

Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17958, July 5, 1973; 68 FR 51367, Aug. 26, 2003]

#### **§ 31.11 Judicial review.**

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

[29 FR 16284, Dec. 4, 1964. Redesignated at 38 FR 17958, July 5, 1973]

#### **§ 31.12 Effect on other regulations; supervision and coordination.**

(a) *Effect on other regulations.* All regulations, orders or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligations assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing

in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Orders 10925, 11114 and 11246 and regulations issued thereunder,

(2) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 23 FR 734, or

(3) Any other regulation or instruction insofar as it prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* (1) The Secretary may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 31.11), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations.

(2) Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Secretary.

[38 FR 17958, July 5, 1973, as amended at 68 FR 51367, Aug. 26, 2003]

## **PART 32—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

### **Subpart A—General Provisions**

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#### APPENDIX A TO PART 32

AUTHORITY: 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); secs. 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955; Executive Order 11914, 41 FR 17871.

SOURCE: 45 FR 66709, Oct. 7, 1980, unless otherwise noted.

## Subpart A—General Provisions

### § 32.1 Purpose.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The purpose of this part is to implement section 504 with respect to

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receiving Federal financial assistance from the Department of Labor.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### § 32.2 Application.

(a) This part applies to each recipient of Federal financial assistance from the Department of Labor, and to every program or activity that receives such assistance.

(b) A government contractor covered by the provisions of section 503 of the Act shall be deemed in compliance with the employment provisions of these regulations if it is in compliance with 41 CFR part 60-741 (as amended after publication of these regulations) with respect to Federal financial assistance from the Department of Labor.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51367, Aug. 26, 2003]

### § 32.3 Definitions.

As used in this part, the term:

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

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

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

*Department* means the Department of Labor.

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

*Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or any other arrangement by which the Department

provides or otherwise makes available assistance in the form of:

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

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

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

*Government* means the Government of the United States of America.

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

*Handicapped individual*

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

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

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

(3) Is regarded as having such an impairment.

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

(1) *Physical or mental impairment* means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Qualified handicapped individual* means:

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

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

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

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

(a) Making the facilities used by the employees or participants in the area where the program or activity is conducted, including common areas used

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by all employees or participants such as hallways, restrooms, cafeterias and lounges, readily accessible to and usable by handicapped persons, and

(b) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

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

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

*Section 504* means section 504 of the Act.

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

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

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

### § 32.4 Discrimination prohibited.

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

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

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

(ii) Afford a qualified handicapped individual an opportunity to participate

in or benefit from the aid, benefit, service or training that is not equal to that afforded others;

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

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

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

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

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

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

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

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

(i) That have the effect of subjecting qualified handicapped individuals to

discrimination on the basis of handicap;

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

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

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

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

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

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

(7)(i) In providing services receiving Federal financial assistance, except for employment-related training, a recipient to which this subpart applies, except small recipients, shall ensure that no handicapped participant is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by the recipient because of the absence of auxiliary aids for participants with impaired sensory, manual or speaking skills. In employment and employment-related training, this paragraph shall apply only to the intake, assessment and referral services. A recipient shall operate each program or activity to which this subpart applies so that, when viewed in its entirety, auxiliary aids are readily available.

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(ii) Auxiliary aids may include brailled and taped written materials, interpreters or other effective methods of making orally delivered information available to persons with hearing impairments, readers for persons with visual impairments, equipment adapted for use by persons 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.

(c) *Aid, benefits, services, or training limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, program services, or training limited by Federal statute on Executive order to handicapped individuals or the exclusion of a specific class of handicapped individuals from aid, benefits, services, or training limited by Federal statute or Executive order to a different class of handicapped individuals is not prohibited by this part.

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

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

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51367, 51368, Aug. 26, 2003]

### § 32.5 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 Assistant 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 obligation.* (1) In the case of Federal financial assistance extended in the form of 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

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the real property or structures are used for the purpose involving the provision of similar services or benefits.

