

## § 34.2

167 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in JTPA. This part clarifies the application of the nondiscrimination and equal opportunity provisions of JTPA and provides uniform procedures for implementing them.

(b) *Application of this part.* This part applies to any recipient, as defined in § 34.2. This part also applies to the employment practices of a recipient, as provided in § 34.7.

(c) *Effect of this part on other obligations.* (1) A recipient's compliance with this part shall satisfy any obligation of the recipient to comply with 29 CFR part 31, implementing title VI of the Civil Rights Act of 1964, as amended (title VI), and with subparts A, D and E of 29 CFR part 32, implementing section 504 of the Rehabilitation Act of 1973, as amended (section 504).

(2) However, compliance with this part shall not affect any obligation of the recipient to comply with subparts B and C and appendix A of 29 CFR part 32, which pertain to employment practices and employment-related training, program accessibility, and accommodations under section 504.

(3) Recipients that are also public entities or public accommodations as defined by titles II and III of the Americans with Disabilities Act of 1991 (ADA), should be aware of obligations imposed pursuant to those titles.

(4) Compliance with this part does not affect, in any way, any obligation that a recipient may have to comply with Executive Order 11246, as amended, section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), the Equal Pay Act of 1963, as amended (29 U.S.C. 206d), title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621), title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681), the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101 *et seq.*) and their respective implementing regulations.

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(5) This rule does not preempt consistent State and local requirements.

(6) The rule generally codifies and consolidates already existing nondiscrimination and equal opportunity requirements. However, to the extent that this rule imposes any new requirements, it is not intended to have retroactive effect.

(d) *Limitation of Application.* This part does not apply to:

(1) Programs or activities funded by the Department exclusively under laws other than JTPA;

(2) Contracts of insurance or guaranty;

(3) Federal financial assistance to a person who is the ultimate beneficiary under any program;

(4) Federal procurement contracts, with the exception of contracts to operate or provide services to Job Corps Centers; and

(5) Federally-operated Job Corps Centers. The operating Department is responsible for enforcing the nondiscrimination and equal opportunity laws to which such Centers are subject.

### § 34.2 Definitions.

As used in this part, the term:

*Administrative Law Judge* means a person appointed as provided in 5 U.S.C. 3105 and 5 CFR 930.203 and qualified under 5 U.S.C. 557 to preside at hearings held under the nondiscrimination and equal opportunity provisions of JTPA and this part.

*Applicant* means the person or persons seeking JTPA services who have filed a completed application and for whom a formal eligibility determination has been made. For State Employment Security Agency (SESA) programs, *applicant* means the person or persons who make(s) application to receive benefits or services from the State employment service agency or the State unemployment compensation agency. See also the definitions of *eligible applicant* and *participant* in this section.

*Applicant for employment* means the person or persons who make(s) application for employment with a recipient of Federal financial assistance under JTPA.

*Application for assistance* means the process by which required documentation is provided to the Governor, recipient, or Department prior to and as a condition of receiving Federal financial assistance under JTPA (including both new and continuing assistance).

*Application for benefits* means the process by which written information is provided by applicants or eligible applicants prior to and as a condition of receiving benefits or services from a recipient of financial assistance from the Department of Labor under JTPA.

*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Assistant Secretary* means the Assistant Secretary for Administration and Management, United States Department of Labor.

*Auxiliary aids or services* includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

*Beneficiary* means the person or persons intended by Congress to receive benefits or services from a recipient of Federal financial assistance under JTPA.

*Citizenship*: See *Discrimination on the ground of citizenship*.

*Department* means the U.S. Department of Labor (DOL), including its agencies and organizational units.

*Director* means the Director, Directorate of Civil Rights (DCR), Office of the Assistant Secretary for Administration and Management, U.S. Department

of Labor, or a designee authorized to act for the Director.

*Directorate* means the Directorate of Civil Rights (DCR), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

*Disability* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means—

(A) 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, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious 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, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The term *impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *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) The phrase *is regarded as having an impairment* means—

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(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by the 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 paragraph (1) of this definition but is treated by the recipient as having such an impairment.

(5) Consistent with amendments to the Rehabilitation Act of 1973 and to the JTPA, and with the ADA, this part uses the term *disability* in place of the term *handicap*. The two terms are intended to have identical meanings.

*Discrimination on the ground of citizenship* means a denial of participation in programs or activities financially assisted in whole or in part under JTPA to persons on the basis of their status as citizens or nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, or other individuals authorized by the Attorney General to work in the United States.

*Eligible applicant* means an applicant who has been determined eligible to participate in one or more titles under JTPA.

*Entity* means any corporation, partnership, joint venture, unincorporated association, or State or local government, and any agency, instrumentality or subdivision of such a government.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock, or other real or personal property or interest in such property.

*Federal financial assistance under JTPA* means any grant, cooperative agreement, loan, contract; any subgrant made with a recipient of a grant or subcontract made pursuant to a JTPA contract; or any other arrangement by which the Department provides or otherwise makes available assistance under JTPA in the form of:

(1) Funds, including funds made available for the acquisition, construction, renovation, restoration or repair of a building or facility or any portion thereof;

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(2) Services of Federal personnel; or  
(3) Real or personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration;

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government; or

(iii) Any other thing of value by way of grant, loan, contract, or cooperative agreement (other than a procurement contract or a contract of insurance or guaranty).

