NATIONAL GUARD REGULATION
No. 600-23
AIR NATIONAL GUARD REGULATION
No. 30-12

DEPARTMENTS OF THE ARMY
AND THE AIR FORCE
WASHINGTON, DC *30 December 1974*

PERSONNEL

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

This regulation assigns responsibility and prescribes procedures to effectuate Title VI of the Civil Rights Act of 1964 and implements DoD Directive 5500.11. This is a complete revision of NGR 600-23/ANGR 30-12. The most significant changes are, The modification and expansion of the complaint procedures and the conduct of compliance review.

	Paragraph	Page
Purpose	1	1
Statutory authority	2	1
Responsible departmental official	3	1
Applicability	4	1
Methods of administration	5	1
Reports and reviews	6	2
Publicity	7	2
Processing complaints of discrimination	8	2
Conduct of investigation	9	3
Procedure for effecting compliance	10	3
Hearings	11	4
Decisions and notices	12	5

1. Purpose. This regulation is issued to provide staff and operating personnel with guidance for establishing detailed procedures necessary to assure compliance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC 2000d) and DoD Directive 5500.11, Nondiscrimination in Federally Assisted Programs.

2. Statutory authority. In accordance with Table VI of the Civil Rights Act of 1964, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.

3. Responsible departmental official. The Chief, National Guard Bureau, has been designated by AR 600-23 and AFR 30-12 as the "Responsible Departmental Official" to implement DoD Directive 5500.11 as it applies to the Army and Air National Guard.

4. Applicability. This regulation applies to all federally assisted activities of the Army National Guard and the Air National Guard as defined in section 101 (4) and 101 (6) of Title 32, United States Code. "State," for the purpose of these regulations, includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, and any other jurisdiction which may be authorized to maintain a National Guard.

5. Methods of administration. Each State will continue administrative procedures and assign responsibilities as required in order to do the following:

a. Training. Inform and instruct twice each year the staff of the State Military Department, the commanders and personnel of all subordinate units, and personnel of any other agencies connected with the National Guard of their rights in and/or obligations to comply with Title VI of the Civil Rights Act, this regulation, and the assurance of compliance as a condition to continued Federal

*This regulation supersedes NGR 600-23/ANGR 30-12, 16 January 1970, including all changes.

financial assistance to National Guard programs. Training may be conducted in conjunction with Army National Guard race relations/equal opportunity training or Air National Guard social actions training, and by the means of Commander's Time, Commander's Call, General Military Training periods, AFT periods, etc.

b. Public information. Inform all potential members, beneficiaries and the general public that the National Guard operates on a nondiscriminatory basis in compliance with Title VI of the Civil Rights Act of 1964, and that any person may file a written complaint with the appropriate National Guard official or the Chief, National Guard Bureau, or both, if he believes that discrimination on the basis of race, color, or national origin is being practiced with any National Guard program that is subject to the provisions of Title VI.

c. Receipt and evaluation of complaints. Receive and evaluate such complaints as submitted to National Guard officials, take prompt, corrective action as necessary to correct any discriminatory practices found to exist as a result of such complaints, and keep the Chief, National Guard Bureau informed regarding the disposition of complaints.

d. Procedures for review. Review periodically the practices within the State military departments, within subordinate military units, and within any other agencies or organizations connected with the National Guard to assure that these practices are in compliance with this regulation. The National Guard Bureau will conduct on-site compliance reviews, generally on a 2 year cycle, to assist in assuring compliance.

6. Reports and reviews. *a. Nature of reports.* Each State will keep records and submit to the Chief, National Guard Bureau complete and accurate compliance reports at such time as determined necessary to enable him to ascertain whether the State is complying with this regulation. In general, recipients should have available the racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

b. Access to records. Each State will permit access by the Chief, National Guard Bureau, or his authorized representatives, during normal business hours to its books, records, accounts, other sources of information, and its facilities, as necessary to determine compliance with this regulation in accordance with 5*d* above and 9 below.

c. Annual inspections. Compliance with this regulation will also be a subject of inspection by Inspectors General or other officers detailed by the Secretaries of the Army and Air Force to conduct the annual general inspection of the National Guard.

7. Publicity. Each State will make available to participants, beneficiaries, and other interested persons information regarding the contents of this regulation and the assurance required by 5*b* above in order that such persons may be apprised of the protection against discrimination assured them by Title VI of the Civil Rights Act of 1964.

8. Processing complaints of discrimination. *a. Grounds for complaints.* The grounds for complaints are limited to alleged discrimination based on race, color, or national origin covered under Title VI.

b. Who may file complaints. Any person or persons who believe that they are subjected to discrimination prohibited by this regulation may file a complaint by themselves, or by an authorized representative. Where a group of individuals have the same complaint, the action should be incorporated into one complaint.

c. Informal procedure. Any person or persons who believe that they have been discriminated against because of race, color, or national origin, should make an attempt to resolve the problem on an informal basis through discussion within the State. Formalizing the complaint in writing is not prohibited prior to informal discussions within the chain of command, however, resolution on an informal basis is encouraged.

d. Where to file. Complaints may be filed with the commander of the National Guard unit having jurisdiction over the personnel or facility where the act of discrimination is al-

leged to have occurred, and at any successive organizational level, direct to the State Adjutant General or to the Chief, National Guard Bureau. Every attempt should be made within the State to resolve the complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination.

e. Processing of complaints. All complaints filed at the State level will be forwarded through military channels to the Adjutant General. Each successive commander will attach his comments and explain what action he has taken to resolve the matter at his level. If the matter cannot be resolved to the satisfaction of the complainant at the State level, the complaint, together with all comments will be forwarded by the State Adjutant General to the Chief, National Guard Bureau. Any complaints filed directly with the Chief, National Guard Bureau, may be referred to the State for comments and explanations.

9. Conduct of investigation. *a. Who conducts investigation.* The authorized representative of the Chief, National Guard Bureau, will conduct a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this regulation.

b. Qualifications of investigators. Investigating personnel, if military, will be in the grade of major, or above, and if civilian, will be in the grade of GS-12 or above.

c. Scope of investigation. The investigation should include, where appropriate, a review of the pertinent practices and policies of the State Military Department, the circumstances under which the alleged act of discrimination occurred, and other factors relevant to a determination of whether the State has failed to comply or has failed to act in good faith. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. The investigating officer will render a written report, to include findings and recommendations, directly to the Chief, National Guard Bureau.

d. Action after investigation completed.

(1) If an investigation pursuant to this paragraph indicates a failure to comply with this regulation, the Chief, National Guard Bureau, will so advise the State and the matter will be resolved by informal means whenever possible. If it is determined that the matter cannot be resolved by informal means, action will be taken as provided in paragraph 10.

(2) If the facts disclosed by an investigation do not warrant further action, the Chief, National Guard Bureau, will so inform the State and the complainant, if any, in writing.

10. Procedure for effecting compliance. *a. General.* If there appears to be a failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, action may be taken in accordance with DOD Directive 5500.11 to refuse to grant or to continue financial assistance or any combination of the above, or to take any other action authorized by law.

b. Termination of Federal assistance. No order terminating or refusing to grant or continue Federal assistance, for noncompliance with this regulation, shall become effective until

(1) the Chief, National Guard Bureau, has advised the State of its failure to comply and has determined that compliance cannot be secured by voluntary means,

(2) there has been an express finding, after an opportunity for a hearing (as provided in para 11), of a failure by the State to comply with a requirement posed by this regulation,

(3) the action has been approved by the Secretary of Defense, and

(4) the expiration of 30 days after the Secretary of Defense has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

11. **Hearings.** *a. Opportunity for hearing.* Whenever an opportunity for a hearing is required, reasonable notice shall be given by the Chief, National Guard Bureau, by means of registered or certified mail return receipt requested, to the Adjutant General of the State concerned. This notice shall advise the State of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the allegations and law constituting the basis for this action. The notice will also—

(1) Fix a date not less than 20 days after the date of such notice within which the State may request that the matter be scheduled for hearing, or

(2) Advise the State that the matter in question has been set down for a hearing at a stated time and place.

