



Rural Development
Office of Civil Rights
1400 Independence
Ave SW
Washington, DC
20250
Voice 202.692.0252
Fax 202.692.0279

RD AN No. **4822** (1901-E)
March 7, 2017

TO: Acting Rural Development State Directors
ATTN: Business Program Directors
Civil Rights Managers/Coordinators
FROM: Angilla Denton /s/ Angilla Denton
Director
SUBJECT: Evaluating Compliance Reviews under Value Added
Producer Grant (VAPG)

Purpose / Intended Outcome

This Administrative Notice (AN) is intended to provide guidance to Rural Development staff in regards to completing compliance reviews for the Value Added Producer Grant (VAPG) program and to serve as clarification for determining when the program is considered “conducted” or “assisted” under the Title VI requirements in the Civil Rights Act of 1964.

Comparison with Previous AN

There have been no previous ANs on this subject.

Background

Federally conducted and assisted programs are defined below.

Conducted Programs

Federally conducted programs are those programs, services, benefits, resources or information delivered directly to the public. This also includes extending Federal financial assistance directly to an ultimate beneficiary or individual. Please note Title VI and 7 CFR 15 and 15b do not apply because the funds are not distributed through a primary recipient.

EXPIRATION DATE:
February 28, 2018

FILING INSTRUCTIONS
Preceding RD Instructions 1901-E

Assisted Programs

Federally assisted programs are those programs where there is a primary recipient who is authorized or required to provide services, benefits, resources or information to another recipient or beneficiary for the purpose of carrying out a program. The primary recipient is responsible for complying with civil rights laws (Title VI, Section 504, and 7 CFR 15, 15a, and 15b) in the administration of their programs and activities because there is an ultimate beneficiary that receives the benefit of the Federal financial assistance (i.e., tenant, water user, hospital patient).

Purpose of Compliance Reviews

For conducted programs, compliance reviews are audits of the practices of USDA personnel in providing nondiscriminatory service to all persons. No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or gender identity, exclude from participation in, deny the benefit of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

For assisted programs, compliance reviews are audits of the practices of recipients in providing nondiscriminatory services or benefits to a beneficiary, applicant or participant. Rural Development, through pre-award and post-award compliance reviews, is responsible for ensuring recipients of Federal funding adhere to nondiscrimination laws and Executive Orders. These laws include, but are not limited to, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, the Civil Rights Restoration Act of 1987, the Fair Housing Act, the Equal Credit Opportunity Act (ECOA), and Executive Order 13166: Limited English Proficiency.

Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, *recipient* is defined as “Any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee.” However, it does not include any ultimate beneficiary under any such program. In assisted and guaranteed programs, the *ultimate beneficiary* does not receive a distribution of federal money. Rather, he or she receives the services or benefits of the program from the primary recipient.

Application of Title VI and Section 504 of the Rehabilitation Act When the Primary Objective of Federal Financial Assistance is to Provide Employment

Nothing contained in Title VI and Section 504 shall be construed to authorize action under Title VI and Section 504 by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

While Title VI and Section 504 were not meant to be the primary Federal vehicle to prohibit employment discrimination, it does forbid employment discrimination by recipients in certain situations. If a **primary objective** of the Federal financial assistance to a recipient is to promote employment, then the recipient's employment practices are subject to Title VI. 42 U.S.C. § 2000d-3. (73) and Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794.

VAPG Program Purpose

The purpose of the VAPG is to enable viable Agricultural Producers (those who are prepared to progress to the next business level of planning for, or engaging in, value-added agricultural production) to develop businesses that produce and market value-added agricultural products and to create marketing opportunities for such businesses. Funding is provided for planning purposes to determine feasibility of an applicant's proposed business venture or to provide working capital funds for eligible processing and marketing expenses. While working capital grants can include paying an employee's wages, the program intent is to help the business expand their markets and increase revenues.

Applicability of Civil Rights Compliance Reviews to the Value Added Producer Grant Program

In most situations, the VAPG program is considered a conducted program. The purpose of the funding is to market a value-added product. The fact that the agricultural producer may hire employees to assist in producing or marketing the value-added product does not take away from the primary objective of increasing revenues and customers for the agricultural producer. Therefore, no compliance review is required (see chart below). Under a few circumstances, a VAPG grant may be considered an assisted program. RD compliance review requirements are determined based upon the definition of recipient, ultimate beneficiary, and the distribution of the Federal money, including intent (primary objective) of program. The VAPG program has a potential to be an "assisted" program when the intent is defined as creating employment (see chart below).

VAPG conducted programs are similar to Single Family Housing grants where the beneficiary is the person receiving the Federal financial assistance (grant) to repair a home. A grantee hires a contractor, through procurement (bidding process) to complete repairs for the Single Family Housing residence. The same applies to the VAPG grantee that hires a consultant to provide a service. If the grant only applies to typical value-added activities (i.e. processing a value-added product, purchasing packaging materials, etc.), then the review will be limited to the conducted side for RD staff and the RD Office of Civil Rights staff will conduct such reviews.

If the intent or the purpose of the VAPG funding becomes job creation/employment, VAPG would be considered an assisted program and a compliance review of the grant applicant would be required.

Project Example	Are funds passed through to employees with the purpose of job creation/employment?	Compliance Review Requirements
Grant funds used to pay a consultant to develop a Feasibility Study, Business Plan, and or Marketing Plan for the benefit of the VAPG applicant.	No	Conducted
Grant funds used to pay for project-related working capital activities.	No	Conducted
Grant funds used to pay employee salaries of 15 or more employees (new employees and/or employees already on payroll).	Yes	Assisted

Compliance reviews for assisted programs will be documented on Form 400-8, utilizing the following schedule for completion.

- 1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.
- 2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

For assisted programs, the maintenance of race, sex, and national origin (RSNO) data of the recipient is an essential component to evaluating participation in all Rural Development programs. This data must be collected at the application phase. Additionally, the recipient under Title VI and Section 504 is responsible for the collection and maintenance of race, sex, national origin, and disability (RSNOD) data of its membership/ownership, boards, and employees. Data pertaining to Limited English Proficiency will also be collected. This information must be available to conduct compliance reviews in accordance with 7 CFR 1901.204. Furthermore, the recipient is responsible for ensuring equal access to its facilities for persons with disabilities, which includes auxiliary aids and a self-evaluation plan.

If you have any questions, please contact Sharese Paylor, Program Compliance Branch Chief, via email at Sharese.paylor@wdc.usda.gov, by phone at (202) 692-0097 or by fax at (202) 692-0305.