§ 104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons as do those used by the recipient are available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §104.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped. Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. Provided, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained

[45 FR 30936, May 9, 2000, as amended at 65 FR 68054, Nov. 13, 2000]
on separate forms that shall be ac-
corded confidentiality as medical
records, except that:
(1) Supervisors and managers may be
informed regarding restrictions on the
work or duties of handicapped persons
and regarding necessary accommoda-
tions;
(2) First aid and safety personnel
may be informed, where appropriate, if
the condition might require emergency
treatment; and
(3) Government officials inves-
tigating compliance with the Act shall
be provided relevant information upon
request.

Subpart C—Accessibility

§ 104.21 Discrimination prohibited.
No qualified handicapped person
shall, because a recipient’s facilities
are inaccessible to or unusable by
handicapped persons, be denied the
benefits of, be excluded from participa-
tion in, or otherwise be subjected to
discrimination under any program or
activity to which this part applies.

§ 104.22 Existing facilities.
(a) Accessibility. A recipient shall op-
erate its program or activity so that
when each part is viewed in its en-
tirety, it is readily accessible to handi-
capped persons. This paragraph does
not require a recipient to make each of
its existing facilities or every part of a
facility accessible to and usable by
handicapped persons.
(b) Methods. A recipient may comply
with the requirements of paragraph (a)
of this section through such means as
redesign of equipment, reassignment of
classes or other services to accessible
buildings, assignment of aides to bene-
ficiaries, home visits, delivery of
health, welfare, or other social services
at alternate accessible sites, alteration
of existing facilities and construction
of new facilities in conformance with
the requirements of § 104.23, or any
other methods that result in making
its program or activity accessible to
handicapped persons. A recipient is not
required to make structural changes in
existing facilities where other methods
are effective in achieving compliance
with paragraph (a) of this section. In
choosing among available methods for
meeting the requirement of paragraph
(a) of this section, a recipient shall
give priority to those methods that
serve handicapped persons in the most
integrated setting appropriate.
(c) Small health, welfare, or other social
service providers. If a recipient with
fewer than fifteen employees that pro-
vides health, welfare, or other social
services finds, after consultation with
a handicapped person seeking its serv-
cices, that there is no method of com-
plying with paragraph (a) of this sec-
tion other than making a significant
alteration in its existing facilities, the
recipient may, as an alternative, refer
the handicapped person to other pro-
viders of those services that are acces-
sible.
(d) Time period. A recipient shall com-
ply with the requirement of paragraph
(a) of this section within sixty days of
the effective date of this part except
that where structural changes in facili-
ties are necessary, such changes shall
be made within three years of the ef-
fective date of this part, but in any
event as expeditiously as possible.
(e) Transition plan. In the event that
structural changes to facilities are nec-
essary to meet the requirement of
paragraph (a) of this section, a recipi-
ent shall develop, within six months of
the effective date of this part, a transi-
tion plan setting forth the steps nec-
essary to complete such changes. The
plan shall be developed with the assist-
ance of interested persons, including
handicapped persons or organizations
representing handicapped persons. A
copy of the transition plan shall be
made available for public inspection.
The plan shall, at a minimum:
(1) Identify physical obstacles in the
recipient’s facilities that limit the ac-
cessibility of its program or activity to
handicapped persons;
(2) Describe in detail the methods
that will be used to make the facilities
accessible;
(3) Specify the schedule for taking
the steps necessary to achieve full ac-
cessibility in order to comply with
paragraph (a) of this section and, if the
time period of the transition plan is
longer than one year, identify the steps
of that will be taken during each year
of the transition period; and