

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

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any other method that results in making its program or activity accessible to handicapped individuals. 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 individuals in the most integrated setting appropriate.

(c) If a small recipient finds, after consultation with a qualified handicapped individual seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities or facility, the small recipient may, as an alternative, refer the qualified handicapped individual to other providers of those services that are accessible at no additional cost to the handicapped.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this part. Where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance 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 accessibility of its program or activity to qualified handicapped individuals;

(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-

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cessibility under § 8b.17(a) and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities and facilities that are accessible to and usable by qualified handicapped individuals.

(Approved by the Office of Management and Budget under control number 0605-0006)

[47 FR 17746, Apr. 23, 1982, as amended at 47 FR 35472, Aug. 16, 1982; 68 FR 51353, Aug. 26, 2003]

## § 8b.18 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by qualified handicapped individuals, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by qualified handicapped individuals.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of August 17, 1990, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[47 FR 17746, Apr. 23, 1982, as amended at 55 FR 29320, July 18, 1990]

### Subpart D—Post Secondary Education

#### § 8b.19 Application of this subpart.

Subpart D applies to post secondary education programs or activities, including post secondary vocational education programs or activities, that receive Federal financial assistance for the operation of, such programs or activities.

#### § 8b.20 Admission and recruitment.

(a) *General.* Qualified handicapped may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped individuals who may be admitted; and

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped individuals or any class of handicapped individuals unless:

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level of whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped individuals; and

(4) Except as provided in paragraph (c) of this section, may not make pre-admission inquiry as to whether an applicant for admission is a handicapped individual but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Pre-admission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 8b.6(a) or 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 § 8b.6(b), the recipient may invite applicants for admission 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 action efforts; and

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