



UNITED STATES DEPARTMENT OF
AGRICULTURE

Rural Development Mission Area



Compliance Reviews

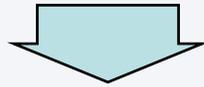


Title VI of the Civil Rights Act of 1964

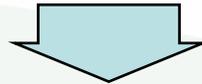
“No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity **receiving Federal financial assistance.**”

Federal Financial Assistance (Assisted Programs)

USDA, extends *Federal Financial Assistance*, through its Agencies, to a *Recipient* (Borrower or Grantee)



The **Recipient** becomes responsible for complying with civil rights laws in the administration of their programs and activities.



The **beneficiary** (i.e., tenant, water user, hospital patient, etc.) receives the benefit.

Statutory requirement that USDA conduct civil rights compliance reviews.

Title VI Compliance Requirements

- Assurance Agreement
- Covenants
- Public dissemination of Title VI information
- Data and information requirements

Compliance and Enforcement Requirements

Compliance Reviews

- **Pre-award review**

Before loan approval or before the disbursement of funds

- **Post award review**

Subsequent reviews to be conducted on a recurring basis in accordance with RD Instruction 1901-E

Pre-Award Compliance Review

- Gather population statistics. Calculate race percentages.
- Obtain and review copies of bylaws, regulations and other policies.
- Look at planned advertisements or discuss planned outreach activities.
 - a. Identify people and public interest groups planned to be contacted by the applicant.
 - b. Determine if minority community is aware of the facility and if it is Federally financed.

Pre-Award Compliance Review

- Determine race, national origin of existing employees, board members, advisory committee member, or others connected with the facility in some capacity.
- Contact by phone, or in person, any community leaders including minority leaders.
- Compare this facility with similar facilities in the area. How are minorities being served (i.e, quality of services, quantity of service, etc)?

Pre-Award Compliance Review

Each instrument of conveyance or Deed of Trust for loans subject to Title VI, shall contain a covenant running with the land assuring nondiscrimination.

“The property described herein was obtained or improved with Federal financial assistance and is subject to the provisions of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 and the regulations issued thereto. This covenant is in effect for as long as the property continues to be used for the same or similar purpose for which the financial assistance was extended, or for as long as the above recipient owns it, whichever is longer.”

Pre-Award Compliance Review

- An Assurance Agreement (Form RD 400-4) will be signed by the Recipient. This agreement should be explained at the time it is signed. Besides requiring that the recipient not discriminate, it requires the recipient to:

- **maintain race and national origin records** of the people who will/are ultimately benefit from the program;
- **make available** to users, participants, beneficiaries and other interested persons such **information** regarding the provisions of the agreement in such a manner as the Agency finds necessary to inform such persons of the protection assured them against discrimination (use non-discrimination statements).
- **permit access** to authorized employees of the Agency during normal business hours to such books, records, accounts and other sources of information and its facilities as may be pertinent to ascertaining compliance.

USDA

FORM

APPROVED

Form RD 400-4

ASSURANCE AGREEMENT

OMB No. 0575-0018

(Rev. 3-97)

(Under Title VI, Civil Rights Act of 1964)

The _____

(name of recipient)

(address)

(“Recipient” herein) hereby assures the U.S. Department of Agriculture that Recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 USD 2000d et. seq.), 7 CFR Part 15, and Rural Development regulations promulgated thereunder, 7C.F.R. section 1901.202. In accordance with that Act and the regulations referred to above, Recipient agrees that in connection with any program or activity for which Recipient receives Federal financial assistance (as such term is defined in 7 C.F.R. section 14.2) no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

1. Recipient agrees that any transfer of any aided facility, other than personal property, by sale, lease or other conveyance of contract, shall be made expressly, subject to the obligations of this agreement and transferee's assumption thereof.



ASSURANCE AGREEMENT

(Under Title VI, Civil Rights Act of 1964)
(cont.)

2. Recipient shall:

(a) Keep such records and submit to the government such timely, complete and accurate information as the government may determine to be necessary to ascertain our/my compliance with this agreement and the regulations.

