

race, color, national origin, disability, or age, as applicable. Discrimination that involves such disparate treatment is barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant adverse effect on individuals based on race, color, national origin, disability, or age, as applicable. Such criteria or practices constitute impermissible discrimination if there is no substantial legitimate justification for those criteria or practices. However, even where such a justification exists, if there is an equally effective but less discriminatory alternative, that alternative must be adopted.)

Pursuant to Executive Order 12250 ("Leadership and Coordination of Nondiscrimination Laws"), the Department of Justice ("DOJ") requested that the Agencies jointly issue amendments to their regulations implementing Title VI, Section 504, and the Age Discrimination Act to incorporate the CRRA definitions of "program" and "program or activity." The two federal agencies implicated in the *Cureton* decision—the Department of Education ("ED") and the Department of Health and Human Services ("HHS")—are promulgating separate rules to incorporate the CRRA's expanded definition of "program or activity" and "program" in their regulations. ED published its NPRM on May 5, 2000, 65 FR 26464, and published its final rule on November 13, 2000, 65 FR 68050. HHS published its NPRM on October 26, 2000, 65 FR 64194, and plans to publish its final rule soon. DOJ participated in and coordinated the promulgation of amendments to 22 other agencies' Title VI, Section 504, and Age Discrimination Act regulations. 65 FR 76460. Again, while DOJ views these modifications to be merely technical in nature, public comments were invited on these modifications.

These changes are summarized in the sections below.

Definition of "Program or Activity" and "Program"

The statutory definition, which is now incorporated into the regulations, addresses the scope of coverage for four broad categories of recipients: (1) State or local governmental entities; (2) colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies, systems of vocational education, and other school systems; (3) private entities, such as corporations, partnerships, and sole proprietorships; and (4) entities that are

a combination of any of those groups. See 42 U.S.C. 2000d–4a.

Under the first part of the definition, when State and local governmental entities receive financial assistance from a federal agency, the "program or activity" or "program" in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the federal assistance is extended. If, for example, a State or local agency receives federal assistance for one of many functions of the agency, all of the operations of the entire agency are subject to the nondiscrimination provisions of these regulations. In addition, "program or activity" or "program" also includes all of the operations of the entity of a State or local government that distributes the federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended. See 42 U.S.C. 2000d–4a(1); S. Rep. No. 100–64, at 16, *reprinted in* 1988 U.S.C.C.A.N. at 18.

Under the second portion of the definition of "program or activity," when covered educational institutions receive federal financial assistance, all of their operations are subject to the nondiscrimination requirements of the funding agency's regulations. See 42 U.S.C. 2000d–4a(2).

Under the third part of the definition, the degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, or how the entity is structured (e.g., physically separate offices or plants). Each of the operations of private businesses that are principally engaged in education, health care, housing, social services, or parks and recreation is considered a "program or activity" for purposes of these regulations. See 42 U.S.C. 2000d–4a(3)(A)(ii). S. Rep. No. 100–64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 100–64, at 16–20, *reprinted in* 1988 U.S.C.C.A.N. at 19–21. In addition, if federal financial assistance is extended to a private entity "as a whole" and the private entity is not principally engaged in the business of education, health care, housing, social services, or parks and recreation, all of the private entity's operations at all of its locations would be covered. If the private entity receives general assistance, that is, assistance that is not designated for a particular purpose, that

would be considered federal financial assistance to the private entity "as a whole." In other instances where financial assistance is extended directly to a geographically separate facility of an entity described in the third part of this definition, then coverage would be limited to the geographically separate facility that receives the assistance. See 42 U.S.C. 2000d–4a(3).

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. See 42 U.S.C. 2000d–4a(4).

The amendments incorporate the CRRA definition of "program or activity" and "program" into the agencies' regulations. When Congress amended Title VI in the CRRA, it added definitions of both "program or activity" and "program" to the statute. Therefore, we are amending each agency's Title VI regulations to incorporate the definition of both "program or activity" and "program." However, when Congress amended section 504 and the Age Discrimination Act in the CRRA, it added a definition of the term "program or activity," but did not add a similar definition of the term "program." Thus, we are amending the agencies' section 504 and Age Discrimination Act regulations to incorporate a new definition of "program or activity" only.

As explained below, in order to conform with the CRRA definitions of "program or activity" and "program," the regulatory changes also modify or delete some existing sections of the Agencies' regulations that have become superfluous or incorrect following enactment of the CRRA. These regulatory changes do not change the requirements of the existing regulations.

It is important to note that the changes do not in any way alter the requirement of the CRRA that a fund termination be limited to the particular programs "or part[s] thereof" that discriminate, or, as appropriate, to all of the programs that are infected by the discriminatory practices. See S. Rep. No. 100–64, at 20, *reprinted in* 1988 U.S.C.C.A.N. at 22 ("The [CRRA] defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

Assurances

Several agencies' Title VI regulations included an assurance requirement that has created confusion with regard to the scope of "program or activity" under