

## § 18.406

## 38 CFR Ch. I (7–1–10 Edition)

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Extent of application to institution or facility.* An assurance shall apply to the entire institution or facility.

(d) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination 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 provisions of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the covenant shall also include a condition coupled with a right to be reserved by the Agency to revert title to the property if there is a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purpose for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as considered appropriate, agree to forbear the exercise of the right to revert title for as long as the lien of the mortgage or other encumbrance remains effective.

(e) *Other methods of enforcement.* (1) Recipients are required to keep such records as the responsible VA official deems necessary for complete and accurate compliance reports. VA can specify intervals for reporting and prescribe the form and content of information required to ascertain whether the

recipient has complied or is complying with the law.

(2) Periodic compliance reviews of training establishments will be conducted by VA compliance officers. During these reviews recipients are required to permit access by VA compliance officers during normal business hours to such of their books, records, accounts, facilities and other sources of information including interviews with personnel and trainees as may be pertinent to ascertain compliance with the law.

(3) From study of documentation, results of interviews, and observation of activities during tours of facilities, compliance officers will evaluate recipients' compliance status.

[45 FR 63268, Sept. 24, 1980, as amended at 51 FR 10385, Mar. 26, 1986; 68 FR 51370, Aug. 26, 2003]

### § 18.406 Remedial action, voluntary action and self-evaluation.

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

(2) Where a recipient is found to have discriminated against qualified 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 with respect to:

(i) Handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred;

(ii) Handicapped persons who would have been participants in the program or activity had the discrimination not occurred; or

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(iii) Handicapped persons presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

(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 recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects of the policies and practices that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request:

(i) A list of the interested persons consulted;

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

(iii) A description of any modifications made and of any remedial steps taken.

(3) Recipients who become such more than one year after the effective date of these regulations shall complete these self-evaluation requirements

within one year after becoming recipients of Federal financial assistance.

(The information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 2900-0415)

[45 FR 63268, Sept. 24, 1980, as amended at 49 FR 32574, Aug. 15, 1984; 68 FR 51370, Aug. 26, 2003]

### § 18.407 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

### § 18.408 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment, or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated under § 18.407. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and