(b) Permit access by authorized employees of the Rural Development or the U.S. Department of Agriculture during normal business hours to such books, records, accounts and other sources of information and its facilities as may be pertinent to ascertaining such compliance.

(c) Make available to users, participants, beneficiaries and other interested persons such information regarding the provisions of this agreement and the regulations, and in such manner as the Rural Development or the U.S. Department of Agriculture finds necessary to inform such persons of the protection assured them against discrimination.

ASSURANCE AGREEMENT

(Under Title VI, Civil Rights Act of 1964)
(cont.)

3. The obligations of this agreement shall continue:

(a) As to any real property, including any structure, acquired or improved with the aid of the Federal financial assistance, so long as such real property is used for the purpose for which the Federal financial assistance is made or for another purpose which affords similar services or benefits, or for as long as the Recipient retains ownership or possession of the property, whichever is longer.

(b) As to any personal property acquired or improved with the aid of the Federal financial assistance, so long as Recipient retains ownership or possession of the property.

(c) As to any other aided facility or activity, until the last advance of funds under the loan or grant has been made.

4. Upon any breach or violation of this agreement the government may, at its option:

(a) Terminate or refuse to render or continue financial assistance for the aid of the property, facility, project, service or activity.

(b) Enforce this agreement by suit for specific performance or by any other remedy under the laws of the United States or the State in which the breach or violation occurs.

ASSURANCE AGREEMENT

(Under Title VI, Civil Rights Act of 1964)
(cont.)

Rights and remedies provided for under this agreement shall be cumulative.

In witness whereof, _____ on this
(name recipient)
date has caused this agreement to be executed by its duly authorized officers and its seal affixed
hereto, or, if a natural person, has hereunto executed this agreement.

Recipient

(SEAL)

Date

Attest: _____
Title

Title

According to the Paperwork Reduction Act of 1995, no persons are to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 0570-0018. The time required to complete this information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.



Pre-Award Compliance Reviews

Does Applicant/Recipient have records of:

- Discrimination complaints
- Lawsuits
- Findings of noncompliance by another Federal Agency

Pre-Award Compliance Reviews

Discuss with the Applicant:

- **Printed material.**
- **Posters**
- **Newspaper articles and advertisements**

Pre-Award Compliance Reviews

Discuss with the Applicant:

- The nondiscrimination poster, “...and Justice for All” will be conspicuously displayed at the recipient’s facility, especially in the recipient’s business office. Additional posters may be posted in common use areas such as laundry rooms or meeting rooms. If the program provides housing, the HUD Fair Housing Poster will also be displayed.

Provide the applicant with the appropriate posters.

Pre-Award Compliance Reviews

Discuss with the Applicant:

Newspaper articles on or any advertisements describing the availability of services must contain the nondiscrimination clause, *“This is an Equal Opportunity Program.”*

Obtain a copy of all planned advertisements.

Pre-Award Compliance Reviews

Discuss with the Applicant:

Application forms to determine eligibility for receipt of services in the recipient's program will meet the following requirements:

Recipients who provide housing will put the fair housing logotype or slogan ***“Equal Housing Opportunity”*** at the bottom of their application forms. All other recipients who use application forms will put the slogan ***“Equal Opportunity Program”*** on the bottom of their application form.

Pre-Award Compliance Reviews

Discuss with the Applicant:

Recipients using application forms shall establish a section of the end of the form, below the signature and date block, to collect race/national origin information. In addition, the following disclosure notice shall be included.

“The following information is requested by the Federal Government in order to monitor compliance with Federal laws prohibiting discrimination against applicants seeking to participate in the program. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, we are required to note the race/national origin of individual applicants on the basis of visual observation or surname.”

New Race Categories

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

While in a transition to the new categories, recipients shall not be found in non-compliance for using old categories.

Pre-Award Compliance Reviews

Discuss with the Applicant:

Where a significant number or proportion of the population eligible to be served or likely to be directly affected by the program needs service or information in a **language other than English** in order to participate, the recipient shall provide information in the appropriate language.