(2) 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.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended or the federally-funded program or activity is operated, whichever is longer.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure non-discrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no Federal 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 in the form of real property or interest in the property from the Department, 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 to finance construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may 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. Such an agreement by the Assistant Secretary may be entered into only

upon the request of the transferee (recipient) if it is necessary to accomplish such financing and upon such terms and conditions as the Assistant Secretary deems appropriate.

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency, and where the grant obligates the recipient agency to comply with the rules and regulations of the Department applicable to that grant the provisions of this part shall apply to programs or activities operated with such funds.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51367, 51368, Aug. 26, 2003]

**§ 32.6 Remedial action, voluntary action, and self-evaluation.**

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

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 of this part, require a recipient to take remedial action:

(i) With respect to handicapped individuals who would have been participants in the program or activity had the discrimination not occurred; and

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

(iii) With respect to employees and applicants for employment.

(b) *Voluntary action.* A 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 individuals.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons who are selected by the recipient, including handicapped individuals or organizations representing handicapped individuals, 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 who are selected by the recipient, including handicapped individuals or organizations representing handicapped individuals, any policies and practices that do not meet the requirements of this part; and

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

(2) A recipient, other than a small 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 Assistant 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.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

**§ 32.7 Designation of responsible employee.**

A recipient, other than a small recipient shall designate at least one person to coordinate its efforts to comply with this part.

**§ 32.8 Notice.**

(a) A recipient, other than a small recipient, shall take appropriate initial and continuing steps to notify participants, beneficiaries, referral sources,

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applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations which have 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 § 32.7. A recipient shall make the initial notifications 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, publication in newspapers and magazines, placement of notices in recipient's publications, and distribution of memoranda or other written communications.

(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 this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### § 32.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient that provides services to fewer than 15 beneficiaries or with fewer than 15 employees, or any class of such recipients, to comply with §§ 32.7 and 32.8, in whole or in part, when the Assistant 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.

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### § 32.10 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.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

## Subpart B—Employment Practices and Employment Related Training Participation

### § 32.12 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 to which this part applies. This subpart is applicable to employees and applicants for employment with all recipients and to participants in employment and training under programs or activities financed in whole or in part by Federal financial assistance.

(2) A recipient shall make all decisions concerning employment or training under any program or activity to which this subpart 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 participants 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, employees or participants to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment

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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 provisions of this subpart apply to:

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

(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, 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 term, condition, or privilege of employment.

(c) *Collective bargaining agreements.* Whenever a recipient's obligation to comply with this subpart and to correct discriminatory practices impacts on and/or necessitates changes in a term of a collective bargaining agreement(s) to which the recipient is a party, the recipient shall attempt to achieve compliance consistent with the provisions of § 32.17(a). However a recipient's obligation to comply with this subpart is not relieved by a term of any such collective bargaining agreement(s).

(d) *Compensation.* In offering employment or promotions to handicapped individuals, the recipient shall not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant

or employee receives from other source.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### § 32.13 Reasonable accommodation.

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

(b) 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 duration and type of training; and

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

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

(d) 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 § 32.4(b)(7).

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### § 32.14 Job qualifications.

(a) The recipient shall provide for, and shall adhere to, a schedule for the review of the appropriateness of all job qualifications to ensure that to the extent job qualifications tend to exclude handicapped individuals because of their handicap, they are related to the

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performance of the job and are consistent with business necessity and safe performance.

(b) Whenever a recipient applies job qualifications in the selection of applicants, employees or participants for employment or training or other change in employment status such as promotion, demotion or training, which would tend to exclude handicapped individuals because of their handicap, the qualifications shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and safe performance. The recipient shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

### § 32.15 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct preemployment medical examinations or make preemployment inquiry of an applicant for employment or training as to whether the applicant is a handicapped person or as to the nature or the 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, 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, or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment or training to indicate whether and to what extent they are handicapped if:

(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.

