significantly impair the ability of the recipient or class of recipients to pro-
vide benefits or services.

§ 104.10 Effect of state or local law or
other requirements and effect of
employment opportunities.

(a) The obligation to comply with
this part is not obviated or alleviated
by the existence of any state or local
law or other requirement that, on the
basis of handicap, imposes prohibitions
or limits upon the eligibility of qual-
ified handicapped persons to receive
services or to practice any occupation
or profession.

(b) The obligation to comply with
this part is not obviated or alleviated
because employment opportunities in
any occupation or profession are or
may be more limited for handicapped
persons than for nonhandicapped
persons.

Subpart B—Employment Practices

§ 104.11 Discrimination prohibited.

(a) General. (1) No qualified handi-
capped person shall, on the basis of
handicap, be subjected to discrimina-
tion in employment under any program
or activity to which this part applies.

(2) A recipient that receives assist-
ance under the Education of the Handi-
capped Act shall take positive steps to
employ and advance qualified handicapped persons in pro-
grams or activities assisted under that
Act.

(3) A recipient shall make all deci-
sions concerning employment under
any program or activity to which this
part applies in a manner which ensures
that discrimination on the basis of
handicap does not occur and may not
limit, segregate, or classify applicants
or employees in any way that ad-
versely affects their opportunities or
status because of handicap.

(4) A recipient may not participate in
a contractual or other relationship
that has the effect of subjecting qual-
fied handicapped applicants or employ-
ees to discrimination prohibited by
this subpart. The relationships referred
to in this paragraph include relation-
ships with employment and referral
agencies, with labor unions, with orga-
nizations providing or administering

§ 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable
accommodation to the known physical
or mental limitations of an otherwise
qualified handicapped applicant or em-
ployee unless the recipient can dem-
onstrate that the accommodation
would impose an undue hardship on the
operation of its program or activity.

(b) Reasonable accommodation may
include:

(1) Making facilities used by employ-
ees readily accessible to and usable by
handicapped persons, and

(2) Job restructuring, part-time or
modified work schedules, acquisition
§ 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 are not shown by the Director to be 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...