

Personnel—General

**Nondiscrimination
on the Basis of
Handicap in
Programs and
Activities
Assisted or
Conducted by
the Department
of the Army**

Headquarters
Department of the Army
Washington, DC
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SUMMARY of CHANGE

AR 600-7

Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army

This is a transitional reprint of this publication which places it in the new UPDATE format. Any previously published permanent numbered changes have been incorporated into the text.

Personnel—General

Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:

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Major General, United States Army
The Adjutant General

History. This UPDATE issue is a reprint of the original form of this regulation that was published on 15 November 1983. Since that time, no changes have been issued to amend the original.

Summary. This regulation implements DOD Directive 1020.1. It defines policies and procedures for implementing the Army's

nondiscrimination programs and their command responsibilities; it also covers complaint, findings, compliance, sanctions, and hearings involved in discriminatory practices.

Applicability.

a. This regulation applies to Active Army and US Army Reserve units that are disbursing Federal financial assistance to, and conducting, programs and activities that affect handicapped persons in the United States and that are covered by this regulation.

b. This regulation also applies to recipients of Federal financial assistance disbursed by DA and to programs and activities that receive or benefit from this assistance, insofar as these recipients, programs, or activities affect handicapped persons in the United States.

c. This regulation does not apply to the Army National Guard.

Proponent and exception authority.
Not applicable

Impact on the New Manning System.

This regulation does not contain information that affects the New Manning System.

Army management control process. Supplementation. Supplementation of this regulation is prohibited unless prior approval is obtained from ASA(MRA), SAMR, WASH DC 20310.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs). Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (SAMR-SFREA), WASH DC 20310.

Distribution. To be distributed in accordance with Special List.

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Glossary

Chapter 1 Introduction

Section I General

1–1. Purpose

This regulation prescribes policy and procedures for prohibiting discrimination based on handicap in Department of the Army (DA) programs and activities that are—

- a. Receiving Federal financial assistance disbursed by DA.
- b. Conducted by DA.

1–2. References

a. Required publications are listed below.

(1) Title 36, Code of Federal Regulations, chapter VIII, part 800 (36 CFR 800) (Protection of Historic and Cultural Properties). Cited in paragraph 3–5e.

(2) DODD 1020.1 (Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense). Cited in the summary statement.

(3) DOD 4270.1–M (Construction Criteria Manual). Cited in paragraph 10–1.

(4) Manual EM 1110–1–103 (Office of the Chief of Engineers) (Design for the Physically Handicapped). Cited in paragraphs 3–2a(1), 3–3, and 10–1. This publication is available from the Office of the Chief of Engineers Publications Depot, 890 South Picket St., ALEX VA 22304; (703) 274–7771.

(5) AR 600–23 (Nondiscrimination in Federally Assisted Programs). Cited in paragraph 6–1b.

b. Related publications are listed below. (A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.)

(1) DODI 5000.22 (Guide to Estimating Reporting Costs).

(2) Public Law 93–112, section 504 (Rehabilitation Act of 1973), September 26, 1973 (sec 794, title 29, United States Code) (1976).

(3) Public Law 93–516, section 111 (Rehabilitation Act Amendments of 1974), December 7, 1974 (sec 706, 780, and 790, title 29, United States Code) (1976).

(4) Public Law 95–602, section 119 (Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978), November 6, 1978 (sec 794, title 29, United States Code) (Supp III, 1979).

(5) Title 28, Code of Federal Regulations, part 41 (28 CFR 41) (Department of Justice Regulation “Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs”, August 11, 1981).

(6) Chapter 35, title 44, United States Code (44 USC 35) (Coordination of Federal Reporting Services).

1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Policy

The Army’s policy is that no qualified handicapped person will be subjected to discrimination on the basis of handicap in any program or activity that receives or benefits from Federal financial assistance disbursed by DA. (Guidelines for determining actions that discriminate against handicapped persons in the United States are discussed in chap 2, sec II.)

Section II Responsibilities

1–5. Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA))

The ASA(M&RA) or designee has overall DA responsibility to monitor compliance with this regulation. The ASA(MRA) or designee will—

a. Coordinate efforts Army–wide to enforce provisions of this regulation.

b. Assist in developing standards and procedures set forth in chapter 2, section I, and chapters 4 and 5.

c. Assist in Army–wide efforts in implementing this regulation.

1–6. Deputy for Civilian Personnel Policy and Equal Opportunity (DCPP&EO), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)

The DCPP&EO will—

a. Ensure compliance with this regulation.

b. Receive and investigate complaints filed under this regulation.

c. Otherwise manage Army–wide responsibilities under this regulation, through direction from the Office of the ASA(M&RA).