(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 pro-

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vide it will not subject the applicant, employee or participant to any adverse treatment, and that it will be used only in accordance with this part.

(c) An employer who routinely requires medical examinations as part of the employment selection process must demonstrate that each of the requirements of this subsection are met:

(1) The medical examination shall be performed by a physician qualified to make functional assessments of individuals in a form which will express residual capacity for work or training. Such an assessment does not require clinical determinations of disease or disability, but shall provide selecting or referring officials sufficient information regarding any functional limitations relevant to proper job placement or referral to appropriate training. Factors which may be assessed may include, for example, use of limbs and extremities, mobility and posture, endurance and energy expenditure, ability to withstand various working conditions and environments, use of senses and mental capacity;

(2) The results of the medical examination shall be specific and objective so as to be susceptible to review by independent medical evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;

(3) The results of the medical examination shall not be used to screen out qualified applicants and employees but to determine proper placement and reasonable accommodation. The employing official using physical or mental information obtained pursuant to this section should be familiar with physical or mental activities involved in performing the job, and the working conditions and environment in which it is carried out. If the applicant is being considered for a variety of jobs having different requirements or skills, the employing official should make a functional assessment of the physical or mental demands of the jobs in order to match the applicant with the most suitable vacancy;

(4) All of potential employees for the jobs are subjected to the medical examination;

(5) The procedures for using medical examinations or the medical information shall be constructed in such a manner that:

(i) A conditional job offer was made or the individual was conditionally placed in a job pool or conditionally placed on an eligibility list prior to the medical examination being performed; or

(ii) The results of the medical examination were considered by the employing official only after a conditional decision to make a job offer or the individual had been placed conditionally in a job pool or conditionally placed on an eligibility list; that is the medical results were the last factor evaluated by the employing officials before a final decision to make an offer of employment was made.

(6) Unless a conditional job offer is made prior to the medical examination, all potential employees for the job shall be informed at the time of the medical examination that:

(i) The results of the medical examination are the last factor evaluated by the employing official before a final decision to make an offer of employment is made, and

(ii) The medical examination results shall be transmitted to the employing official and the applicant only after a conditional decision to make a job offer has been made.

(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) 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 persons 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.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2004]

**§ 32.16 Listing of employment openings.**

Recipients should request State employment security agencies to refer qualified handicapped individuals for consideration for employment.

**§ 32.17 Labor unions and recruiting and training agencies.**

(a) The performance of a recipient's obligations under the nondiscrimination provisions of these regulations may necessitate a revision in a collective bargaining agreement(s). The policy of the Department of Labor is to use its best efforts, directly or through the recipients, subgrantees, local officials, vocational rehabilitation facilities, and other available instrumentalities, to cause any labor union, recruiting and training agency or other representative or workers who are or may be engaged in work under programs or activities receiving Federal financial assistance to cooperate with, and to comply in the implementation of section 504.

(b) To effectuate the purposes of paragraph (a) of this section, the Assistant Secretary may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(c) Whenever compliance with section 504 necessitates a revision of a collective bargaining agreement or otherwise significantly affects a substantial number of employees represented by the union, the collective bargaining representatives shall be given an opportunity to present their views to the Assistant Secretary.

(d) The Assistant Secretary may notify any Federal, State, or local agency of his/her conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his/her judgment has failed to cooperate with the Department of Labor, recipients, subgrantees or applicants in carrying

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out the purposes of section 504. The Assistant Secretary also may notify other appropriate Federal agencies when there is reason to believe that the practices of any such labor organization or agency violates other provisions of Federal law.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### Subpart C—Accessibility

#### § 32.26 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.

#### § 32.27 Accessibility.

(a) *Purpose.* 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 aid, benefit, service, or training is available in only one location, that site must be made accessible or the aid, benefit, service, or training must be made available at an alternative accessible site or sites. Accessibility requires nonpersonal aids to make the program or activity accessible to mobility impaired persons. Reasonable accommodations, as defined in § 32.3, are required for particular handicapped individuals in response to the specific limitations of their handicaps.

