

§ 32.3

29 CFR Subtitle A (7-1-20 Edition)

§ 32.3 Definitions.

As used in this part, the term:

The Act means the Rehabilitation Act of 1973, Public Law 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, and by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Public Law 95-602.

Assistant Secretary means the Assistant Secretary for Employment and Training Administration or his or her designee.

Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

Department means the Department of Labor.

Facility means all or any portion of the buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property which are utilized in the execution of the program or activity for which Federal financial assistance is received.

Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

- (a) Funds;
- (b) Services of Federal personnel; or
- (c) Real and personal property or any interest in or use of such property, including:

- (1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

- (2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

Government means the Government of the United States of America.

Handicap means any condition or characteristic that renders a person a handicapped individual as defined in this section.

Handicapped individual

- (a) *Handicapped individual* means any person who—

- (1) Has a physical or mental impairment which substantially limits one or more major life activities;

- (2) Has a record of such an impairment; or

- (3) Is regarded as having such an impairment.

- (b) As used in the preceding paragraph of this section, the phrase:

- (1) *Physical or mental impairment* means—

- (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

- (ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- (iii) The term *physical or mental impairment* includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

- (2) *Substantially limits* means the degree that the impairment affects an individual becoming a beneficiary of a program or activity receiving Federal financial assistance or affects an individual's employability. A handicapped individual who is likely to experience difficulty in securing or retaining benefits or in securing, or retaining, or advancing in employment would be considered substantially limited.

- (3) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

- (4) *Has a record of such an impairment* means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more life activity.

- (5) *Is regarded as having such an impairment* means that the individual—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

Qualified handicapped individual means:

(a) With respect to employment, an individual with a handicap who is capable of performing the essential functions of the job or jobs for which he or she is being considered with reasonable accommodation to his or her handicap;

(b) With respect to services, a handicapped individual who meets eligibility requirements relevant to the receipt of services provided in the program or activity;

(c) With respect to employment and to employment related training, a handicapped individual who meets both the eligibility requirements for participation in the program or activity and valid job or training qualifications with reasonable accommodation.

Reasonable accommodation means the changes and modifications which can be made in the structure of a job or employment and training, or in the manner in which a job is performed or employment and training is conducted, unless it would impose an undue hardship on the operation of the recipient's program or activity. Reasonable accommodation may include:

(a) Making the facilities used by the employees or participants in the area where the program or activity is conducted, including common areas used by all employees or participants such as hallways, restrooms, cafeterias and lounges, readily accessible to and usable by handicapped persons, and

(b) 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.

Recipient means any state or its political subdivisions, any instrumentality of a State or its political subdivisions, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Section 504 means section 504 of the Act.

§ 32.4

Small recipient means a recipient who serves fewer than 15 beneficiaries, and employs fewer than 15 employees at all times during a grant year.

United States means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa and the Trust Territory of the Pacific Islands.

[45 FR 66709, Oct. 7, 1980, as amended at 61 FR 19985, May 3, 1996; 68 FR 51367, 51368, Aug. 26, 2003]

§ 32.4 Discrimination prohibited.

(a) *General.* No qualified handicapped individual shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, service or training, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped individual the opportunity to participate in or benefit from the aid, benefit, service or training;

(ii) Afford a qualified handicapped individual an opportunity to participate in or benefit from the aid, benefit, service or training that is not equal to that afforded others;

(iii) Provide a qualified handicapped individual with any aid, benefit, service or training that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped individuals or to any class of handicapped individuals unless such action is necessary to provide qualified handicapped individuals with aid, benefits, services or training that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped individual by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, service or training to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped individual the opportunity to participate

29 CFR Subtitle A (7-1-20 Edition)

as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

(2) For purposes of this part, aid, benefits, services or training, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals, but must afford handicapped individuals equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) A recipient may not deny a qualified handicapped individual the opportunity to participate in its regular aid, benefits, services, or training, despite the existence of separate or different aid, benefits, services, or training for the handicapped which are established in accordance with this part.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped individuals to discrimination on the basis of handicap;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped individuals; or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections.

(i) That have the effect of excluding handicapped individuals from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives