessary to enable them to participate in the training.
- An accountant with a vision impairment is hired by a welfare provider. That employer may be required to provide reasonable accommodation for the accountant by obtaining computer equipment to enable the accountant to read printed material.
- A welfare recipient who uses a wheelchair obtains a job on the clerical staff of an employer whose offices are in a building that has two-steps at the entrance. The employer may be required to provide reasonable accommodation for the employee by providing a ramp at the building entrance.

**VI. How Are The Nondiscrimination Laws Enforced?**

Federal agencies may investigate alleged noncompliance by a recipient of Federal financial assistance upon receipt of a complaint or conduct a compliance review of a recipient. If an agency believes a recipient is not in compliance with nondiscrimination laws, it will initially seek to negotiate compliance by the recipient. If negotiations fail and noncompliance remains, the agency may seek judicial enforcement or seek to terminate Federal funding. Individuals may bring lawsuits to enforce their rights under Title VI, Title IX, Section 504, or the Age Discrimination Act and, in certain circumstances, may receive compensatory damages if they prevail.

Individuals who work also may have rights under the Federal employment discrimination laws that protect them from unlawful discrimination in hiring, work

assignments, promotions, etc., and may file a complaint with the appropriate Federal agency. Individuals, after complying with administrative complaint procedures, may also bring lawsuits to enforce their rights (including the potential for compensatory damages) under Title VII, the ADEA, and the ADA. Individuals may file private suits to enforce their rights under the EPA without first filing an administrative complaint.

Federal contractors and subcontractors are required to comply with Executive order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended. These laws ban discrimination and also require Federal contractors, subcontractors, and contractors working on federally assisted construction contracts to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability, or status as a Vietnam era or special disabled veteran. These laws are administered by the Office of Federal Contract Compliance Programs (OFCCP). OFCCP also acts as an agent for the Equal Employment Opportunity Commission in the enforcement of the ADA.

#### **VII. Who May File A Complaint of Discrimination?**

Any individual who believes that he or she is a victim of discrimination on the basis of race, color, national origin, disability, age, or sex in a program or activity that receives Federal assistance may file a complaint with the Federal agency that provides assistance to the program in issue, or with the U.S. Department of Justice, which will refer the complaint to the appropriate agency. An individual who believes that he or she is a victim of employment discrimination in violation of Title VII, the ADEA, or the ADA may file a complaint with the Equal Employment Opportunity Commission.

Complaints on behalf of classes of individuals are also permitted. Complaints generally must be filed within 180 days of the alleged discriminatory event. Individuals who ask welfare providers how to file a complaint should be referred to the appropriate Federal agency.

Individuals who work for Federal contractors or subcontractors, including individuals who obtain employment as a result of welfare implementation, and who believe they have been discriminated against, may file complaints directly with any of OFCCP's regional or district offices throughout the country, or with the OFCCP office in Washington, D.C. Complaints must be filed within 180 days from the date of the alleged discrimination, or within 300 days in the case of complaints filed under Section 503 of the Rehabilitation Act.

Diana Fortuna

02/13/98 02:12:23

PM

Record Type: Record

To: Robert N. Weiner/WHO/EOP, Cynthia A. Rice/OPD/EOP

cc: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Guidance on welfare and civil rights

Dennis Hayashi of HHS's civil rights office says that the Leadership Conference on Civil Rights is coming in to meet with Shalala around Feb 25th, and HHS wants to know where we stand on the draft welfare/civil rights guidance we have in hand, so they can tell that group what's happening. Apparently that group is generally aware that HHS and other agencies are working on this. When we're satisfied with the draft, they want to informally share it with this group. So Dennis wants some kind of read from us by mid to late next week, and he may try to arrange a conference call with me and Rob.

(Actually, this is a remote possibility for our various lists of possible announcements of executive actions, don't you think, Cynthia?)

Diana -  
Whatever happened to this?  
Elena



File - WR - civil rights issues

# Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010  
Washington, D.C. 20006  
Phone: 202 / 466-3311  
Fax: 202 / 466-3435  
TTY: 202 / 785-3859

Cynthia/Diana —

FYI.

Elena

May 15, 1997

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Brian Komar

President William J. Clinton  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

## Re: Welfare Reform and Civil Rights Enforcement

Dear President Clinton:

On behalf of the 180 national organizations that comprise the Leadership Conference on Civil Rights, the nation's oldest and most broadly-based civil rights coalition, we write to request your assistance in making the civil rights and economic security of low-income individuals and families a higher national priority, as states implement the recently-enacted **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)**.

The Leadership Conference believes that real welfare reform must remain true to fundamental principles of equality, fairness, and social justice while increasing the chances for all families in need to become economically independent. The changes required by the PRWORA create new challenges -- and new risks -- to upholding these fundamental principles.

## New Threats of Discrimination Targeted at Low-Income Families

The PRWORA creates perverse new incentives for states to deny assistance to needy families and act in discriminatory ways, thus, erecting new hazards for individuals who already face discrimination: persons of color, women, people with disabilities, and older people. For example:

(\*Deceased)

"Equality In a Free, Plural, Democratic Society"

