

## Small Business Administration

## § 113.3-1

transaction because of race, color, religion, national origin, sex, marital status, handicap, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

### **§ 113.3-1 Consideration of race, color, religion, sex, marital status, handicap, or national origin.**

(a) This regulation does not prohibit the consideration of race, color, religion, sex, marital status, handicap, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, religion, sex, marital status, handicap, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, religion, sex, marital status, handicap, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of this regulation. All programs and activities shall be administered in the most integrated setting possible.

(b) Nothing in this part shall prohibit the restriction of certain jobs to members of one sex if a bona fide occupational qualification can be demonstrated by the applicant or recipient. Custom or tradition is not a bona fide occupational qualification.

(c) Recipients shall take steps to ensure that communications with job applicants and employees who have vision and/or hearing disabilities are available in appropriate modes.

(d) Recipients shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped job applicant or

employee UNLESS the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Factors to be considered in determining whether an accommodation would impose an undue hardship on the operation of a recipient's business include:

(1) The overall size of the recipient's business with respect to number of employees, number and type of facilities, size of budget, and the financial condition of the business;

(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.

(e) Such accommodation may include making facilities used by employees readily accessible to and usable by handicapped persons, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(f) The final decision, when making a review or investigation of a complaint, as to whether an accommodation would impose an undue hardship on the operation of a recipient business will be made by the compliance officials of the Small Business Administration.

(g) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, and shall not participate in a contractual relationship that has the effect of subjecting qualified handicapped job applicants or employees to discrimination prohibited by this part. The relationships referred to in this paragraph include those with referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

(h) Nothing in this part shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected

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with the carrying on by such corporation, association, educational institution or society of its religious activities.

#### § 113.3-2 Accommodations to religious observance and practice.

A recipient of financial assistance must accommodate to the religious observances and practices of an employee or prospective employee unless the recipient demonstrates that it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. As part of this obligation, recipient must make reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommodations can be made without undue hardship on the conduct of the employer's business. In determining the extent of a recipient's obligations under this section, at least the following factors should be considered: (a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

#### § 113.3-3 Structural accommodations for handicapped clients.

(a) *Existing facilities.* Recipients in preexisting structures shall make their goods or services accessible to and usable by handicapped clients. Where structural changes are necessary to make the recipient's goods or services accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this Regulation. A plan setting forth the steps necessary to complete such structural changes shall be developed and submitted to SBA. If practical, interested persons, including handicapped persons or organizations representing handicapped persons, will be consulted.

(b) *Design, construction, and alteration.* New facilities shall be designed and

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constructed to be readily accessible to and usable by persons with handicaps. Alterations to existing facilities that affect usability shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (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.

[44 FR 20068, Apr. 4, 1979, as amended at 45 FR 81734, Dec. 12, 1980; 55 FR 52138, 52140, Dec. 19, 1990]

#### § 113.4 Assurances required.

An application for financial assistance shall, as a condition to its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. Such an assurance shall contain provisions authorizing the acceleration of the maturity of the recipient's financial obligations to SBA in the event of a failure to comply, and provisions which give the United States a right to seek judicial enforcement of the terms of the assurance. SBA shall specify the form of the foregoing assurance for each program,