

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.

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§ 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]

§ 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 of-

ficial 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

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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

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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.

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§ 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).

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§ 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 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