

## § 1307.6

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make an accommodation to the physical or mental limitations of the otherwise qualified employee or applicant and the accommodation is deemed by TVA to be reasonable.

(f) *Employment criteria.* A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) *Preemployment inquiries.* (1) A recipient shall not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except as set out in this paragraph (g).

(2) A recipient may make a preemployment inquiry into an applicant's ability to perform job-related functions.

(3) When a recipient is taking remedial action to correct the effects of past discrimination, taking voluntary action to overcome the effects of conditions that resulted in limited participation in its TVA-assisted program or activity or is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That the recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is so used, that:

(i) The information requested is intended for use solely in connection with such remedial, voluntary or affirmative action efforts;

(ii) The information is being requested on a voluntary basis and it will be kept confidential as provided in paragraph (g)(4) of this section;

(iii) Refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(iv) The information will be used only in accordance with this part.

(4) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior

to the employee's entrance on duty: *Provided*, That:

(i) All entering employees are subjected to such an examination regardless of handicap; and

(ii) The results of such an examination are used only in accordance with the requirements of this part.

(5) Information obtained in accordance with this section as to the medical condition or history of an employee or applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(ii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(iii) TVA officials investigating compliance with section 504 shall be provided information which they deem relevant upon request.

[45 FR 22895, Apr. 4, 1980, as amended at 68 FR 51356, Aug. 26, 2003]

### § 1307.6 Accessibility.

(a) *General.* No qualified handicapped person shall, because 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 subject to this part.

(b) *Existing facilities.* (1) Each program or activity subject to this part shall be operated so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. A recipient is not required to make building alterations or structural changes if other methods are effective in achieving accessibility. Such compliance methods may include (subject to the provisions of §§ 1307.4 and 1307.5), reassigning aid, benefits, or services to accessible locations within a facility; providing assistance to handicapped

persons into or through an otherwise inaccessible facility; delivering programs or activities at other alternative sites which are accessible and are operated or available for use by the recipient; or other methods which comply with the intent of this paragraph.

(2) This paragraph governs the timing of development of transition plans and the completion of necessary building alterations and structural changes to existing facilities, including historic property covered by paragraph (c) of this section. If building alterations or structural changes will be necessary to comply with paragraph (b)(1) of this section, the recipient shall develop a transition plan setting forth the steps necessary to complete the alterations or changes in accordance with such standards as TVA may specify in the contract or agreement, and shall have the plan approved by TVA. If the financial assistance from TVA is expected to last for less than three years, the contract or agreement shall specify the date by which the transition plan shall be developed and approved. If the financial assistance from TVA is expected to last for at least three years, the transition plan shall be developed and submitted to TVA within six months from the effective date of the contract or agreement, subject to extension by TVA for an additional six month period, for good cause shown to it. A transition plan shall:

(i) Be developed with the assistance of interested persons or organizations representing handicapped persons;

(ii) Be available for public inspection after approval by TVA (or at any earlier time required by state or local law applicable to the recipient);

(iii) Identify the official responsible for implementation of the approved plan; and

(iv) Specify the date by which the required alterations or changes shall be completed, which shall be as soon as practicable and in no event later than three years after the effective date that financial assistance is extended by TVA.

(3) Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(c) *Historic property.* If a recipient's program or activity uses an existing facility which is an historic property, the recipient shall endeavor to assure compliance with paragraph (b)(1) of this section by compliance methods which do not alter the historic character or architectural integrity of the historic property. The recipient must determine that accessibility cannot be accomplished by such alternative methods before considering building alterations as a compliance method. To the maximum extent possible any building alterations determined to be necessary shall be undertaken so as not to alter or destroy architecturally significant elements or features. A recipient may determine that structural changes are necessary to accomplish accessibility only if the recipient has determined that accessibility cannot feasibly be accomplished by any of the other foregoing methods. To the maximum extent possible, any structural changes determined to be necessary shall be undertaken so as not to alter or destroy architecturally significant elements or features.

(d) *New construction.* (1) New facilities required under a program or activity subject to this part shall be designed and constructed to be readily accessible to and usable by handicapped persons.

(2) Effective as of November 4, 1988, design, construction, or alteration of buildings in conformance with Sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (41 CFR Subpart 101-19.6 app. A) 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.

(3) 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 physically handicapped persons.

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(4) 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.

[45 FR 22895, Apr. 4, 1980, as amended at 53 FR 39083, Oct. 5, 1988; 68 FR 51356, Aug. 26, 2003]

### § 1307.7 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with this part and compliance with such standards for construction and alteration of facilities as TVA may provide. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or the transferee in the case of a subsequent transfer, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient during the period for which ownership or possession of the property is retained. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreement, and the extent to which an agreement shall be applicable to subcontractors, transferees, successors in interest, and other participants.

(b) In the case of real property, structures or improvements thereon, or interests therein, acquired with TVA financial assistance, or in the case where financial assistance was provided in the form of a transfer by TVA of real property or interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring compliance with this part and the guidelines contained herein for the period during which the real property is used for a purpose for which the TVA financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is in-

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involved, but property is improved with of TVA financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event, 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 such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

[45 FR 22895, Apr. 4, 1980, as amended at 68 FR 51356, Aug. 26, 2003]

### § 1307.8 Compliance information.

(a) *Cooperation and assistance.* TVA shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case which a primary recipient extends financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.