

and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of Section 504 and of this part. The notification shall state, where appropriate, that the recipient does not discriminate in the admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to § 8b.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publications in newspapers and magazines, placement of notices in recipient's publications, and distribution of memoranda or other written communication. A recipient shall take appropriate steps to ensure that notice is available to persons with impaired vision or hearing.

(b) If a recipient publishes or uses recruitment materials or publications containing general information made available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications, or by revising and reprinting the materials and publications.

§ 8b.9 Administrative requirements for small recipients.

The Secretary may require small recipients to comply with §§ 8b.7 and 8b.8, in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the small recipient to provide benefits or services.

§ 8b.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 qualified handicapped individuals to receive services, participate in programs or activities, or 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 individuals than for nonhandicapped persons.

Subpart B—Employment Practices

§ 8b.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped individual shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance.

(2) A recipient shall make all decisions 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 adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) *Specific activities.* The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising and the processing of applicants for employment;

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(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; pension or other benefit the applicant or employee receives from any other source.

§ 8b.12 Reasonable accommodation.

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

(b) Reasonable accommodation may include:

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

(2) 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.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number of participants, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(e) Nothing in this paragraph shall relieve a recipient of its obligation to make its program or activity accessible as required in subpart C of this part, or to provide auxiliary aids, as required by § 8b.4(b)(7).

§ 8b.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 individuals or any class of handicapped individuals 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 individuals are not shown by the Secretary 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 to reflect the applicant's or employee's job skills aptitude, or whatever 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).

§ 8b.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct preemployment inquiry of an applicant for employment as to whether the applicant is a handicapped individual, 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 § 8b.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in this federally assisted program or activity pursuant to § 8b.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 employees are subject 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 on separate forms that shall be accorded confidentiality as medical records, except:

(1) Employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was placed conditionally in a job pool or placed conditionally on an eligibility list;

(2) Supervisors and managers may be informed regarding restrictions on the work or duties of qualified handicapped individuals and regarding necessary accommodations;

(3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(4) Government officials investigating compliance with the Act shall be provided information upon request.

§ 8b.15 Employment on ships.

No qualified handicapped individual possessing an appropriate license or certificate obtained from the United States Coast Guard pursuant to the requirements of 46 CFR 10.01-1 *et seq.* and 12.01-1 *et seq.* shall, on the basis of handicap, be subjected to discrimination in employment on ships under any program or activity to which this part applies.

Subpart C—Accessibility

§ 8b.16 Discrimination prohibited.

No qualified handicapped individual shall, because a recipient's facilities are inaccessible to or unusable by handicapped individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 8b.17 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. 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 qualified handicapped individuals. However, if a particular program is available in only one location, that site must be made accessible or the aid, benefit, or service must be made available at an alternative accessible site or sites. Accessibility requires nonpersonal aids to make the aid, benefit, or service accessible to mobility impaired 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 beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of § 8b.19, or