(b) *Scope and application.* (1) For the purpose of this subpart, prime sponsors under the Comprehensive Employment and Training Act and any other individual or organization which receives a grant directly from the Department to establish or operate any program or activity shall assure that the program or activity, including those involving Public Service Employment, Work Experience, Classroom Training and On-

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the-Job-Training, when each part is viewed in its entirety, is readily accessible to qualified handicapped individuals.

(2) *Job Corps.* All agencies, grantees, or contractors which screen or recruit applicants for the Job Corps shall comply with the nondiscrimination provisions of this part. Each regional office of the Department of Labor's Employment and Training Administration which makes the decision on the assignment of a Job Corps applicant to a particular center may, where it finds, after consultation with the qualified handicapped person seeking Job Corps services, that there is no method of complying with § 32.27(a) at a particular Job Corps Center, other than by making a significant alteration in its existing facilities or in its training, assign that individual to another Job Corps Center which is accessible in accordance with this section and which is offering comparable training. The Job Corps, and each regional office of the Employment and Training Administration, shall assure that the Job Corps Program, when viewed in its entirety, is readily accessible to qualified handicapped individuals and that all future construction, including improvements to existing Centers, be made accessible to the handicapped.

(3) If a small recipient finds, after consultation with a qualified handicapped person seeking its services, that there is no method of complying with § 32.27(a) other than making a significant alteration in its existing facilities or facility the recipient may, as an alternative, refer the qualified handicapped person to other providers of those services that are accessible.

(c) *Methods.* A recipient may comply with the requirement of § 32.27(a) 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 requirements of § 32.28, or 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 § 32.27(a). In choosing among available methods for meeting the requirement of § 32.27(a), a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(d) *Time period.* A recipient shall comply with the requirements of § 32.27(a) 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 even as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of § 32.27(a), 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 qualified handicapped individuals. 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 accessibility under § 32.27(a) 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; 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.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### § 32.28 Architectural standards.

(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 in a manner that affects or could affect the usability of the facility or 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) *Standards for architectural accessibility.* Design, construction, or alteration of facilities under this subpart shall meet the most current standards for physical accessibility prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101-19.6. Alternative standards may be adopted when it is clearly evident that equivalent or greater access to the facility or part of the facility is thereby provided.

## Subpart D—Procedures

### § 32.44 Compliance information.

(a) *Cooperation and assistance.* The Assistant Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Assistant Secretary timely, complete and accurate compliance reports at such times, and in such form and containing such information as the Assistant Secretary may determine to be necessary to enable him to ascertain whether the recipient had complied or is complying with this part. For example, recipients should have available for the Department data showing the

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extent to which known handicapped individuals are beneficiaries and participants in federally assisted programs or activities. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Assistant Secretary during normal business hours to such of its books, records, accounts, and other sources of information and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from access to or copying of records or information, or from evaluating or seeking to enforce compliance with this part.

(d) *Posters and information.* The recipient will post in prominent locations (bulletin boards, time clock areas, etc.) posters designed and furnished by DOL outlining and summarizing the nondiscrimination requirements of section 504. The recipient also will make readily available information on section 504 requirements with respect to compliance procedures, the rights of beneficiaries and employees through handbooks, pamphlets and other materials furnished by DOL.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### § 32.45 Investigations.

(a) *Periodic compliance reviews.* The Assistant Secretary shall from time-to-time review the practices of recipients to determine whether they are complying with this part.