Conducted Programs - Agency Pays

Assisted Programs - Recipient Pays

New Ethnicity Categories

- Hispanic or Latino
- Not Hispanic or Latino

While in a transition to the new categories, recipients shall not be found in non-compliance for using old categories.

All applicants will be asked to make **two** choices:

- What is your ethnicity(national origin)?
and
- What is your race?
- Applicant will be asked to provide an answer to both questions (i.e., **Hispanic and African American**).

While in a transition, recipients will not found in non-compliance for using a single question concerning an applicant's race/national origin.

Pre-Award Compliance Reviews

- **Discuss with the Applicant:**
- **Outreach and community contacts.** The recipient will make contacts in the community with local organizations, minority leaders and others to advise them of the availability of services at the recipient's project or facility.

Pre-Award Compliance Reviews

Affirmative Fair Housing Marketing Plans (AFHMPs).

All recipients who provide housing that is intended to be occupied for more than a brief period of time must have an approved AFHMP. The approved plan must be made available and posted (in a conspicuous location) by the participant for public inspection at the participant's place of business, sales and/or rental office. Specific instructions for the development of the AFHMP are attached to the blank form. **The requirement of having an AFHMP applies to participants of all RD programs that provide housing.**

Pre-Award Compliance Reviews

Discuss with the Applicant:

The recipient must establish a system for maintaining records of the number of applications received from participants on an annual basis and that the records must reflect the number of applicants approved or rejected for the benefit or service by race/national origin.

Post-Award Compliance Review

Three stages of the review

- Planning and preparation
- Actual review stage
- Findings and conclusion stage

Planning and Preparation

- Review Office Files
- Collect Population Statistics by Race or National Origin
 - Calculate Percentages
- Make a List of Possible Community Contacts
 - Arrange Interviews
- Obtain Appropriate Posters

Actual Review Stage

Visit Facilities

- **Look for Poster(s)**
- **Interview Manager(s)**
- **Review Records**
 - Determine the number of people benefiting by Race or National Origin**
 - Calculate Percentages**
- **Review advertisements, newspaper releases, etc.**
- **Interview people associated with facility**
- **Make Community Contacts and Interview Minority**

Leaders



Preparing For The Interview

- Determine who you plan to interview, and what information they can provide.
- Obtain background information.
- Provide proper environment.
 - Privacy
 - Arrange interview at convenience of interviewee

Conducting the Interview

- **Identify yourself.**
- **Establish rapport.**
- **Explain the purpose of the interview.**
- **Interviewer should not ask leading questions. Questions should be phrased to get information.**

Examples:

“How do you feel about...”

“What do you think of...”

Conclude The Interview

- Summarize main points.
- Get feedback.

Data and Information Collection Requirements

Data To Be Kept By Race, Color, National Origin

- **Participants or people served**
- **Population of service area**
- **Employees, including use of bilingual employees**
- **Membership of any planning or advisory body**
- **Demographic maps for certain projects**
- **Lawsuits filed against borrower on the basis of race, color, national origin**

Title VI Prohibits Unequal Treatment Because of Race, Color, National Origin

- Participation or Use
- Priority
- Quality
- Quantity
- Methods
- Charges

Indicators of Non-compliance with Title VI

- **Statistical data--percentage of participants by race are out of proportion to percentage of racial population in the area.**
- **No outreach, or very little outreach by the borrower.**
- **Unequal quality of service**
- **No advertising--advertising is done through word of mouth, or in ways that did not reach minority community.**
- **No records on participants or applicants by race/ethnic group.**
- **Community contacts--no contacts made by borrower and community contacts revealed that minority community is not aware that the facility is Federally financed.**

Multi-Family Housing Projects

Number of:

- -- Applicants on waiting list
- -- Tenants
- -- AFHM Plan

Documentation For Compliance Review

Mountain View Apartment Complex

	<u>Eligible Population</u>		<u>Participants</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Total	<u>6,104</u>	<u>100%</u>	<u>48</u>	<u>100%</u>
White, Not of Hispanic Origin	2,886	47%	41	86%
Black, Not of Hispanic Origin	3,108	51%	5	10%
Hispanic	95	2%	1	2%
American Indian	1	0%	0	0%
Asian/Pacific Islander	14	0%	1	2%

