

Subpart 1251.1—General Provisions

§ 1251.100 Purpose and broad coverage.

(a) *Purpose.* This part effectuates section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

(b) *Broad scope of coverage.* Consistent with the Americans with Disabilities Act Amendments Act of 2008’s purpose (ADA Amendments Act) of reinstating a broad scope of protection under the ADA and section 504, the definition of “disability” applicable to this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of this part. The primary object of attention in cases brought under this part should be whether entities covered under section 504 have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. The question of whether an individual meets the definition of disability under this part should not demand extensive analysis.

[81 FR 3709, Jan. 22, 2016]

§ 1251.101 Application.

This part applies to each recipient of Federal financial assistance from the National Aeronautics and Space Administration and to each program or activity that receives such assistance.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 1251.102 Definitions

As used in this part, the term:

(a) *2004 ADAAG* means the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

(b) *2010 Standards* means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in 28 CFR 35.151.

(c) *Applicant for assistance* means one who submits an application, request, or plan required to be approved either by

a NASA official or by a recipient, as a condition to becoming a recipient.

(d) *Associate Administrator* means the Associate Administrator for Diversity and Equal Opportunity Programs for NASA.

(e) *Auxiliary aids and services* means services or devices that enable persons with sensory, manual, or speech disabilities to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the recipient. Auxiliary aids and services include:

(1) Qualified interpreters onsite or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(f) *Direct threat* means a significant risk to the health or safety of others that cannot be eliminated by a change to policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 1251.110 of this part.

(g) *Disability* means the definition given that term in the Department of Justice's regulation implementing title II of the ADA at 28 CFR part 35.

(h) *Drug* means a controlled substance as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(i) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

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

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

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

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

(k) *Illegal use of drugs* means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(l) *Individual with a disability* means any individual who has a disability as defined in 28 CFR part 35. The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the recipient acts on the basis of such use.

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

(1)(i) A department, agency, special purpose district, or other instrumen-

tality of a State or of a local government; or

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

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

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

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

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

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

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

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

(n) *Qualified individual with a disability* means:

(1) With respect to any aid, benefit, or service, provided under a program or activity subject to this part, an individual with a disability who, with or without reasonable accommodations in rules policies, or procedures, the removal of architectural, communication, or transportation barriers, or the provision auxiliary aids or services, meets the essential eligibility requirements for participation in, or receipt from, that aid, benefit, or service, and

(2) With respect to employment, the definition given that term in the Equal Employment Opportunity Commission's regulation at 29 CFR part 1630, implementing Title I of the Americans

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with Disabilities Act of 1990, which regulation is made applicable to this part by § 1251.2.

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

(p) *Section 504* means section 504 of the Act.

(q) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 29 U.S.C. 794 *et seq.*

[81 FR 3709, Jan. 22, 2016]

§ 1251.103 Discrimination prohibited.

(a) *General.* No qualified individual with a disability shall, on the basis of disability, 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, benefits, or services, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

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

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

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

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

(v) Aid or perpetuate discrimination against a qualified individual with a

disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

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

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

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and individuals without disabilities, but must afford individuals with disabilities 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) Recipients shall take appropriate steps to ensure that no individual with disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program or activity receiving Federal financial assistance because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(4) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified individual with a disability the opportunity to participate in such programs or activities that are not separate or different.

(5) 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 individuals with disabilities to discrimination on the basis of disability;

(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 individuals with disabilities; or