

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.

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- 33.9 Program accessibility: Existing facilities.
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- 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 Executive agencies or the United States Postal Service.

§ 33.2 Application.

This part applies to all programs or activities conducted by the Department of Labor.

§ 33.3 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary for Administration and Management (ASAM) means the Assistant Secretary for Administration and Management in the Department of Labor.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department of Labor. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Persons with manual impairments may need other specially adapted equipment.

Complete complaint means a written statement that contains the complainant's name and address and describes the actions in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Department means the Department of Labor.

Director means the Director, Directorate of Civil Rights (DCR), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or his or her designee.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a

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record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* includes—

(1) 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

(2) 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.

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

(c) *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 major life activities.

(d) *Is regarded as having an impairment* means—

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

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

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the Department as having such an impairment.

Qualified individuals with handicaps means—

(a) With respect to any program or activity of the Department under which a person is required to perform

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services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in its nature;

(b) With respect to any other Department program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity, and

(c) For purposes of employment, a *Qualified handicapped person* as that term is defined in 29 CFR 1613.702(f) which is made applicable to this part by § 33.7.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95-602, 92 Stat. 2955), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810).

[52 FR 11606, Apr. 9, 1987, as amended at 52 FR 23967, June 26, 1987]

§ 33.4 Self-evaluation.

(a) The Department shall, by May 11, 1988, evaluate, with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Department shall proceed to make the necessary modifications.

(b) The Department shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.5 Notice.

The Department shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Department, and make such information available to them in such manner as the ASAM finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 33.6 General prohibitions against discrimination.

(a) No qualified individual with handicaps 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 conducted by the Department.

(b)(1) The Department, 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 individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

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

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

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Department may not deny a qualified individual with handicaps the opportunity to participate in programs or activities despite the existence of permissibly separate or different programs or activities.

(3) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The provisions of paragraph (b)(4) of this section do not apply to sites or locations at which the Department owns or leases buildings on the date the regulations in this part become effective.

(6) The Department, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(7) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or activities of licensees or certified entities

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that subject qualified individuals with handicaps to discrimination on the basis of handicap. This part does not apply to the programs or activities of non-departmental entities that are licensed or certified by the Department of Labor.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to persons with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.7 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.8 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 33.9 and 33.10 of this part, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

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§ 33.9 Program accessibility: Existing facilities.

(a) *General.* The Department shall operate such program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(b)(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available for use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (b)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents

the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or undue burdens.

(c) If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that qualified individuals with handicaps receive the benefits and services of the program or activity.

(d) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of 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, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Alterations to existing buildings shall be made in accordance with the provisions of § 33.10 of this part. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(e) *Time period for compliance.* The Department shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(f) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department 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 individuals with handicaps and organizations representing individuals with handicaps. 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 Department's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(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 compliance with 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 official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.10 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered after the effective date of this part by, on behalf of, or for the use of the Department shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps in accordance with the requirements of the Uniform Federal Accessibility Standards adopted by the General Services Administration at 41 CFR §§ 101-19.600 to 101-19.607 (1984).

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.11 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a

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program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the individual with handicaps.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs), or equally effective telecommunications systems shall be used.

(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signage at a primary entrance to each of its accessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The Department shall take appropriate steps to provide individuals with handicaps with information regarding their section 504 rights under the Department's programs or activities. If the Department uses recruitment materials, informational publications, or other materials which it distributes or makes available to participants, beneficiaries, referral sources, applicants, employees, or the public, it shall include in those materials or publications a statement of the policy described in §33.6 of this part and information as to complaint procedures. The requirements of this paragraph may be met either by including applicable inserts in existing materials and publications or by revising and reprinting such materials, as appropriate.

(e) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(1) If a Department official believes that the proposed action would fun-

damentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available for use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (e)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraphs (a) through (d) of this section, as applicable, would result in such alteration or undue burdens.

(f) If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

[52 FR 11606, Apr. 9, 1987; 52 FR 24367, June 30, 1987]

§ 33.12 Complaint handling procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by DOL.

(b)(1) Complaints alleging violations of section 504 with respect to employment shall be processed according to the procedures established in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) Complaints based upon program inaccessibility in violation of section 504 will be governed by the procedures at §§ 33.9(b) and 33.11(e) of this part, as applicable.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Directorate of Civil Rights (DCR). Complaints may be delivered or mailed to the Director, Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-4123, Washington, DC 20210.

(d) All complaints must be filed within 180 days of the alleged act of discrimination. The Director may extend this time period for good cause.

(e) Where a complaint contains insufficient information, the Director shall seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been utilized to locate him or her, or the information is not furnished within 30 days of the date of such request, the complaint may be dismissed upon notice sent to the complainant's last known address.

(f) If the Director receives a complaint over which the Department does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(g) The Director shall accept and investigate all complete complaints which are timely filed, are within the Department's jurisdiction, and state an allegation(s) which, if true, would violate section 504 or its implementing regulations.

(1) Where the Director determines that the complaint will be inves-

tigated, he or she will notify the complainant(s) and the appropriate Department official(s).

(2) Such notification will advise the parties that a determination on the merits of the complaint will be issued within 180 days of the date of notification unless the matter is resolved informally prior to that time.

(3) If, during the course of the investigation, the Department official states that he or she believes that resolution of the complaint would require a fundamental alteration of the program or undue financial and administrative burdens, the complaint will proceed in accordance with §§ 33.9(b) and 33.11(e) of this part, as applicable.

(h) At any time prior to the issuance of the determination the parties to the complaint may resolve the complaint on an informal basis. For this purpose, the Director shall furnish, to the extent permitted by law, a copy of the investigative file to the complainant and the appropriate Department official. If the complaint is resolved, the terms of the agreement shall be reduced to writing and entered as part of the official file by the Deputy Assistant Secretary for Administration and Management (Deputy ASAM).

(i) If informal resolution is not achieved, the Deputy ASAM shall issue a determination on the merits which notifies the parties to the complaint of the results of the investigation and includes—

(1) The findings of fact and conclusions of law;

(2) A remedy and/or corrective action, as appropriate, for each violation found; and

(3) A notice of the right to appeal to the Assistant Secretary for Administration and Management (ASAM).

(j)(1) An appeal of the Deputy ASAM's determination may be filed with the ASAM by any party to the complaint. Such appeal must be filed within 30 days of receipt of the determination. The ASAM may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the ASAM. The ASAM's determination shall be based upon the written record which may include, but is not limited to, the determination made by the Deputy ASAM,

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the investigative file, and any other materials submitted by the parties pursuant to a request from the ASAM.

(k) The ASAM shall notify all parties of his or her determination on the appeal within 90 days of the receipt of the appeal. The ASAM's determination represents the final administrative decision by the Department.

(l) The time limits cited in paragraphs (g)(2) and (k) of this section may be extended with the permission of the Assistant Attorney General.

(m) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

(n) The Director shall respond to requests by the Architectural and Transportation Barriers Compliance Board for information on the status of any complaint alleging that buildings that are subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), are not readily accessible and usable to individuals with handicaps.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.13 Intimidation and retaliation prohibited.

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of, or exercise of authority under, or privilege secured by section 504 and the regulations in this part.

PART 34—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS OF THE JOB TRAINING PARTNERSHIP ACT OF 1982, AS AMENDED (JTPA)

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- 34.5 Specific discriminatory actions prohibited on the ground of disability.
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