(b) *Adoption of grievance procedures.* A recipient shall adopt an internal review procedure incorporating appropriate due process standards which provides

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for the prompt and equitable resolution of complaints alleging any action prohibited by this part. The complainant or his or her representative shall file the complaint with the recipient for processing under those procedures. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Assistant Secretary for good cause shown. The recipient shall maintain records on all complaints filed alleging violation of the Act and shall make such records available to the Assistant Secretary upon request. The complaint and all actions taken thereunder shall be kept confidential by the recipient. If the complaint has not been resolved under those procedures satisfactorily to the complainant within 60 days of the filing or referral, the complainant or his or her representative may file a complaint with the Assistant Secretary within 30 days of the recipient level decision or 90 days from the date of filing the complaint, whichever is earlier. Upon such filing, the Assistant Secretary will proceed as provided in this section. Exhaustion of recipient level procedures shall be required except where:

(1) The recipient has not acted within the timeframe specified in this section; or

(2) The recipient's procedures are not in compliance with this section; or

(3) An emergency situation is determined to exist by the Assistant Secretary.

(c) *Complaints.* Where recipient level procedures have been exhausted, any person who believes he or she or any specific class of individuals has been subjected to discrimination prohibited by this part may (or through an authorized representative) file a written complaint with the Assistant Secretary.

(d) *Contents of complaints.* Complaints must be signed by the complainant or his or her authorized representative and must contain the following information:

(1) Name and address (including telephone or TTY number) of the complainant;

(2) Name and address of the recipient or sub-grantee who committed the alleged violation;

(3) A description of the act or acts considered to be a violation;

(4) A statement that the individual is handicapped or has a history of a handicap or other documentation of impairment or was regard by the recipient as having an impairment; and

(5) Other pertinent information available which will assist in the investigation and resolution of the complaint.

(e) *Incomplete information.* Where a complaint contains incomplete information, the Assistant Secretary shall seek the needed information or any other information which indicates a possible failure to comply with this part from the complainant and shall be responsible for developing a complete record. If such information is not provided within 60 days, the complaint may be closed upon notice to the parties.

(f) *Resolution of matters.* Where an investigation indicates that the recipient has not complied with the requirements of the Act or this part, efforts shall be made to secure compliance through conciliation and persuasion within a reasonable time. Before the recipient or subgrantee can be found to be in compliance, it must make a specific commitment, in writing, to take corrective action to meet the requirements of the Act and this part. The commitment must indicate the precise action to be taken and dates for completion. The time period allowed should be no longer than the minimum period necessary to effect such changes. Upon approval of such commitment by the Assistant Secretary, the recipient may be considered in compliance on condition that the commitments are kept. Where the investigation indicates a violation of the Act or regulations in this part (and the matter has not been resolved by informal means), the Assistant Secretary shall afford the recipient an opportunity for a hearing in accordance with § 32.47.

(g) *Intimidatory or retaliatory acts prohibited.* The sanctions and penalties contained in this regulation may be exercised by the Assistant Secretary against any recipient or sub-grantee

who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Act.

#### § 32.46 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation and if the non-compliance or threatened noncompliance cannot be corrected by informal means, the Department may suspend, terminate or refuse to grant or to continue Federal financial assistance or take any other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or any assurance; and

(2) Any applicable proceeding under state or local law.

(b) *Noncompliance with the requirements of this part.* If a recipient fails or refuses to comply with a requirement imposed by or pursuant to this part, the Department may institute an administrative enforcement proceeding to compel compliance with the requirement, to seek appropriate relief, and or to terminate Federal financial assistance in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph if grants have not yet been approved or funds not yet committed to the recipient. However, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal

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financial assistance shall become effective until:

(1) The Assistant Secretary has advised the applicant or recipient of its failure to comply and compliance has not been secured by voluntary means; and

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program or activity, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) The Assistant Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

### § 32.47 Hearing practice and procedure.

(a) All hearings conducted under section 504 of the Rehabilitation Act of 1973, as amended, and the regulations in this part shall be governed by the Department of Labor's rules of practice for administrative proceedings to enforce title VI of the Civil Rights Act of 1964 contained in 29 CFR part 31.

