

**PART 1232—NONDISCRIMINATION
ON BASIS OF HANDICAP IN
PROGRAMS OR ACTIVITIES RE-
CEIVING FEDERAL FINANCIAL
ASSISTANCE**

Subpart A—General Provisions

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Subpart A—General Provisions

§ 1232.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1232.2 Application.

This part applies to each recipient of Federal financial assistance from ACTION and to each program or activity that receives such assistance, including, but not limited to VISTA, Univer-

sity Year for ACTION (UYA), Senior Companion Program (SCP), Foster Grandparent Program (FGP) and Retired Senior Volunteer Program (RSVP). This part does not apply to recipients outside the United States which receive financial assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87–293, as amended.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

§ 1232.3 Definitions.

As used in this part the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, and the Rehabilitation Act Amendments of 1978, Pub. L. 95–602.

(b) *Section 504* means section 504 of the Act.

(c) *Director* means the Director of ACTION.

(d) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, 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.

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

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

- (1) Funds;
- (2) Services of Federal personnel;
- (3) Real and personal property or any interest in or use of such property, including:

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

(ii) 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.

(4) A Federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance, including the provision of volunteers under the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4951, Pub. L. 93-113, as amended.

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) *Handicapped person*.

(1) *Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, except that as it relates to employment or volunteer service the term "handicapped person" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment or volunteer service, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) 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; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 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, drug addiction and alcoholism.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) 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 (C) has none of the impairments defined in paragraph (h)(2)(i) of this section but is treated by a recipient as having such an impairment.

(i) *Qualified handicapped person* means (1) with respect to employment or volunteer service, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job or assignment in question; and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

(k) *Volunteer* and "Volunteer service" refers to any person serving as a full time or part-time volunteer as authorized under the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended.

(l) *Work station* means any public or private agency, institution, organization or other entity to which volunteers are assigned by a recipient.

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, 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

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(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 (m)(1), (2), or (3) of this section.

(Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794), sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; Sec. 402(14), Pub. L. 93–113, 87 Stat. 398)

[44 FR 31018, May 30, 1979; 46 FR 6951, Jan. 22, 1981, as amended at 68 FR 51388, Aug. 26, 2003]

§ 1232.4 General prohibitions against discrimination.

(a) No qualified handicapped person, 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 to which this part applies.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licens-

ing, or other arrangements, on the basis of handicap:

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

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

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

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

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

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

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

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in aid, benefits, or services that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) 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 persons to discrimination on the basis of handicap,

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

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accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, 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.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding handicapped persons 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 of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from aid, benefits, or services limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, volunteers and beneficiaries are available to persons with impaired vision and hearing.

(f) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program or activity receiving Federal financial assistance from ACTION because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

§ 1232.5 Assurances required.

(a) An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form

specified by the Director, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to ACTION. The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(b) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(c) A recipient operating a program or activity under which volunteers are assigned to a number of work stations shall obtain an assurance from each work station that neither volunteers nor the beneficiaries they serve will be discriminated against on the basis of handicap.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

§ 1232.6 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, volunteers and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of section 504 and this part.

§ 1232.7 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504

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or this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or

(ii) With respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred, or

(iii) With respect to handicapped persons presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

(b) *Voluntary action.* Recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) Each recipient shall, within one year of the effective date of this part, conduct a self-evaluation of its compliance with Section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each recipient shall with the assistance of and consultation with interested persons, including handicapped persons, evaluate its current policies, practices and effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

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§ 1232.8 Effect of state or local law.

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 qualified handicapped persons to receive services or to practice any occupation or profession.

Subpart B—Employment and Volunteer Service Practices

§ 1232.9 General prohibitions against employment and volunteer service discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment or volunteer service under any program or activity that receives federal financial assistance.

(b) A recipient shall make all decisions concerning employment or volunteer service 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 or volunteers in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment and volunteer service applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment or volunteer service;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment or volunteer service, whether or not administered by the recipient;