The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall also be advised of the time and place of hearing. A State may waive a hearing and submit written information such as certified documents, affidavits, briefs, and argument. The failure of a State to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, or submit written materials shall be deemed a waiver of the right to a hearing under section 602 of the Civil Rights Act of 1964 and consent to the making of a decision on the basis of such information as is available.

b. Time and place of hearings. Hearings shall be held at the National Guard Bureau, Washington, D. C., at a time fixed by the Chief, National Guard Bureau, unless he determines that the convenience of the State, the complainant, if any, or the National Guard Bureau requires that another place be selected. Hearings shall be held before a hearing examiner designated by the Chief, National Guard Bureau.

c. Hearing examiner. The hearing examiner shall be an active member of the Army or the Air Force, as appropriate, in the grade of colonel or above, or a civilian employee of the Army or the Air Force above the grade of GS-14, or the equivalent. Such a person must be admitted to practice before a Federal court or the highest court of a State.

d. Right to counsel. In all proceedings connected with such hearings, the State and the National Guard Bureau shall have the right to be represented by counsel.

e. Procedures.

(1) The State shall be entitled to an open hearing at which it may examine any witness present. Both the National Guard Bureau and the State shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to such hearings, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary and within the discretion of the hearing examiner. He may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other written evidence or exhibits offered as evidence shall be open to examination and objections by the parties. Opportunity shall be given to refute facts and arguments advanced on either side of the issues. Both parties should be allowed reasonable time for final arguments, and, subject to the discretion of the hearing officer, may file written briefs. A verbatim transcript shall be made of the oral evidence except to the extent that the substance of certain testimony may be stipulated for the record.

f. Consolidated or joint hearings. Where the same or related facts are asserted to constitute noncompliance with this regulation in two or more separate alleged acts of discrimination within the National Guard of a particular State, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies which have been issued under Title VI of the Civil Rights Act of 1964, the Secretary of the Army or Air Force, as appropriate, after consultation with the Assistant Secretary of Defense (Manpower), if in agreement with such other departments or agencies, provide for the conduct of consolidated or joint hearings. In such

instances, primary responsibility for conduct of the hearings may be assigned to the National Guard Bureau or to such other department or agency as is agreed. However, final decison in such cases shall be made as provided in paragraph 10.

12. Decisions and notices. *a. Initial decision by the hearing examiner.* If authorized by the Chief, National Guard Bureau, the hearing examiner shall make an initial decision. A copy of this decision shall then be mailed to the State. The State may, within 30 days of the mailing of this decision, file with the Chief, National Guard Bureau, any exceptions to this initial decision and its reasons therefor. In the absence of exceptions filed by the State, the Chief, National Guard Bureau, may on his own motion, within 45 days after the initial decision, serve notice upon the State that he will review the decision. Subsequent to filing of such exceptions or notice of review, the Chief, National Guard Bureau, shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions by the State or a notice of review, the initial decision will constitute the final decision of the Chief, National Guard Bureau.

b. Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to paragraph 11*a*, a decision shall be made by the Chief, National Guard Bureau, on the record and a copy of such decision shall be given in writing to the State and to the complainant, if any.

c. Rulings required. Each decision of a hearing officer or the Chief, National Guard Bureau, shall set forth his ruling on each finding, conclusion, or exceptions presented, and shall identify the requirements imposed by or pursuant to this regulation with which it is found that the State has failed to comply.

d. Approval by the Secretary of Defense. Any final decision of the Chief, National Guard Bureau, which provides for the refusal to grant or to continue Federal financial assistance or the imposition of any other sanction available under the Civil Rights Act of 1964, shall be promptly transmitted through the Secretary of the Army or Air Force, as appropriate, to the Secretary of Defense, who may approve such decision, may vacate or modify it, or remit or mitigate any sanction imposed.

e. Contents of decision. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance. It may also contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Civil Rights Act of 1964 and this regulation. Included are provisions designed to assure that no Federal financial assistance will thereafter be extended for support of the National Guard of the particular State determined to be in default in its performance of an assurance given by it pursuant to this regulation or to have otherwise failed to comply with this regulation, unless and until it corrects its noncompliance and satisfies the Chief, National Guard Bureau, that it will fully comply with the specified requirements.

f. Judicial review. Any final action taken in accordance with the above provisions is subject to judicial review as provided in section 603 of the Civil Rights Act of 1964.

Users of this regulation are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to NGB–EO, Washington, DC 20310.

By Order of the Secretary of the Army and the Air Force:

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