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eligibility for Federal financial assistance, and the term *application* means such an application, request, or plan.

(j) The term *facility* includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

[30 FR 314, Jan. 9, 1965, as amended at 38 FR 17948, July 5, 1973; 68 FR 51358, Aug. 26, 2003]

APPENDIX A TO PART 141—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Mutual understanding between people of the United States and the people of other countries by educational and cultural exchange—studies, research, instruction and other educational activities—cultural exchanges (Mutual Educational and Cultural Exchange Act of 1961—75 Stat. 527–538).

2. Center for Cultural and Technical Interchange Between East and West—grant to State of Hawaii (Pub. L. 86–472, 74 Stat. 141).

3. Assistance to or in behalf of refugees designated by the President (Migration and Refugee Assistance Act of 1962—76 Stat. 121–124).

4. Donations of certain foreign language tapes and other training material to public and private institutions (Regulations of Administrator of General Services relating to surplus property—41 CFR 101–6.2).

[30 FR 314, Jan. 9, 1965, as amended at 38 FR 17948, July 5, 1973]

PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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APPENDIX A TO PART 142—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

AUTHORITY: 29 U.S.C. 794.

SOURCE: 45 FR 69438, Oct. 21, 1980, unless otherwise noted.

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Subpart A—General Provisions

§ 142.1 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.

§ 142.2 Application.

This part applies to all programs or activities directly affecting handicapped individuals in the United States

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carried on by recipients of Federal financial assistance pursuant to any authority held or delegated by the Secretary of State, including the types of Federal financial assistance listed in appendix A of this part. (appendix A may be revised from time-to-time by notice in the FEDERAL REGISTER.) It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this regulation, even if the application for such assistance is approved prior to such effective date. This part does not apply to:

(a) Any Federal financial assistance by way of insurance or guaranty contracts;

(b) Money paid, property transferred or other assistance extended before the effective date of this part;

(c) Any assistance to any individual who is the ultimate beneficiary; and

(d) Any procurement of goods or services, including the procurement of training. This part does not bar selection and treatment reasonably related to the foreign affairs objective or such other authorized purpose as the Federal assistance may have. It does not bar selections which are limited to particular groups where the purpose of the Federal financial assistance calls for such a limitation, nor does it bar special treatment including special courses of training, orientation or counseling consistent with such purpose.

§ 142.3 Definitions.

As used in this part, the term:

(a) *Executive order* means Executive Order 11914, entitled "Nondiscrimination with Respect to the Handicapped in Federally-Assisted Programs," issued April 28, 1976.

(b) *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 of Amendments of 1978, Pub. L. 95-602.

(c) *Section 504* means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794: amendments of 1978, Pub. L. 95-602.

(d) *Department* means the Department of State and includes each of its organizational units. It does not include the Agency for International Development.

(e) *Secretary* means the Secretary of State or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act under the regulations in this part.

(f) *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 and any sovereign foreign government.

(g) *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 or becoming a recipient.

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

(1) Funds;

(2) Services of Federal personnel; or

(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.

(i) *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.

(j) *Handicapped person*. (1) means any person who: (i) has a physical or mental impairment which substantially

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limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(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 and 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 story 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 that 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 impairments, or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reason-

able accommodation, can perform the essential functions of the job in question;

(2) With respect to public pre-school, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which non-handicapped persons are provided such services, (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standard requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the recipient of such services.

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

(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 (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—

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(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.

[45 FR 69438, Oct. 21, 1980, as amended at 68 FR 51359, Aug. 26, 2003]

§ 142.4 Discrimination prohibited.

(a) *General.* 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 which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.*

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, 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 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 person 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 any 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 an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services to be effective, are not required to produce identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped person 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) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(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 persons 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 persons, or (iii) that perpetuate the discrimination with respect to 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 or a facility, an applicant for assistance or a recipient may not 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 of (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.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part with Federal financial assistance.

(c) *Aid, benefits, or services limited by Federal law.* The exclusion of a handicapped person 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 ensure that communications with their applicants, employees, and handicapped persons participating in their programs or activities, or receiving aids, or benefits of services, are available to persons with impaired vision and hearing in appropriate modes, including braille, enlarged type, sign language and telecommunication devices for the deaf.

§ 142.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance on a form specified by the Secretary, 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 the Department.

(b) *Duration of obligations.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purposes for which Federal financial as-

sistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided by the Department in the form of real property or interest in real property, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

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

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of the Act or this part, the recipient shall take such remedial action as the Secretary 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 of the Act or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 of the Act or this part, require a recipient to take 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 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.

(b) *Voluntary action.* A recipient may take steps, in addition to any action 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) A recipient shall, within six months of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient 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 Secretary 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.

§ 142.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs 15 or more persons shall designate at least one

person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 142.8 Notice.

(a) A recipient shall take appropriate initial 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 of the Act or this part. The notification shall state, where appropriate, that the recipient does not discriminate in 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 § 142.7(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 but are not limited to the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, distribution of memoranda or other written communications; and with persons with impaired vision and hearing, through appropriate modes including braille, enlarged type, sign language, and telecommunication devices for the deaf.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes 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 the paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

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§ 142.9 Administrative requirements for small recipients.

The Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with § 142.7, 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 recipient or class of recipients to provide benefits or services.

§ 142.10 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 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

§ 142.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity receiving 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. This includes relationships with employment and referral agencies, with labor unions, with orga-

nizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) *Specific activities.* The provisions of this part apply to:

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

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

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

(4) Job assignments, job classification, 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 whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 142.12 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 the program or activity.

