

## National Foundation on the Arts and the Humanities

## § 1170.33

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

### §§ 1170.25–1170.30 [Reserved]

### Subpart D—Accessibility

#### § 1170.31 Discrimination prohibited.

No qualified handicapped person shall, because recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

#### § 1170.32 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1170.33, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the ef-

fective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year 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 handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available upon request for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(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 full accessibility under paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[46 FR 55897, Nov. 12, 1981, as amended at 68 FR 51386, Aug. 26, 2003]

#### § 1170.33 New construction.

(a) *Design, construction, and alteration.* New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as

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of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[46 FR 55897, Nov. 12, 1981, as amended at 55 FR 52138, 52142, Dec. 19, 1990]

## § 1170.34 Historic properties. [Reserved]

## §§ 1170.35-1170.40 [Reserved]

### Subpart E—Postsecondary Education

#### § 1170.41 Application of this subpart.

Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

[46 FR 55897, Nov. 12, 1981, as amended at 68 FR 51386, Aug. 26, 2003]

#### § 1170.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission

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or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Chairman to be available.

(3) Shall assure itself that:

(i) Admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) Admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) Admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1170.52(a) or when a recipient is taking voluntary