- **With the elimination of the individual entitlement to welfare benefits and services and the lack of clear rules, crucial decisions about who gets benefits, who gets services, and who gets penalized, may be made in arbitrary and discriminatory ways.** For example, as a result of the new legislation states now have wide latitude to use different rules in different geographic areas. As a result, communities with a high concentration of racial or ethnic minorities such as cities may receive lower benefits, fewer services, or be subject to harsher rules and penalties.
- **The harsh new restrictions aimed at legal immigrants will likely worsen discriminatory practices that many ethnic minorities already face.** Individuals who are eligible to participate in a particular welfare program could be shut out simply because they have an accent and are assumed not to be citizens. While the Department of Justice will be issuing guidance on verification of status procedures to providers that distribute federal public benefits, there will be no procedure to monitor the providers and likely no consequence to a provider that discriminates. Others may lose benefits because they are unfamiliar with new welfare program rules and cannot obtain materials in their native language. Still others are already being shunned by employers, or unfairly selected out to produce identification documents, simply because they "look foreign."
- **Early reports suggest that pressure on states to place recipients in jobs and meet strict new work participation requirements may push women, especially women of color, into low wage, stereotyped "women" and "minority" jobs with little training and few prospects for future employment.** States attempting to raise their work participation rates also may "cream" job seekers, i.e., focus more attention on individuals perceived as "more desirable" or the closest to being job-ready, and offer less desirable assignments to minorities, people with disabilities, older workers, pregnant women, immigrants and others who too often lose out on job opportunities, because of discriminatory stereotypes about their abilities.
- **Early reports also suggest that rigid new work participation requirements may discourage states and employers from assessing and accommodating the needs of individuals with disabilities.** A recent study by the Urban Institute found that 16-20 percent of women receiving AFDC (under the old welfare law) reported one or more disabilities that limited their ability to work. But some individuals with disabilities may be unable to comply with the new law's work requirements because their disability has never been identified, assessed, or reasonably accommodated. Moreover, specific provisions in the new law may have discriminatory effects on individuals with disabilities: the twelve month time limit on participation in vocational education, for example, may unfairly impact individuals with learning disabilities who need to enroll in specialized programs of a longer duration.

- **Increased sexual harassment is a foreseeable problem.** Women are the majority of adult welfare recipients. Given the documented instances of sexual harassment in our society, it is reasonable to assume that some of these women may become victims of harassment in the workplace because they are particularly vulnerable -- i.e. they risk losing vital benefits if they cannot keep their jobs.
- **Children may be penalized unfairly by welfare reform simply because of the circumstances of their birth; i.e. because their parents were unmarried, or young, or immigrants.** As a result, the new law will take benefits away from children who otherwise would receive them under the old AFDC program and who now desperately need them.

### Recommendations

Welfare reform should not mean a loss of civil rights protection. Moreover, devolution of power to the states cannot and must not mean the abandonment of the federal government's responsibility to provide basic civil rights protections for low-income individuals and families. The new welfare law does not modify the many civil rights laws that protect against discrimination, nor does it alter the federal government's continuing obligation to enforce such laws. In this changed environment, the role of your Administration will be critical. We urge the Administration to:

1. **Vigorously enforce the laws prohibiting discrimination in federally funded programs, including those specifically listed in the legislation and Title IX of the Education Amendments of 1972, as part of welfare implementation.** As the recent U.S. Commission on Civil Rights report, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs* (June 1996) concluded, there has been a history of under enforcement of Title VI, especially in the context of block grant programs. Given the heightened potential for discriminatory practices under the PRWORA, the federal government must develop new strategies to detect and challenge discrimination, and better coordinate its enforcement efforts.
2. **As states submit, amend and expand their state plans, the federal government should require specific information about the "objective criteria" states will use to determine eligibility; how they will assure "fair and equitable treatment;" and how they will provide welfare recipients an opportunity to be heard as required by the PRWORA.** The Department of Health and Human Services does not have the authority to disapprove state plans, but it does have the responsibility to determine whether the plans are complete. Requiring states, as they submit their plans in future years, to articulate the standards and procedures they intend to follow is critical to prevent arbitrary and discriminatory decision-

making at both the level of individual benefit determinations as well as the level of state-wide implementation. For example, if the state plan proposed differences in treatment for predominantly minority urban areas and predominantly white suburban areas, potential violations of Title VI could be identified and deterred.

3. **Vigorously enforce other civil rights and labor laws on behalf of welfare recipients, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Fair Labor Standards Act, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act, the Immigration Reform and Control Act, and the Family and Medical Leave Act.** Welfare recipients, whose families' access to subsistence benefits hinges on their ability to get and keep jobs, will be easy and vulnerable targets for discrimination. They are entitled to the same protections against discrimination, unsafe working conditions, and exploitive pay as other workers. And enforcing the law on their behalf protects all workers, by reducing the incentive to replace current employees with cheaper and more exploitable labor.
4. **Ensure that states comply with the requirements of the PRWORA to maintain assistance to single recipients who cannot obtain child care for a child under six years old, and maintain Medicaid coverage for eligible families.** The Administration should ensure that states comply with the law's provision protecting families with children under six from being penalized if lack of child care prevents them from accepting a work assignment by requiring states to conduct case reviews of a sample drawn from families that have been sanctioned.
5. **Work to repeal the provisions of the PRWORA that severely limit the eligibility of legal immigrants and refugees for a wide variety of federal benefit programs, and to address the inadequacies of the naturalization process.** The provisions of the PRWORA related to legal immigrants are blatantly discriminatory in that they treat foreign-born individuals differently than those who are born in the United States, denying them benefits until they have become naturalized citizens regardless of whether they work and pay taxes to the United States government. These provisions have a particularly discriminatory impact on elderly and disabled immigrants, many of whom are unable to fulfill the English language and civics requirements for naturalization or to take a meaningful oath of allegiance and therefore will remain permanently ineligible for Supplemental Security Income and Food Stamps.

President Clinton  
May 15, 1997  
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We also urge efforts to allow legal immigrants to continue to receive assistance while they are in the naturalization process, to waive the English language and civics requirements for an expanded class of elderly immigrants, and to allow individuals who are too disabled to naturalize to continue to receive federal benefits.

