

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;

§ 1307.5

18 CFR Ch. XIII (4-1-00 Edition)

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(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 social or recreational programs; and

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

(d) A recipient shall not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this part, including relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) *Reasonable accommodation.* (1) 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 the program or activity subject to this part. Reasonable accommodation may include:

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

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, or other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity under this para-

graph factors to be considered include but are not limited to:

(i) The nature and cost of the accommodation needed, and its effect, if any, on the recipient's programs.

(ii) The kind of operation conducted by the recipient, including the composition and structure of the recipient's workforce; and

(iii) 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.

(3) It is not an undue hardship with respect to a qualified handicapped employee or applicant if the sole basis for the claim of hardship is the need to make an accommodation to the physical or mental limitations of the otherwise qualified employee or applicant and the accommodation is deemed by TVA to be reasonable.

(f) *Employment criteria.* A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) *Preemployment inquiries.* (1) A recipient shall not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except as set out in this paragraph (g).

(2) A recipient may make a preemployment inquiry into an applicant's ability to perform job-related functions.

(3) When a recipient is taking remedial action to correct the effects of past discrimination, taking voluntary action to overcome the effects of conditions that resulted in limited participation in its TVA-assisted program or activity or is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That the recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is so used, that:

(i) The information requested is intended for use solely in connection with such remedial, voluntary or affirmative action efforts;

(ii) The information is being requested on a voluntary basis and it will be kept confidential as provided in paragraph (g)(4) of this section;

(iii) Refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(iv) The information will be used only in accordance with this part.

(4) 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:*

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

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

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

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

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

(iii) TVA officials investigating compliance with section 504 shall be provided information which they deem relevant upon request.

#### § 1307.6 Program accessibility.

(a) *General.* No qualified handicapped person shall, because facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program subject to this part.

(b) *Existing facilities.* (1) Each program subject to this part shall be operated so that, viewed in its entirety, it is read-

ily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. A recipient is not required to make building alterations or structural changes if other methods are effective in achieving program accessibility. Such compliance methods may include (subject to the provisions of §§ 1307.4 and 1307.5), reassigning programs or activities to accessible locations within a facility; providing assistance to handicapped persons into or through an otherwise inaccessible facility; delivering programs or activities at other alternative sites which are accessible and are operated or available for use by the recipient; or other methods which comply with the intent of this paragraph.

(2) This paragraph governs the timing of development of transition plans and the completion of necessary building alterations and structural changes to existing facilities, including historic property covered by paragraph (c) of this section. If building alterations or structural changes will be necessary to make covered programs or activities in existing facilities of a recipient accessible, the recipient shall develop a transition plan setting forth the steps necessary to complete the alterations or changes in accordance with such standards as TVA may specify in the contract or agreement, and shall have the plan approved by TVA. If the financial assistance from TVA is expected to last for less than three years, the contract or agreement shall specify the date by which the transition plan shall be developed and approved. If the financial assistance from TVA is expected to last for at least three years, the transition plan shall be developed and submitted to TVA within six months from the effective date of the contract or agreement, subject to extension by TVA for an additional six month period, for good cause shown to it. A transition plan shall:

(i) Be developed with the assistance of interested persons or organizations representing handicapped persons;