(b) For the purposes of hearings pursuant to this part 32, references in 29 CFR part 31 to title VI of the Civil Rights Act of 1964 shall mean section 504 of the Rehabilitation Act of 1973, as amended.

(c) The Assistant Secretary from time-to-time may assign to officials of other departments or agencies of the Government or of the Department of

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Labor (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of section 504 of the Act and this part (other than responsibility for final decisions as provided in § 32.46), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of section 504 and this part to similar programs or activities and in similar situations.

(d) Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Secretary.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51369, Aug. 26, 2003]

### Subpart E—Auxiliary Matters

#### § 32.48 Post-termination proceedings.

(a) An applicant or recipient adversely affected by an order suspending, terminating or refusing to grant or continue Federal financial assistance shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility, brings itself into compliance with this part and satisfies the Assistant Secretary that it will fully comply with section 504 and this part.

(b) Any applicant or recipient adversely affected by an order suspending, terminating or refusing to grant or continue Federal financial assistance may request the Assistant Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (a) of this paragraph. If the Assistant Secretary determines that those requirements have been satisfied, the applicant's or recipient's eligibility shall be restored.

(c) If the Assistant Secretary denies any such request, the applicant or recipient may submit a written request for a hearing, specifying why it believes the Assistant Secretary to have

been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure specified in this part. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order suspending, terminating or refusing to grant or continue Federal financial assistance shall remain in effect.

#### § 32.49 Recordkeeping.

(a) Each recipient shall maintain for a period of not less than three years records regarding complaints and actions taken thereunder, and such employment or other records as required by the Assistant Secretary or by this part and shall furnish such information in the form required by the Assistant Secretary or as the Assistant Secretary deems necessary for the administration of the Act and regulations in this part.

(b) Failure to maintain and furnish complete and accurate records as required under this section is a ground for the imposition of appropriate sanctions.

#### § 32.50 Access to records.

Each recipient shall permit access and copying during normal business hours to its places of business, books, records and accounts pertinent to compliance with the Act, and all rules and regulations promulgated pursuant thereto for the purposes of investigation.

#### § 32.51 Rulings and interpretations.

Ruling under or interpretations of the Act and the regulations contained in this part 32 shall be made by the Assistant Secretary.

#### APPENDIX A TO PART 32

Accommodations may take many forms based on the type of handicap and the needs of the individual. In developing appropriate accommodations, the individual should be consulted as to particular needs.

The following is a list of possible types of accommodations provided for guidance and technical assistance. These suggestions are

not mandatory, and other forms of accommodation not described herein may be required if they are appropriate to meet the needs of particular handicapped individuals.

#### *Accommodations for Participants and Employees*

(a) Job restructuring means the procedure which includes:

(1) Identifying the separate tasks that comprise a job or group of jobs;

(2) Developing new position descriptions which retain some of the tasks of the original job; and

(3) Developing a career ladder which builds upward from the new positions which contain the lesser skilled tasks to regular jobs. A restructured job can be clearly different from the original one in terms of skills, knowledge, abilities, and work experience needed to perform the work. Job restructuring is intended to maximize the abilities of the particular handicapped person and is not intended to permit a recipient to under-employ or job-stereotype that person. A restructured job, for example, could be one in which the more highly skilled but physically less demanding duties are retained, e.g. operating controls and switches in a steel mill, and less skilled, physically taxing duties, e.g. lifting, pulling, are reassigned to non-handicapped employees.

(b) Modify job or program schedules, for example, by allowing for a flexible schedule a few days a week so that a participant or employee may undergo medical treatment or therapy. Work-times or participation in program activities may also be altered to permit handicapped individuals to travel to and from work during non-rush hours. For employees or participants who become unable to perform the duties of their positions because of a physical or mental condition, recipients may be required to grant liberal time off or leave without pay when paid sick leave is exhausted and when the disability is of a nature that it is likely to respond to treatment of hospitalization. See, e.g., 339 Federal Personnel Manual-1-3(b)(1).