In addition to challenging discriminatory practices at the state level, we urge the Administration to work diligently at the federal level to remedy the harshest effects of the new law. The Administration has begun some of this work, but there is more to do. For example, we support proposals in the Administration's budget to mitigate the new law's hardships for the most vulnerable legal immigrants, people with disabilities and children. But the far-reaching impact of the new law -- almost all noncitizens are no longer eligible for SSI and Food Stamp benefits, and new immigrants will be barred from federal means-tested benefit programs for five years -- will require the Administration to take more steps to restore the status of legal immigrants as full and equal members of American society.

We strongly urge the Administration to take advantage of any flexibility permitted under the new law to minimize its negative consequences. For example, the PRWORA targeted the SSI Childhood Disability program for cuts, and required the Social Security Administration to develop a new definition of childhood disability. Unfortunately, the Social Security Administration failed to take advantage of the statute's flexibility, and has issued unnecessarily harsh interim final regulations. If these regulations are not changed, they are likely to disqualify at least 135,000 children with significant impairments, and to fall especially heavily on children with mental retardation or mental health problems.

Restricting children's eligibility for the SSI Childhood Disability Program will also restrict their eligibility for Medicaid. Most children who qualify for SSI are automatically eligible for Medicaid; thus, children who fail to meet the new restrictive definitions for SSI eligibility lose this automatic coverage. Some will qualify for Medicaid on other grounds; others, however, will not. We commend the Administration for proposing to continue Medicaid coverage for children currently receiving SSI, who are disqualified under the new rules defining childhood disability. However, this proposal only helps current recipients. It will not ensure Medicaid coverage for children who would have qualified for SSI, and thus Medicaid, under the former rules, but cannot meet the stringent new standards.

### **New Barriers to Economic Security Facing Low-Income Families**

Ensuring that low-income individuals are protected from discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence. The new law ignores many of the specific barriers -- such as the lack of

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livable wage jobs, transportation, health care, child care, domestic violence counseling, and limited access to quality education and job training programs -- that make it difficult for low-income individuals to move permanently from welfare to work. Many welfare recipients, for example, are being forced to drop out of school and take "dead-end" jobs even though completing their education may be the only way they can get jobs to support themselves and their families.

The welfare to work initiatives included in the budget may mean more funding to help individuals get jobs, but it is unclear what these initiatives will be and how much funding will be available. Even the original budget proposal -- \$3.6 billion allocated over five years -- is not enough to meet the needs of all of those who must find work. **We urge you to pursue meaningful and much-needed reforms, and seek additional funds to: (1) create new jobs that pay decent wages; (2) expand access to education and job training so that welfare recipients can be better prepared for the workplace; and (3) provide necessary support services, such as child care, health care, domestic violence counseling, and transportation costs, that welfare recipients need to go to work.** Without such reforms, welfare recipients will be pitted against, or simply displace, other low-wage workers as they vie for an inadequate supply of jobs and compete for ever-dwindling support services.

This Administration has distinguished itself by standing firm in its commitment to uphold basic civil rights protections for all individuals. We urge you to make the promise of our civil rights laws a reality for all individuals, particularly those most vulnerable, by making civil rights enforcement a top priority as the new welfare law is implemented. And, we urge you to go even further, by working to restore equal treatment for immigrants to this country, a safety net for children and adults with disabilities, and assistance to poor families struggling to achieve financial independence.

Sincerely,

**Dr. Dorothy I. Height**  
Chairperson  
Leadership Conference on Civil Rights

**Wade Henderson**  
Executive Director  
Leadership Conference on Civil Rights

**Horace Deets**  
Executive Director  
American Association of Retired Persons

**Jackie DeFazio**  
President  
American Association of University  
Women

WR - civil rights issue

Copies to Elena  
Cynthia  
Andrea



Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP  
cc: Andrea Kane/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: Guidance on civil rights and welfare reform

HHS's civil rights person (Dennis Hayashi) just told me that HHS has prepared guidance for states on civil rights laws and welfare reform, in consultation with EEOC, Labor, Education, USDA, and DOJ. (Who knew?) Anyway, they have a 20 page draft they just sent me that I will forward to you. There is a letter with an overview of the laws and a "technical assistance for caseworkers" document in the form of Q&A's and examples. I don't think the timing is urgent in any way.

It doesn't seem like a terrible idea to remind states and their agents of laws against discrimination on the basis of race, ethnicity, disability, age, etc., just as states are making this major change in their welfare programs. Most of the examples given are common sense but, of course, there are some issues. Three or four examples seemed odd to me, but since I don't know civil rights laws that well, perhaps they are natural extensions of the law. By far the most glaring one to me is as follows:

] Agree

"The Act imposes a 5-year time limit on receipt of TANF benefits. However, a state may allow hardship exemptions from the time limit for up to 20% of its caseload. States and counties may not use a neutral criterion that has a disproportionate impact on minorities to determine who will be granted this exemption, unless it can be shown that this is necessary, and no less discriminatory alternative is available."

I assume we would like Rob Weiner (or whoever is the appropriate person in counsel's office) to review this. Let me know if you want to take a different approach.

1st page to  
Andrea, Cynthia

Andrea -

I would like Rob to review.  
Ask him where the adverse  
impact less you note above  
comes from. Thanks, and  
sorry for taking so long  
to respond.

Elena

Draft: December 5, 1997, 1:00 p.m.  
Guidance on Nondiscrimination in Federal Welfare Reform

Dear Colleague:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereafter referred to as "The Act") transforms our nation's welfare system into one that requires work, promotes parental responsibility, and protects children. The Act imposes several new obligations on states, including the implementation of programs that impose increased work requirements on welfare beneficiaries. It also gives states broad discretion in the implementation of these work requirements.

