§ 113.3–1 Consideration of race, color, religion, sex, marital status, handicap, or national origin.

(a) This regulation does not prohibit the consideration of race, color, religion, sex, marital status, handicap, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, religion, sex, marital status, handicap, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, religion, sex, marital status, handicap, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of this regulation. All programs and activities shall be administered in the most integrated setting possible.

(b) Nothing in this part shall prohibit the restriction of certain jobs to members of one sex if a bona fide occupational qualification can be demonstrated by the applicant or recipient. Custom or tradition is not a bona fide occupational qualification.

(c) Recipients shall take steps to ensure that communications with job applicants and employees who have vision and/or hearing disabilities are available in appropriate modes.

(d) Recipients shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped job applicant or employee UNLESS the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Factors to be considered in determining whether an accommodation would impose an undue hardship on the operation of a recipient’s business include:

(1) The overall size of the recipient’s business with respect to number of employees, number and type of facilities, size of budget, and the financial condition of the business;

(2) The type of the recipient’s operation, including the composition and structure of the recipient’s workforce; and

(3) The nature and cost of the accommodation needed.

(e) Such accommodation may include making facilities used by employees readily accessible to and usable by handicapped persons, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.
§ 113.3–3 Structural accommodations for handicapped clients.

(a) Existing facilities. Recipients in preexisting structures shall make their goods or services accessible to and usable by handicapped clients. Where structural changes are necessary to make the recipient’s goods or services accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this Regulation. A plan setting forth the steps necessary to complete such structural changes shall be developed and submitted to SBA. If practical, interested persons, including handicapped persons or organizations representing handicapped persons, will be consulted.

(b) Design, construction, and alteration. New facilities shall be designed and constructed to be readily accessible to and usable by persons with handicaps. Alterations to existing facilities that affect usability shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards.

(1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or