

Small Business Administration

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(f) The final decision, when making a review or investigation of a complaint, as to whether an accommodation would impose an undue hardship on the operation of a recipient business will be made by the compliance officials of the Small Business Administration.

(g) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, and shall not participate in a contractual relationship that has the effect of subjecting qualified handicapped job applicants or employees to discrimination prohibited by this part. The relationships referred to in this paragraph include those with referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

(h) Nothing in this part shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.

§ 113.3-2 Accommodations to religious observance and practice.

A recipient of financial assistance must accommodate to the religious observances and practices of an employee or prospective employee unless the recipient demonstrates that it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. As part of this obligation, recipient must make reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommodations can be made without undue hardship on the conduct

of the employer's business. In determining the extent of a recipient's obligations under this section, at least the following factors should be considered: (a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

§ 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

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result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[44 FR 20068, Apr. 4, 1979, as amended at 45 FR 81734, Dec. 12, 1980; 55 FR 52138, 52140, Dec. 19, 1990]

§ 113.4 Assurances required.

An application for financial assistance shall, as a condition to its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. Such an assurance shall contain provisions authorizing the acceleration of the maturity of the recipient's financial obligations to SBA in the event of a failure to comply, and provisions which give the United States a right to seek judicial enforcement of the terms of the assurance. SBA shall specify the form of the foregoing assurance for each program, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors in interest, and other participants in the program.

§ 113.5 Compliance information.

(a) *Cooperation and assistance:* SBA shall to the fullest extent practicable seek the cooperation of applicants and recipients in obtaining compliance with this part and shall provide assistance and guidance to applicants and recipients to help them comply voluntarily with this part. Recipients are expected to continually evaluate their compliance status, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

(b) *Compliance reports:* Each applicant or recipient shall keep such records and submit to SBA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as SBA may determine to be necessary to enable SBA to ascertain whether the applicant or recipient has complied or is complying with this part. In the case of a small business concern which re-

ceives financial assistance from a development company or from a small business investment company, such concern shall submit to the company such information as may be necessary to enable the company to meet its reporting requirements under this part.

(c) *Access to sources of information:* Each applicant or recipient shall permit access by SBA during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person; and such agency, institution or person shall fail or refuse to furnish this information, the applicant or recipient shall so certify in its report and shall set forth what efforts it has made to obtain this information.

(d) *Information to the Public.* Each recipient shall make available to persons entitled under this part to protection against discrimination by the recipient such information as SBA may find necessary to apprise them of their rights to such protection.

(1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under § 113.5(b) to provide information as to the availability of equal opportunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal opportunity fully available to racial, qualified handicapped, nationality groups and persons who because of their sex were previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial, qualified handicapped, or nationality