Under the Act, states and many other providers of welfare services have legal obligations to comply with Federal civil rights laws that prohibit discrimination based on race, color, religion, sex, national origin, age, and disability. The requirements of the Federal civil rights laws are explained in the enclosure, "Civil Rights Laws and Welfare Reform - An Overview", and would apply to entities that provide funds, employment, training, food stamps, and other benefits under the Act. This document contains a list of Federal agencies available to answer your questions on the application of civil rights laws to your programs.

We have also enclosed another document, "Technical Assistance For Caseworkers on Civil Rights Laws and Welfare Reform", designed to provide caseworkers with real life examples of how civil rights laws apply in situations commonly encountered in casework. We urge you to provide both documents to your personnel to share this important information on the requirements of the Federal civil rights laws. This information has been developed in joint collaboration between the United States Departments of Health and Human Services, Labor, Justice, Education, Agriculture, and the Equal Employment Opportunity Commission. We hope it will be useful to your agency in implementing the Act and ensuring continued compliance with civil rights laws.

Sincerely,

Enclosures

*Not just TANF?*

## CIVIL RIGHTS LAWS AND WELFARE REFORM AN OVERVIEW

A variety of federal nondiscrimination laws require that federally assisted programs be administered in a manner that does not discriminate or have the effect of discriminating on the basis of race, color, national origin, disability, sex, age, religion and political belief (Section 272.6 of the Food Stamp Program Regulations).

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereafter referred to as "The Act") specifically incorporates Title VI of the Civil Rights Act of 1964, as amended Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. These laws, and other Federal civil rights laws, including Title IX of the Education Amendments of 1972, as amended, Title VII of the Civil Rights Act of 1964, as amended, and the Equal Pay Act of 1963 continue to apply to states and other recipients that provide funds, employment, training, food stamps, and other benefits under the Act.

This document reviews the general prohibitions against discrimination and is intended to assist states and welfare providers in applying these nondiscrimination laws to welfare programs. Additional examples of practices which may violate these non-discrimination laws are provided in a document for case workers, entitled "Technical Assistance for Caseworkers on Civil Rights Laws and Welfare Reform".

Agencies participating in the development of these technical assistance documents are: the U.S. Department of Health and Human Services, the U.S. Department of Labor, the U.S. Department of Justice, the U.S. Department of Education, the U.S. Department of Agriculture and the Equal Employment Opportunity Commission.

### Civil Rights Requirements

#### A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. When operating or participating in a Federally assisted program, a recipient cannot, on the basis of race, color or national origin, either directly or indirectly, distinguish among individuals in the types, quantity, quality or timeliness of program services, aids or benefits that it provides or the manner in which it provides them. This prohibition applies to disparate treatment, as well as to facially neutral procedures, criteria or methods of administration that have a

Page 2

disparate impact on individuals because of their race, color, or national origin. Policies and practices which have such an impact must be eliminated unless they are necessary to the program's operation and there is no less discriminatory alternative.

Set forth below are examples of conduct that may violate Title VI:

- o A state disproportionately grants exemptions to the 5-year TANF time limit for reasons of hardship to non-minority clients while similarly situated minority clients are routinely denied exemptions.
- o A benefit provider restricts training and/or work assignments based on its clients' race or national origin by assigning minority clients to jobs that pay less or have fewer opportunities for permanent employment than work assignments given to non-minority clients.
- o A predominantly minority community is provided lower benefits, fewer services, or is subject to harsher rules than a predominantly non-minority community.

B. The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq.

The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. A provider generally may not exclude, deny, or provide different or lesser services to applicants or beneficiaries, on the basis of age. If, for example, the provider excludes beneficiaries from education and training programs based on their age, this may violate the Age Discrimination Act.

C. Civil Rights Laws Applicable to Persons with Disabilities

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504") prohibits discrimination on the basis of disability by recipients of Federal financial assistance. The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"), prohibits discrimination on the basis of disability by both public and private entities whether or not they receive Federal financial assistance. Providers covered by Section 504 and/or the ADA may not deny benefits or services to qualified individuals with disabilities

Page 3

or provide lesser benefits than they provide to others. In general, an individual with a disability is "qualified" if that person meets the essential eligibility requirements for receipt of services or participation in the program or activity with or without reasonable accommodation. The purpose of these laws is to ensure that public programs are as accessible to persons with disabilities as they are to nondisabled individuals.

Program providers may not refuse to allow a person with a disability to participate because the person has a disability and they must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to participate. This applies to persons with mental and physical disabilities. Eligibility for participation in any benefit, service or program must be based on an individual assessment of each person's ability to meet the eligibility requirements rather than on stereotypes or assumptions about the effects of a type of disability. Program providers are required to make reasonable modifications to policies, practices and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result. If a reasonable modification to the program requirements would enable a person to meet the eligibility requirements without fundamentally altering the program, that modification must be offered.

Set forth below are examples of conduct that may violate Section 504 and the ADA:

- o A benefit provider refers persons with disabilities to placement opportunities inappropriately because of the failure to properly and individually take into account a person's disabilities.
- o A provider fails to provide reasonable accommodation in job training and other programs conducted by the agency.

Program providers must ensure that programs and services are provided in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity for individuals with disabilities. Programs that provide special benefits to people with disabilities are permitted, but people with disabilities cannot be compelled to participate in those programs.

