

## § 1307.2

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

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities.

(4) *Is regarded as having such an impairment* means (i) has a physical or mental impairment that does not substantially limit major life activities but which is treated by a 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 the impairment; or (iii) does not have a physical or mental impairment as defined in paragraph (f)(1) of this section but is treated by a recipient as having such an impairment.

(g) *Qualified handicapped person* means (1) with respect to employment, a handicapped person (except an alcoholic or drug abuser as defined in paragraph (f) of this section), who, with reasonable accommodation, can perform the essential functions of the job in question and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(h) *Historic property* means an architecturally, historically, or culturally significant property listed in or eligible for listing in the National Register of Historic Places, or a property officially designated as having architectural, historic, or cultural significance under a statute of the appropriate State or local governmental body.

(i) *Building alterations* means those changes to existing conditions and equipment of a building which do not involve any structural changes, but which typically improve and upgrade a building, such as site improvements and alterations to stairways, doors, toilets or elevators.

(j) *Structural changes* shall mean those changes which alter the structure of a building, including but not limited to its load bearing walls and all

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types of post and beam systems in wood, steel, iron or concrete.

### § 1307.2 Purpose.

The purpose of this part is to effectuate section 504 to the end that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from TVA.

### § 1307.3 Application.

This part applies to any program in which financial assistance is provided by TVA, except that this part does not apply to any (a) TVA procurement contracts, contracts with other Federal agencies, or contracts of insurance or guaranty, (b) money paid, property transferred, or other assistance extended to a recipient under any program before the effective date of this part, or (c) assistance to any individual or entity which is the ultimate beneficiary under any such program. Nothing in paragraph (b) of this section exempts any recipient of financial assistance under a contract in effect on the effective date of this part from compliance with this part.

### § 1307.4 Program discrimination.

(a) *General.* No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(b) *Specific discriminatory actions.* (1) A recipient under any program to which this part applies shall not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or services available under the program;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others under the program;

(iii) Provide a qualified handicapped person with an aid, benefit, or service

that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others under the program;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others, unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others under the program;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or entity that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards with respect to the program; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment under the program of any right, privilege, advantage, or opportunity enjoyed by others under the program.

(2) A recipient shall not deny a qualified handicapped person the opportunity to participate under the program in activities that are not separate or different, despite the existence of permissibly separate or different activities.

(3) A recipient shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control.

(4) A recipient shall not, in determining the site or location of a facility under the program, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting

them to discrimination under the program, or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped 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) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons. A recipient who wishes to establish a policy of separate programs or different treatment for handicapped and nonhandicapped persons shall request and receive written approval from TVA before instituting such policy or undertaking any such separate treatment.

(e) Recipients shall take appropriate steps to ensure that communications to their applicants, employees, and beneficiaries are available to such persons with impaired vision and hearing.

#### § 1307.5 Employment discrimination.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity subject to this part.

(b) *Specific discriminatory actions.* With respect to a program or activity subject to this part, a recipient shall not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient shall make all decisions concerning employment under any program or activity subject to this part in a manner which ensures that discrimination on the basis of handicap does not occur, including the following activities:

(1) Recruitment, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;