

§8b.5

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 geographic 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 benefit 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, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased, rented or otherwise acquired, in whole or in part, with Federal financial assistance.

(7)(i) In providing services, recipients 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. 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. The Secretary may require small recipients to provide auxiliary aids in order to 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 small recipients, when this would not significantly impair the ability of the small recipient to provide benefits or services.

(ii) Auxiliary aids may include brailled and taped materials, inter-

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preters, telecommunications devices, or other equally 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 devices 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, or services limited by Federal law.* The exclusion of non-handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from aid, benefits, or services 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 ensure that communications with their applicants, employees and beneficiaries are available to persons with impaired vision or hearing. Appropriate modes of communication may include braille, enlarged type, sign language and telecommunications devices.

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

§8b.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of 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 the real property or structures are used

for the purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(2) In 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 transfer or 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 transferee 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 proposed 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 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 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 Secretary deems appropriate.

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency to carry out the objectives of Federal financial assistance under a law administered by the Department, 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.

§8b.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or 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 or activity, 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