Program providers must also ensure effective communication with individuals who have hearing, speech or visual impairments. Providers must provide such persons with auxiliary aids if necessary to ensure effective communication, but are not required to provide aids that would cause a fundamental alteration in the program or that would result in undue financial or administrative burdens. Thus, it could be a violation of Section 504 and the ADA if:

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- o Information about job openings is available by telephone but it is not available by other effective means for individuals with hearing impairments.
- o Printed information is available to participants but such information is not available on audiotape or in braille, or other effective means for persons with visual impairments.
- o Information is provided orally but a sign language interpreter or other form of effective communication is not provided for hearing impaired participants.

Finally, providers may not exclude individuals with disabilities because their buildings are inaccessible, but the providers are not required to take any action that would result in a fundamental alteration in the nature of the program or activity or in undue financial or administrative burdens. Providers need not remove physical barriers as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

D. Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et. seq. (Title IX)

Title IX prohibits discrimination on the basis of sex in educational programs and activities that receive or benefit from Federal financial assistance. ( ADD INSERT FROM Education)

E. Federal Employment Discrimination Laws

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. ("Title VII"), the Age Discrimination in Employment Act of 1967, as amended, 42 U.S.C. Section 621 et. seq. (ADEA) and the Equal Pay Act of 1963, 29 U.S.C. Section 206 (d) (EPA) are federal employment discrimination laws that offer civil rights protection to all workers including TANF beneficiaries who participate in work activities.

Title VII prohibits both employers and employment agencies with 15 or more employees from discriminating on the basis of race, color, sex (including pregnancy), religion or national origin in all aspects of an employment relationship, including hiring, discharge, compensation, assignments, and other terms, conditions and privileges of employment. The ADEA prohibits employers with 20 or more employees, and state and local governments from discriminating against persons 40 or older because of age. The EPA requires payment of equal wages to men and women performing substantially the same work unless the pay discrepancy is based on a seniority or merit system, a system that measures quantity or quality of production, or a factor other than sex. The EPA applies to employers of any size. Each of these laws prohibit

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retaliation against individuals because they oppose practices that they reasonably believe are unlawful under the employment discrimination statutes or because they participate in proceedings under the employment discrimination statutes.

Title I of the ADA is another statute that offers protection to TANF beneficiaries engaged in work activities. Title I prohibits private and State and local government employers with 15 or more employees from discriminating in employment, on the basis of disability. It also prohibits retaliation for opposing disability discrimination or participating in the complaint process. Title I applies to all employers who are covered by Title VII and prohibits discrimination based on disability in all aspects of the employment relationship.

Set forth below are examples of conduct by welfare agencies that assign TANF participants to work activities and the employers to whom they are assigned that may violate Title VII:

- o Denying employment opportunities to a TANF participant because he looks "foreign" or has an accent.
- o Prohibiting an employee from wearing religious garb would be religious discrimination unless it would pose an undue hardship.

The Federal agencies will continue to work with you and other benefit providers as welfare reform is implemented. Attached are addresses and telephone numbers of the Federal agencies as a helpful reference for questions related to civil rights and welfare reform. Each agency has provided a toll free number for your convenience and is available to provide technical assistance, and answer questions. Please share this information with your colleagues, constituents and other interested organizations.

Attachments: Federal Agency Listing  
ADA Information from the Department of Justice

**FEDERAL AGENCY LISTINGS**

If you have any questions concerning the applicability of civil rights requirements to specific programs, and are uncertain which agency to call, you may call the Office for Civil Rights at the U.S. Department of Health and Human Services at 1-800-368-1019 or TDD 1-800-537-7697 and your call will be directed to the appropriate agency.

If you have questions about the application of civil rights laws to TANF or other welfare programs administered by HHS, contact:

U.S. Department of Health and Human Services  
Office for Civil Rights  
200 Independence Avenue, S.W., Room 509F  
Washington, D.C. 20201  
(202) 619-0403 (voice)  
(800) 537-7697 (TDD)

If you have question about the application of civil rights laws to wages, general conditions of employment Federal contracts that are a part of the welfare program, or the Department of Labor welfare to work programs, you may contact:

Directorate of Civil Rights  
U.S. Department of Labor  
200 Constitution Ave., N.W., Room N-4123  
Washington, D.C. 20210  
(202) 219-7026 (voice)  
(202) 219-6118 (TDD)  
(800) 326-2577 (TDD)

If you have questions about the application of civil rights laws to Federal contracts, you may contact:

Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
200 Constitution Ave., N.W. Room C-3325  
Washington, D.C. 20210  
(202) 219-9486 (voice)  
(202) 208-0452 (TDD)

If you have questions about the application of civil rights laws to a food stamp or child nutrition program including the school lunch program, you may contact:

U.S. Department of Agriculture  
Food and Consumer Services (FCS)  
Office for Civil Rights  
3101 Park Center Drive, Room 203-B  
Alexandria, Va. 22302  
(703) 305-2195

If you have questions about the application of civil rights laws to education or training provided as part of a welfare program, you may contact:

U.S. Department of Education  
Office for Civil Rights  
330 C Street, N.W.  
Washington, D.C. 20202-1100

If you have questions about the application of civil rights laws to employment, or you wish to obtain the location of a regional EEOC office, you may contact:

Equal Employment Opportunity Commission (EEOC)  
Office of Legal Counsel  
1801 L Street, N.W.  
Washington, D.C. 20507  
(800) 669-4000  
(800) 669-6820 (TDD)  
Home Page: <http://www.eeoc.gov>

General questions about the application of Title VI to welfare programs may also be addressed to the U. S. Department of Justice, which will respond to or refer the matter to the appropriate agency.

Coordination and Review Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66560  
Washington, D.C. 20035-6560

(888) TITLE-06 (Spanish language and TDD service is available) or (202) 307-2222.

General questions about the application of Section 504 or the ADA to welfare questions may also be addressed to the U.S. Department of Justice, which will respond to or refer the matter to the appropriate agency.

