

## Department of Veterans Affairs

## § 18.405

recipient's program with respect to handicapped persons, or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections that:

(i) Have the effect of excluding handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or

(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objective of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) *Special communication.* Recipients shall take appropriate action to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

### § 18.405 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance on a form specified by the Secretary, that the program will be operated in compliance with this part.

(b) *Duration of obligation.* (1) When Federal financial assistance is extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in

the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.

(2) Where Federal financial assistance is extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(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 unless the applicant establishes, to the satisfaction of the Secretary, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such a program. If the assistance is being received or requested for the construction of a facility or part of a facility, the assurance shall apply to the entire facility and to other facilities operated in connection with the 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]

**§ 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 but who were participants in the program when such discrimination occurred;

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

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

(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.