*Governor* means the chief elected official of any State or his or her designee.

*Grant applicant* means the entity which submits the required documentation to the Governor, recipient, or the Department, prior to and as a condition of receiving Federal financial assistance under JTPA.

*Guideline* means written informational material supplementing an agency's regulations and provided to grant applicants and recipients to provide program-specific interpretations of their responsibilities under the regulations.

*Illegal use of drugs* means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. *Illegal use of drugs* does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

*Individual with a disability* means a person who has a disability, as defined in this section. The term *impairment* does not include homosexuality or bisexuality; therefore, the term *individual with a disability* does not include an individual on the basis of homosexuality or bisexuality.

(1) The term *individual with a disability* does not include an individual on the basis of:

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

(2) The term *individual with a disability* also does not include an individual who is currently engaging in the illegal use of drugs, when a recipient acts on the basis of such use. This limitation should not be construed to exclude as an *individual with a disability* an individual who:

(i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use, but is not engaging in such use, except that it shall not be a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (2)(i) or (2)(ii) of this definition is no longer engaging in the illegal use of drugs.

(3) With regard to employment, the term *individual with a disability* does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

*JTPA* means the Job Training Partnership Act of 1982, as amended, Public Law 97-300, 96 Stat. 1322 (29 U.S.C. 1501 *et seq.*), including the Nontraditional Employment for Women Act of 1991, Public Law 102-235, 105 Stat. 1806 (29 U.S.C. 1501), and the Job Training Reform Amendments of 1992, Public Law 102-367, 106 Stat. 1021.

*JTPA-funded program or activity* means a program or activity, operated by a recipient and funded under JTPA, for the provision of services, financial aid, or other benefit to individuals (including but not limited to education or training, health, welfare, housing, so-

cial service, rehabilitation or other services, whether provided through employees of the recipient or by others through contract or other arrangements with the recipient, and including work opportunities and cash, loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. It also includes services, financial aid, or other benefits provided in facilities constructed with the aid of Federal financial assistance under JTPA. It further includes services, financial aid, or other benefits provided with the aid of any non-JTPA funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance under JTPA.

*Methods of Administration* means the written document and supporting documentation developed pursuant to § 34.33.

*National Programs* means programs receiving Federal funds under JTPA directly from the Department. Such programs include, but are not limited to, programs funded under title IV of JTPA, such as the Migrant and Seasonal Workers Programs, Native Americans Programs, Job Corps, National Activities and such Veterans' Employment programs as are funded by the Department. *National programs* also includes programs funded under certain titles of the Nontraditional Employment for Women Act.

*Noncompliance* means a failure of a recipient to comply with any of the applicable requirements of the nondiscrimination and equal opportunity provisions of JTPA or this part.

*Participant* means an individual who has been determined to be eligible to participate in and who is receiving services (except post-termination and follow-up services) under a program authorized by JTPA. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized employment, training, or other services provided under JTPA.

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*Parties to a hearing* means the Department and the grant applicant(s) or recipient(s).

*Prohibited ground* means any basis upon which it is illegal to discriminate under the nondiscrimination and equal opportunity provisions of JTPA or this part, i.e., race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship or participation in JTPA.

*Qualified individual with a disability* means:

(1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question;

(2) With respect to services, an individual with a disability who meets the essential eligibility requirements for the receipt of such services;

(3) With respect to employment and employment-related training programs, an individual with a disability who meets the eligibility requirements for participation in JTPA and who, with or without reasonable accommodation, is capable of performing the essential functions of the job or meets the qualifications of the training program, as applicable.

*Recipient* means any entity to which Federal financial assistance under any title of JTPA is extended, either directly or through the Governor or through another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the JTPA-funded program or activity and the Governor. *Recipient* includes, but is not limited to: Job Corps Centers and Center operators (excluding federally-operated Job Corps Centers), State Employment Security Agencies, State-level agencies that administer JTPA funds, SDA grant recipients, Substate grant recipients and service providers, as well as National Program recipients.

*Respondent* means the grant applicant or recipient against which a complaint has been filed pursuant to the nondiscrimination and equal opportunity provisions of JTPA or this part.

*SDA grant recipient* means the entity that receives JTPA funds for a service

delivery area (SDA) directly from the Governor.

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

*Service provider* means the operator of any JTPA-funded program or activity that receives funds from or through an SDA grant recipient or a Substate grantee.

*Small recipient* means a recipient who serves fewer than 15 beneficiaries, and employs fewer than 15 employees at all times during a grant year.

*Solicitor* means the Solicitor of Labor, U.S. Department of Labor, or his or her designee.

*State* means the individual states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

*State Employment Security Agency* (SESA) means the State agency which, under the State Administrator, contains both the State Employment Service agency (State agency) and the State unemployment compensation agency.

*State Programs* means programs funded in whole or in part under JTPA wherein the Governor and/or State receives and disburses the grant to or through SDA grant recipients or Substate grantees. Such programs include but are not limited to those programs funded in whole or in part under titles II or III of JTPA. *State programs* also includes *State Employment Security Agencies*.

*Substate grantee* means that agency or organization selected to administer programs pursuant to section 312(b) of JTPA. The Substate grantee is the entity that receives title III funds for a substate area directly from the Governor.

*Terminee* means a *participant* terminating during the applicable program year.