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
Post Office Box 66738  
Washington, D.C. 20035-6738

(800) 514-0301 (voice) or (800) 514-0383 (TDD)  
Spanish language service is also available

**TECHNICAL ASSISTANCE FOR CASEWORKERS  
ON CIVIL RIGHTS LAWS AND WELFARE REFORM**

12/4/97

Welfare providers and employees face many new responsibilities and challenges as a result of welfare reform, particularly in implementing the Temporary Assistance for Needy Families program (TANF). The purpose of this document is to give welfare providers and employees an overview of Federal laws that prohibit discrimination and to alert them to stereotypes or other actions that, even if unintended, may violate Federal laws. The examples of discriminatory conduct provided in this document are illustrative, and are not an exclusive list of all potential violations of laws prohibiting discrimination.

**I. What Federal Nondiscrimination Laws Apply to TANF Programs?**

Federal laws that prohibit discrimination in Federally funded programs and activities on the basis of race, color, national origin, sex, disability, and age apply to TANF programs, welfare programs and the actions of welfare providers. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereafter referred to as "The Act") specifically incorporates Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990 (ADA). These laws, and other Federal civil rights laws, including Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA) continue to apply to states and other recipients that provide funds, employment, training, food stamps, and other benefits under the Act.

The purpose of these laws is to ensure that programs operated with Federal money do not exclude or deny benefits or services to persons, or provide different, lesser benefits to persons on any of these prohibited bases. In addition, employers are subject to the same Federal laws that prohibit discrimination when they employ welfare recipients as when they employ other individuals.

**II. Who Is Covered by Federal Nondiscrimination Laws?**

Public agencies and private businesses that administer welfare, food stamp, and other programs and activities that receive Federal money or other forms of Federal assistance are subject to several funding statutes, including Title VI, Title IX (in education programs), Section 504 and the Age Discrimination Act.<sup>1</sup>

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<sup>1</sup> For ease of reading, all references in this section to "funding statutes" should be understood to include Title VI, Section 504, the Age Discrimination Act and, when concerning education programs, Title IX. In addition, all references to "employment discrimination statutes" should be understood to include Title VII, the ADEA, the ADA, and the EPA.

All public agencies of any size, businesses with 15 or more employees, and employment agencies are subject to Title VII and the ADA whether or not they receive Federal financial assistance.

All public agencies, businesses with 20 or more employees, and employment agencies are subject to the ADEA.

Most employers and public agencies are subject to the EPA.

As discussed above, the funding statutes prohibit discrimination on the basis of race, color, national origin, age, and disability in programs or activities that receive or benefit from Federal financial assistance, and prohibit discrimination on the basis of sex in education and training programs that receive Federal financial assistance. The employment discrimination statutes prohibit discrimination on the basis of race, color, religion, national origin, sex, age, and disability in private and public sector employment.

Examples of who these laws apply to are:

- State agencies that receive Federal money through a block grant to conduct welfare programs are subject to the funding statutes.
- County and town offices that assist in job training as part of a welfare program are subject to the funding statutes.
- Private businesses hired by States to identify who is eligible to receive welfare benefits are subject to the funding statutes.
- Private businesses that help people who receive welfare to find jobs or training are subject to the funding statutes.
- County offices that distribute food stamps receive Federal money and are subject to the funding statutes.
- Local offices that operate federally funded child nutrition programs (for example, National School Lunch Program and Women, Infants and Children) are subject to the funding statutes.
- All businesses or public agencies that hire welfare recipients are subject to the employment discrimination statutes if they have the requisite number of employees. (Of course, if they receive Federal assistance, they are also covered by the funding statutes.)

- State agencies that refer welfare recipients to businesses or public agencies for employment are subject to the employment discrimination statutes.
- Private businesses that contract with States to provide job referral services for welfare recipients are subject to the employment discrimination statutes.

### III. What Conduct Is Prohibited In Federally Funded Programs and Activities?

Entities that receive Federal financial assistance may not discriminate against people on the basis of race, color, national origin, disability, or age in how they run their program or activity, or on the basis of sex in education programs.

Programs *may not exclude or deny welfare benefits* to persons based on their race, color, national origin, or age, or on the basis of sex in education programs.

Examples:

- Welfare workers may not assume that a person is not eligible for benefits because he is or appears to be an African-American, Hispanic, Asian, or a member of another racial or ethnic minority.
- County employees may not assume that a woman is not a United States citizen and is not eligible for welfare or food stamp benefits because her last name is foreign.
- A TANF contractor's employees may not deny benefits to persons who are not fluent in English because they assume persons who are or appear to be from other countries, and are not English proficient, are not eligible for such benefits.

Programs *may not impose different standards or procedures to determine who may receive benefits* on the basis of race, color, national origin, or age, or on the basis of sex in education programs.

Examples:

- Employees may not require an African-American male to submit additional or different documents than what is asked of a white male to establish his legal status and eligibility for welfare benefits in the absence of evidence to warrant further inquiry.
- If a local welfare office accepts a particular INS Form to establish a white woman's eligibility for welfare benefits, the welfare office cannot require a

Hispanic male applicant who submits the same form to provide additional proof of his legal status and eligibility for welfare benefits in the absence of evidence to warrant further inquiry.