(c) Modify program and work procedures and training time.

(d) Relocate particular offices or jobs or program activities so that they are in facilities accessible to and usable by qualified handicapped persons. For example, an employee or participant with a respiratory ailment can be placed in a "nonsmoking" and/or well-ventilated office.

(e) Acquire or modify equipment or devices. For hearing-impaired participants or employees, this may include placing amplifiers on telephone receivers, making telephone equipment compatible with hearing aids, providing flashing lights to supplement telephone rings or installing telecommunications devices (TDD's or TTY's). For blind participants or employees, this may include

providing tape recorders or dictating machines for those who cannot type. For wheelchair-users, this may include raising on blocks a desk that is otherwise too low for the employee, rather than purchasing a specially-made desk. A recipient is not obligated to acquire or modify equipment that enables a participant or employee to perform a particular job or participate in a particular program until after an employee with a need for these modifications is hired for a particular office or admitted to a program.

(f) Provide readers, interpreters, and similar assistance as needed for deaf, blind and other handicapped participants or employees. In most instances, this would not require a full-time assistant.

(g) Decrease reliance solely on one form of communication. For example, for deaf participants or employees this may include supplementing program or job orientation sessions with written manuals and other visual materials. If appropriate, a visual warning system should be installed. It may also include providing flashing lights to supplement auditory signals such as sirens and alarm bells. For blind employees, this may include making some communications available in braille, enlarged print, or on cassette recordings. A recipient should tailor the accommodations listed above to the needs of the individual participants or employees who have been admitted to a particular program or hired for a particular office.

(h) Provide human relations-sensitivity training on issues pertaining to handicapped discrimination to all recipient employees.

(i) Conduct ongoing training and planning sessions with recipient supervisors, managers, personnel, technical experts and disability rights advocates to implement and evaluate methods of reasonable accommodation.

#### *Accommodations for Applicants*

(a) Announce program and job vacancies in a form readily understandable by mentally handicapped persons and by persons with impaired vision or hearing, for example, by making the announcements available in braille or on cassette tapes. §32.4(e) of DOL's proposed section 504 regulations requires recipients to insure that communications with applicants are available to persons with impaired vision or hearing. Recipients shall undertake to explain, as appropriate, program and job announcements to mentally handicapped participants or employees or applicants. For example, this might entail notifying known mentally handicapped participants or employees of openings for positions that they might be able to perform and taking specific steps to clearly explain the nature of the program or job and its benefits to that individual.

#### *Handicapped Persons*

(b) Provide readers, interpreters, and other similar assistance during the application, testing, and interview process.

(c) Appropriately adjust or modify examinations so that the test results accurately reflect the applicant's skills, aptitude or 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). This may require the extension of traditional time deadlines or allowing, for example, a blind person to answer an examination orally.

(d) If necessary waive traditional tests and permit the applicant to demonstrate his or her skills through alternate techniques and utilization of adapted tools, aids, and devices.

### **PART 33—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF LABOR**

#### Sec.

- 33.1 Purpose.
- 33.2 Application.
- 33.3 Definitions.
- 33.4 Self-evaluation.
- 33.5 Notice.
- 33.6 General prohibitions against discrimination.
- 33.7 Employment.
- 33.8 Program accessibility: Discrimination prohibited.
- 33.9 Program accessibility: Existing facilities.
- 33.10 Program accessibility: New construction and alterations.
- 33.11 Communications.
- 33.12 Complaint handling procedures.
- 33.13 Intimidation and retaliation prohibited.

AUTHORITY: 29 U.S.C. 794, as amended by sec. 103, Pub. L. 99-506, 100 Stat. 1810.

SOURCE: 52 FR 11606, Apr. 9, 1987, unless otherwise noted.

#### **§33.1 Purpose.**

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by