

§ 1151.32

45 CFR Ch. XI (10–1–03 Edition)

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

[44 FR 22734, Apr. 17, 1979, as amended at 68 FR 51384, Aug. 26, 2003]

§ 1151.32 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition, or modification of equipment or devices, such as use of telecommunication devices and amplifiers on telephones, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

[44 FR 22734, Apr. 17, 1979, as amended at 68 FR 51384, Aug. 26, 2003]

§ 1151.33 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria are unavailable.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or other factors relevant to adequate performance of the job in question.

§ 1151.34 Preemployment inquiries.

A recipient may not, except as provided below, conduct a preemployment medical examination, make preemployment inquiry as to whether the applicant is a handicapped person, or inquire as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(a) When a recipient is taking remedial action to correct the effects of past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept

confidential as provided in paragraph (c) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(b) 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:

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

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

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

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

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

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

[44 FR 22734, Apr. 17, 1979; 45 FR 57129, Aug. 27, 1980]

§§ 1151.35–1151.40 [Reserved]

Subpart D—Enforcement

§ 1151.41 Assurances required.

(a) An applicant for federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Chairman, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Endowment.

(b) *Duration of obligation.* (1) In the case of federal financial assistance extended to provide personal property, the assurance will obligate the recipi-

ent for the period during which it retains ownership or possession of the property.

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

(c) *Covenants.* Where property is purchased or improved with federal financial assistance, the recipient shall agree to include in any instrument effecting or recording any transfer of the property a covenant running with the property assuring 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 provision of similar services or benefits.

[44 FR 22734, Apr. 17, 1979, as amended at 68 FR 51384, Aug. 26, 2003]

§ 1151.42 Self evaluation.

(a) A recipient shall within six months of the effective date of this part:

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

(2) 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

(3) 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.

(4) Maintain on file, make available for public inspection, and provide to the Endowment upon request, for at least three years following completion of the self-evaluation:

(i) A list of the interested persons consulted;

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