- An employee of a contractor hired by a State must review all applications in a timely manner, and may not delay a review of applications from older individuals (over age 40) until after she evaluates applications from younger persons, including applications from younger individuals that are submitted after a person over 40 years.
- Employees should not question the authenticity of documents submitted by applicants who are or appear to be Hispanic, in the absence of independent evidence to warrant such inquiry. All documents should be presumed to be authentic and legitimate, if they appear genuine on their face.
- A welfare office may not refuse to provide assistance to applicants who are or appear to be of Asian descent, such as failing to provide forms necessary to receive benefits in languages other than English, when a significant proportion or number of eligible persons are limited English proficient.
- A food stamp office may not refuse to provide adequate bilingual interpreter services or other effective means of communicating with its clients if it serves a substantial number of persons with limited or no English speaking abilities.
- The Act imposes a 5-year time limit on receipt of TANF benefits. However, a State may allow hardship exemptions from the time limit for up to 20% of its caseload. States and counties may not use a neutral criterion that has a disproportionate impact on minorities to determine who will be granted this exemption, unless it can be shown that this is necessary, and no less discriminatory alternative is available.
- If States choose to impose drug testing on recipients, they must do so without regard to race, color, or national origin. For example, if a sample of the recipient population is tested, the race and ethnicity of members in this sample may not be disproportionate to the race and ethnicity of recipients overall. Further, States must ensure that the consequences of positive tests are not imposed differently based on the race or ethnicity of the recipient.

Programs *may not provide different benefits* to persons on the basis of their race, color, national origin, or age, or on the basis of sex in education programs.

Examples:

- Employees must provide complete information to all persons that ask questions about the type of benefits, including job training assistance, placement, and other services, and not fail or refuse to provide the same, complete information on opportunities to persons who are or appear to be Asian.
- A county employee may not deny job training benefits to persons because they are or appear to be Hispanic.
- A contractor's employee may not enroll a male recipient in a computer training program and deny a female recipient an opportunity for the same program, (where both recipients do not have a high school diploma), because the employee assumes the woman is not smart enough to learn the computer skills.
- A welfare employee may not assume, because a welfare recipient is over 50 years, that he is too weak for certain training classes for manual labor, or too old to be placed in computer training classes, while welfare recipients who are 30 years of age and with the same background, are placed in these training classes.
- A contractor that provides job training or referral services may not require a high school diploma to participate in all training programs, or other neutral criteria or methods that have a disproportionate impact on minorities (that is, excludes disproportionate numbers of minorities), unless such requirements or criteria are necessary to program operations (job performance) and no less discriminatory practice is available.
- A welfare office **must** provide written materials that describe all of the benefits and services offered to applicants and recipients in languages other than English when a significant number or proportion of the population to be served has limited English proficiency.

**IV. What Type of Conduct Is Prohibited in Employment Settings?**

Employment discrimination laws protect workers and prospective workers from discrimination based on race, color, national origin, religion, sex, age, or disability. These laws apply to both individual employers and employment agencies, including

welfare agencies and contractors that provide job placement services for welfare recipients. The laws prohibit discrimination in all aspects of the employment process: hiring and discharge, compensation, assignments, and all other terms, conditions, and privileges of employment. These laws also protect all workers who are in an employment relationship — where the employer has the right to control the "means and manner" of the individual's work, whether or not the employer pays the individual's salary.

Examples:

- Individuals who refer welfare participants to an employer may not make assignments on the basis of race, color, national origin, religion, sex, age, or disability. Thus, for example, a job placement service for welfare recipients may not assign African-Americans to janitorial and sanitation positions and whites with similar backgrounds to entry-level office positions.
- Employers and those referring welfare participants to employers may not retaliate against participants because they opposed practices that they reasonably believed were unlawful under the employment discrimination statutes or because they participated in proceedings under the employment discrimination statutes.
- Employers and those referring welfare participants to employers may not discriminate on the basis that a person looks "foreign" or has an accent.
- Employers and those referring welfare participants to employers may not make hiring or referral decisions on an assumption that participants over the age of 50 are too weak for manual labor.
- Employers must accommodate an employee's or welfare participant's religious practices unless doing so would create an undue hardship. For example, people must normally be permitted to wear religious garb unless doing so would create a safety hazard. Furthermore, a welfare agency may not refuse to refer an individual for employment because of his or her need for religious accommodation.
- Employers and those referring welfare participants to employers may not impose job selection criteria that disproportionately exclude members of protected groups, unless they are job related for the position in question and consistent with business necessity, and there are no less discriminatory alternatives. For example, some physical (fitness and/or strength) or paper and pencil tests may disproportionately exclude women or minorities. If so, such tests cannot be

used unless it adequately predicts performance in the particular job and there are no less discriminatory alternatives.

- Employers may not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the payment of wages. Also, employers must pay equal wages to women and men who perform substantially equal work, unless the pay discrepancy is based on a seniority system, a merit system, a system that measures quantity or quality of production, or on a factor other than sex.
- Employers may not place female welfare participants in office positions and male welfare participants in labor positions based on assumptions of the individual's skills or strength.

#### V. What Conduct on the Basis of Disability Is Prohibited?

Covered entities may not discriminate against any qualified individual with a disability in any program or activity that receives Federal financial assistance. In general, an individual with a disability is "qualified" if that person meets the essential eligibility requirements for receipt of services or participation in the program or activity.

Program providers and employers may not refuse to allow a person with a disability to participate or be employed because the person has a disability, and they must eliminate unnecessary eligibility standards or rules that deny an individual with a disability an equal opportunity to participate or be employed.

##### Examples:

- The director of a county day care program for the children of welfare recipients who are attending employment training programs may not refuse to accept children who use wheelchairs into the program.
- A community college offering job-training for welfare recipients may not require students with disabilities to provide extensive medical histories that are not required from other students.
- A welfare office may not refuse to permit guide dogs and other service animals assisting individuals with disabilities to accompany those individuals into the office.

