employment, a recipient of the assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the grounds of race, color, national origin, or sex (when covered by section 16 and section 401) in its employment practices under the program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion or transfer, training, participation in upward mobility projects, rates of pay or other forms of compensation, and use of facilities). This prohibition also applies to programs where the primary objective of the Federal financial assistance is:

(i) To assist individuals through employment to meet expenses incident to the commencement or continuation of their education or training;

(ii) To provide work experience which contributes to the education or training of the individuals involved;

(iii) To reduce the unemployment of individuals or to help them through employment to meet subsistence needs; or

(iv) To provide employment to individuals who, because of handicaps, cannot be readily absorbed in the competitive labor market. The requirements applicable to construction under any such program are to be those specified in or under part III of Executive Order 11246, as amended, or any Executive Order which supersedes it.

(2) In regard to Federal financial assistance which does not have provision of employment as a primary objective, the provisions of paragraph (a)(1) of this section apply to the employment practices of the recipient if discrimination on the grounds of race, color, national origin, or sex (when covered by section 16 or section 401) in such employment practices tends to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (a)(1) of this section apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(3) Paragraph (a)(1) also applies to covered employment as defined in §1040.12(a)(2).

(b) Enforcement of title VI compliance with respect to covered employment practices is not to be superseded by State or local merit systems relating to the employment practices of the same recipient.


Subpart C [Reserved]

Subpart D—Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as Amended

GENERAL PROVISIONS

§ 1040.61 Purpose and application.

(a) The purpose of this subpart is to implement sec. 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

(b) This subpart applies to each recipient or subrecipient of Federal financial assistance from DOE and to each program or activity that receives assistance.


§ 1040.62 Definitions.

(a) Executive Order means Executive Order 11914, titled “Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs” issued on April 28, 1976.


(c) Handicapped person means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

(d) As used in paragraph (c) of this section, the phrase:

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; or
(ii) 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, when current use of drugs and/or alcohol is not detrimental to or interferes with the employee’s performance, nor constitutes a direct threat to property or safety of others.

(2) Major life activities means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

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

(4) Is regarded as having an impairment means:
   (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 paragraphs (d)(1) (i) and (ii) of this section, but is treated by a recipient as having such an impairment.

(e) Qualified handicapped person means:
   (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
   (2) With respect to public preschool, elementary, secondary, or adult education services, a handicapped person:
      (i) Of an age during which non-handicapped persons are provided such services;
      (ii) Of any age during which it is mandatory under state law to provide such services to handicapped persons; or
      (iii) To whom a state is required to provide a free appropriate public education under sec. 612 of the Education for All Handicapped Children Act of 1975, Pub. L. 94–142.
   (3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity; and
   (4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(f) Handicap means condition or characteristic that renders a person a handicapped person as defined in paragraph (c) of this section.

(g) Historic properties means those architecturally, historically or culturally significant properties listed in or eligible for listing in the National Register of Historic Places or such properties designated under a statute of the appropriate State or local governmental body.

(h) Building alterations means those changes to the existing conditions and equipment of a building which do not involve any structural changes, but which typically improve and upgrade a building, such as alterations to stairways, doors, toilets, elevators, and site improvements.

(i) Structural changes means those changes which alter the structure of a historic building including, but not limited to, its bearing walls and all types of post and beam systems in wood, steel, iron or concrete.

The definitions set forth in §1040.3 of this part, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.