Water and Waste Development Projects

- Number of applicants
- Number of users
- Map of project's service area

Attachment to Form FmHA 400-8
Documentation for Compliance Review Spring Water System

	<u>Eligible Population</u>		<u>Participants</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Total	<u>562</u>	<u>100%</u>	<u>170</u>	<u>100%</u>
White, Not of Hispanic Origin	338	60%	153	90%
Black, Not of Hispanic Origin	208	37%	17	10%
Hispanic	15	3%	0	0%
American Indian	0	0%	0	0%
Asian/Pacific Islander	1	0%	0	0%

Number of Users 170



Community Facilities

- **Health care--number of patients**
- **Fire rescue and public safety**
 - (a) **Log of individuals assisted**
 - (b) **Map of service area**
- **Schools and day care centers--number of students**
- **Recreation associations--number of members, if membership is required**
- **Other:**
 - (a) **Cemeteries--number of grave plots sold**
 - (b) **Camp grounds--number of campers**

All CF Projects--Number of parking spaces reserved for the handicapped

Self Evaluations

(in accordance with USDA Regulation 7 CFR 15b)

- Has a Self Evaluation (accessibility) been conducted by the borrower?
- Was the Self Evaluation conducted with the assistance of persons or organizations who are knowledgeable about accessibility issues?

Does the borrower maintain a **Self Evaluation Record** containing the following items:

- A list of the interested persons consulted;
- A description of the areas examined and any problems identified; and
- A description of any modifications made and of any remedial steps taken.

Transition Plans

- If it is necessary to remove structural barriers, a **Transition Plan** must be developed with the assistance of persons or organizations who are knowledgeable about accessibility issues.

Transition Plans must at a minimum:

- Identify physical obstacles in the borrower's facilities that limit the accessibility of their programs or activities to persons with disabilities;
- Describe in detail the methods that will be used to make the facilities accessible;

Transition Plans must at a minimum (cont.):

- Specify the schedule for taking steps necessary to achieve full program accessibility and if the time period of the transition is longer than one year, identify steps that will be taken during each year of the transition period; and
- Identify the person responsible for implementation of the plan.

Dissemination of Nondiscrimination Information and Public Notification

The borrower shall do the following:

- Display Posters
- Put a nondiscrimination statement in:
 - (a) Printed material and advertisements
 - (b) Broadcasts
 - (c) Other visual and aural media

Examples of Nondiscrimination Slogans

- *“This is an Equal Opportunity Program”*
- *“Equal Opportunity Program”*

For printed materials:

“This is an equal opportunity program. Discrimination is prohibited by Federal law. Complaints of discrimination may be filed with the USDA, Director, Office of Civil Rights, 1400 Independence Ave., S.W., Washington, DC 20250-9410.”

Possible Findings

- Discrimination
- Noncompliance
- Compliance
- Technical violation

What To Do When A Finding Of Noncompliance Is Made

- **Formally** notify recipient of action needed to achieve compliance
- Notify EO staff, NO, of the noncompliance
- Work with recipient to achieve voluntary compliance
- Never let recipient delay longer than 60 days to achieve compliance

Findings and Conclusion Stage

- Review all materials and documentation.
- Summarize Report using Form RD 400-8.
- Make an accurate finding of compliance or noncompliance.
- Have guts enough to mark **X** noncompliance on Form RD 400-8.
- **Formally** notify the borrower of each item causing the non-compliance finding and seek voluntary compliance.
- Schedule follow-up visit.



UNITED STATES DEPARTMENT OF AGRICULTURE

Rural Development Civil Rights Staff

THE END



Committed to the future of rural communities.

Rural Development is an Equal Opportunity Lender and its programs are operated on an equal opportunity basis. Complaints of discrimination may be filed with USDA, Director, Office of Civil Rights, 1400 Independence Ave., S.W., Washington, DC 20250-9410.