- A welfare office may not exempt individuals with disabilities from work activities based on assumptions that such individuals are not qualified to participate in training or work.
- Employers and those referring welfare recipients to employers may not impose qualification standards that screen out any individual with a disability or a class of individuals with disabilities unless such standards are shown to be job related and consistent with business necessity. For example, a requirement that all job applicants have a driver's license may unintentionally screen out an individual with epilepsy or blind people as a group. Even if the standard is job related and consistent with business necessity, the employer or referring entity that imposes the standard must consider whether there is a reasonable accommodation that will enable a welfare participant with a disability to meet the standard.

Program providers and employers are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.

Examples:

- A job-training course for welfare recipients must extend testing time when a person with a learning disability needs extra time to complete the test because of his or her disability.
- A welfare program with a complicated application will need to simplify its application form or provide someone to help fill out the form when a person with a mental disability is unable to complete the form.
- Employers must provide reasonable accommodation to qualified individuals with disabilities unless doing so would result in undue hardship. Reasonable accommodations may include modifying leave or other workplace policies.

Program providers must ensure that programs and services are provided in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity for individuals with disabilities. Programs that provide special benefits to people with disabilities are permitted, but people with disabilities can not be compelled to participate in those programs.

Examples:

- A county social service center that provides a hot lunch program for senior citizens may not require people with HIV to be served in a separate room from the other participants.

- A county vocational training program may offer special training opportunities for people with vision impairments, but it may not require people with vision impairments to participate in the special program or refuse to permit them to participate in courses open to other program participants.

Programs and employers must ensure effective communication with individuals and employees who have hearing, speech, or vision impairments. Programs must provide auxiliary aids and services (such as Braille material, sign language interpreters, readers, or text telephones (TTY's)) when necessary to ensure effective communication but they are not required to provide auxiliary aids that will result in a fundamental alteration of the program or service or that will result in undue financial and administrative burdens.

**Examples:**

- A municipal job placement program that makes information about job openings available by telephone must ensure that the information is available to users of TTY's.
- A city welfare office that provides printed information about eligibility requirements to applicants must ensure that the same information is provided on audiotape or in Braille for people who have vision impairments.
- Job training programs for welfare recipients must provide sign language interpreters for deaf students when it is necessary to ensure effective communication for those students.

Program providers may not exclude individuals with disabilities from programs and activities because buildings are inaccessible, but the providers are not required to take any action that would result in a fundamental alteration in the nature of the program or activity, or in undue financial and administrative burdens. Providers need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

**Examples:**

- A welfare office that is located on the second floor of a building that has no elevator may make its services accessible to a applicant who uses a wheelchair by meeting with that applicant in an accessible ground floor office.
- A food stamp office located in an inaccessible space may make its services accessible to a person with a mobility impairment by alternative methods. For example, a food stamp office may mail an application to an applicant and

conduct a home visit to determine eligibility, or interview the applicant's designated representative at the office. Food stamps may also be mailed to that person's residence or picked up by the representative.

- A job training program that usually offers classes in an inaccessible second-floor classroom may make its program accessible by relocating the class to an accessible classroom in another building.

Programs must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities. Recipients are not required to retrofit existing buildings to eliminate barriers, but when alterations are undertaken, the altered elements must be made accessible.

#### **VI. How Are The Nondiscrimination Laws Enforced?**

Federal agencies may investigate alleged noncompliance by a recipient of Federal assistance upon receipt of a complaint or conduct a compliance review of a recipient. If an agency believes a recipient is not in compliance with nondiscrimination laws, it will initially seek to negotiate compliance by the recipient. If negotiations fail and noncompliance remains, the agency may seek judicial enforcement or seek to terminate Federal funding. Individuals may bring lawsuits to enforce their rights under Title VI, Title IX, Section 504, or the Age Discrimination Act and, in certain circumstances, may receive compensatory damages if they prevail.

Individuals who work also may have rights under the Federal employment discrimination laws that protect them from unlawful discrimination in hiring, work assignments, promotions, etc., and may file a complaint with the appropriate Federal agency. Individuals, after complying with administrative complaint procedures, may also bring lawsuits to enforce their rights (including the potential for compensatory damages) under Title VII, the ADEA, and the ADA. Individuals may file private suits to enforce their rights under the EPA without first filing an administrative complaint.

Federal contractors and subcontractors are required to comply with Executive order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended. These laws ban discrimination and also require Federal contractors, subcontractors, and contractors working on federally assisted construction contracts to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability, or status as a Vietnam era or special disabled veteran. These laws are administered by the

**Office of Federal Contract Compliance Programs (OFCCP).** OFCCP also acts as an agent for the Equal Employment Opportunity Commission in the enforcement of the ADA.

## **VII. Who May File A Complaint of Discrimination?**

Any individual who believes that he or she is a victim of discrimination on the basis of race, color, national origin, disability, age, or sex in a program or activity that receives Federal assistance may file a complaint with the Federal agency that provides assistance to the program in issue, or with the U.S. Department of Justice, which will refer the complaint to the appropriate agency. An individual who believes that he or she is a victim of employment discrimination in violation of Title VII, the ADEA, or the ADA may file a complaint with the Equal Employment Opportunity Commission.

Complaints on behalf of classes of individuals are also permitted. Complaints generally must be filed within 180 days of the alleged discriminatory event. Individuals who ask welfare providers how to file a complaint should be referred to the appropriate Federal agency.

Individuals who work for Federal contractors or subcontractors, including individuals who obtain employment as a result of welfare implementation, and who believe they have been discriminated against, may file complaints directly with any of OFCCP's regional or district offices throughout the country, or with the OFCCP office in Washington, D.C. Complaints must be filed within 180 days from the date of the alleged discrimination, or within 300 days in the case of complaints filed under Section 503 of the Rehabilitation Act.