(b) Reasonable accommodation may include: (1) Making facilities used by employees 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,

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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 with respect to number and type of facilities, and size of budget;

(2) Job restructuring, part-time or modified work schedules, acquisition and or modification of equipment of devices such as telecommunication devices for the deaf, the provision of readers or interpreters and other similar actions including the use of braille, enlarged type, and sign language, when appropriate.

(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.

§ 142.13 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 Secretary to be available.

(b) A recipient shall select and administer tests concerning employment to ensure that when administered to any applicant or employee who has a handicap that impairs sensory, manual, speaking, or other skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, speaking, or other skills (except where those skills are the factors that the test purports to measure).

§ 142.14 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 §142.6(a), when a recipient is taking voluntary action to overcome the effect of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §142.6(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 requirement 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 that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodation;

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

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

Subpart C—Accessibility

§ 142.15 Discrimination prohibited.

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

§ 142.16 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 and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as the addition of equipment (e.g., telecommunication device for the deaf) re-design of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of §142.18, or any other method that results in making its program or activity accessible to handicapped persons. 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 persons in the most integrated setting appropriate.

(c) *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 except that 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.

(d) *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 handicapped persons;

(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 accessibility under paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the person responsible for implementation of the plan; and

(5) A list of all handicapped persons and organizations consulted in the plan formulation process.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing,

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can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[45 FR 69438, Oct. 21, 1980, as amended at 68 FR 51359, Aug. 26, 2003]

§ 142.17 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, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by persons with handicaps, 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 in a manner that effects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by persons with handicaps.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (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 ac-

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complished without removing or altering a load-bearing structural member.

[55 FR 52138, 52140, Dec. 19, 1990]

§§ 142.18-142.40 [Reserved]

Subpart D—Postsecondary Education

§ 142.41 Application of this subpart.

Subpart D applies to postsecondary education programs and activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance from the Department of State, and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 142.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons 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 persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons 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 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 or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, speaking or other 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, speaking or other 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, are accessible to handicapped persons; and

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

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §142.6(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 §142.6(b), the recipient may invite applicants for admissions 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.

(d) *Validity studies.* For the purpose of paragraph (c)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 142.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be ex-

cluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational, training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs or activities in the most integrated setting appropriate.

§ 142.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discrimination, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose

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upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, speaking or other skills as will best ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, speaking or other skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, speaking or other skills.

(2) Auxiliary aids may include taped texts, interpreters, telecommunication devices for the deaf or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 142.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C of this part, such housing shall be available in sufficient quantity and variety so that the scope of handi-

capped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 142.46 Financial and employment assistance to students.

(a) *Provisions of financial assistance.* (1) In providing financial assistance of qualified handicapped persons, a recipient to which this subpart applies may not:

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

§ 142.47 Non-academic services.

(a) *Physical education and athletics.* (1) In providing physical education courses, athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separate or differentiation is consistent with the requirements of §142.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

§§ 142.48–142.60 [Reserved]

Subpart E—Health, Welfare, Social, and Other Services

§ 142.61 Application of this subpart.

Subpart E applies to health, welfare, social and other programs or activities

that receive Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 142.62 Health, welfare, social, and other services.

(a) *General.* In providing health, welfare, social and other services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that are not equal to those offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in §142.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs 15 or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, speaking or other skills (where necessary) to afford such persons an equal opportunity to benefit from the service in question.

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(2) The Secretary may require recipients with fewer than 15 employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(e) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 142.63 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Subpart F—Procedures

§ 142.70 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 22 CFR subchapter O, part 141.

APPENDIX A TO PART 142—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

Types of Federal Financial Assistance Administered by the Department of State Subject to Handicap Discrimination Regulations.

1. Resettlement of Refugees in the United States Under the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 *et seq.* (1976)).

2. Non-reimbursable assignment of Foreign Service officers to State or local governments, public schools, community colleges, and other public or private nonprofit organizations designated by the Secretary of State (section 576 of the Foreign Service Act of 1946, as amended; 22 U.S.C. 966 (1976)).

3. Diplomat-in-Residence Program of the Foreign Service Institute under Title VII of the Foreign Service Act of 1946, as amended (22 U.S.C. 1041, *et seq.* (1976)).

[45 FR 69438, Oct. 21, 1980, as amended at 68 FR 51359, Aug. 26, 2003]

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PART 143—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

143.1 What is the purpose of age discrimination regulations?

143.2 To what programs or activities do these regulations apply?

143.3 Definitions.

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143.22 Notice to subrecipients.

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143.33 Mediation.

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143.36 Compliance procedure.

143.37 Hearings, decisions, post-termination proceedings.

143.38 Remedial action by recipient.

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APPENDIX A TO PART 143—LIST OF AFFECTED FEDERAL FINANCIAL ASSISTANCE

APPENDIX B TO PART 143—LIST OF AFFECTED FEDERAL FINANCIAL ASSISTANCE

APPENDIX C TO PART 143—LIST OF AFFECTED PROGRAMS

AUTHORITY: Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*); 22 U.S.C. 2658; 45 CFR part 90.

SOURCE: 45 FR 31713, May 14, 1980, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 143 appear at 68 FR 51360, Aug. 26, 2003.

Subpart A—General

§ 143.1 What is the purpose of the age discrimination regulations?

The purpose of these regulations is to set out the policies and procedures for the three foreign affairs agencies (State, USICA and AID) under the Age