1–7. Heads of Army Installations and activities

Heads of Army installations and activities will—

a. Cooperate fully with the ASA(&RA) or designee in carrying out responsibilities prescribed by this regulation. This cooperation will include timely furnishing to the ASA(M&RA) or designee of required reports and information.

b. Assign sufficient personnel to implement and insure effective enforcement of provisions of this regulation.

c. Ensure that provisions of this regulation are carried out.

1–8. Equal employment opportunity (EEO) officers

EEO officers will—

a. Act as advisors to commanders of installations and activities to which they are assigned.

b. Submit reports described in chapter 4 (paras 4–2d, 4–4b, and 4–6c specifically).

Chapter 2 Discriminatory Practices

Section I Types of Programs and Activities Subject to This Regulation

2–1. General coverage

Existing programs and activities that are assisted or conducted Army–wide and that are subject to this regulation (but do not appear in paras 2–2 and 2–3) are covered; even though they are not listed. Activities must report new programs and activities that are subject to this regulation to the ASA(M&RA) or designee within 15 calendar days of their creation or funding.

2–2. Federal programs

Federal financial assistance programs subject to this regulation and their enabling legislation, are listed below.

a. Various programs involving the loan or other disposition of surplus, obsolete, or unclaimed property (sec 483, 484, and 512, title 40, United States Code (1976); sec 1101 and 1107, title 49, United States Code (1976); sec 2541, 2544, 2571, 2576, 2662, 7308, 7541, 7542, 7545, 7546, and 7547, title 10, United States Code (1976 and supp IV 1980)).

b. National Program for the Promotion of Rifle Practice (sec 4307–4311, title 10, United States Code (1976) and the annual Appropriations Act).

c. Federal grants and cooperative agreements (sec 501–509, title 41, United States Code (supp III 1979)).

d. Army Corps of Engineers participation in cooperative investigations and studies concerning erosion of shores of coastal and lake waters (sec 426, title 33, United States Code (1976) and supp III 1979).

e. Army Corps of Engineers assistance in construction of works for restoration and protection of shores (sec 426e–h, title 33, United States Code (1976)).

f. Construction and operation of public park and recreational facilities in water resource development projects under DA administrative jurisdiction (sec 460d, title 16, United States Code (1976)).

g. Payment to States of lease receipts from lands acquired by the United States for flood control, navigation, and allied purposes (sec 701c-3, title 33, United States Code (1976)).

h. Grants of easements without consideration, or at nominal or reduced consideration, on land under DA control at water resource development projects (sec 558c and 702d-1, title 33, United States Code (1976); sec 2668 and 2699, title 10, United States Code (1976); sec 961, title 43, United States Code (1976); and sec 319, title 40, United States Code (1976)).

i. Army Corps of Engineers assistance in construction of small boat-harbor projects (sec 540 and 577, title 33, United States Code (1976)).

j. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (sec 701s, title 33, United States Code (1976)).

k. Army Corps of Engineers contracts for protection, alteration, reconstruction, relocation, or placement of structures facilities (sec 633, title 33, United States Code (1976)).

l. Provision of specialized services or technical information by the Army Corps of Engineers to State and local governments for control of aquatic plant growths in rivers, harbors, and allied waters (sec 610, title 33, United States Code (1976)).

m. Provision of specialized services by the Army Corps of Engineers to any State for preparation of comprehensive plans for drainage basins located within the boundaries of said State (sec 1962d-16, title 42, United States Code (1976)).

n. Provision of specialized services by the Army Corps of Engineers to improve channels for navigation (sec 603a, title 33, United States Code (1976)).

o. Research grants and contracts with nonprofit institutions of higher education using equipment purchased under Public Law 85-934 (title 42, United States Code (1892)).

p. Provision of specialized service by the Army Corps of Engineers to reduce flood damage (sec 701g, title 33, United States Code (1976)).

q. US Soldiers' and Airmen's Home (sec 44c and 47, title 24, United States Code (1976)).

2-3. Programs and activities that affect handicapped persons

All programs and activities conducted by DA that affect handicapped persons in the United States are subject to this regulation. These programs and activities are included as listed below.

a. Promulgation of rules and regulations for public comment in a manner that grants handicapped persons a reasonable opportunity for such comment; an example is making cassette recordings of proposed rules.

b. Public meetings, conferences, or seminars sponsored or conducted by DA, but held in non-Governmental buildings.

c. Public meetings, conferences, or seminars sponsored or conducted by DA or a non-DA organization, but held in a DA building.

d. Open houses, memorial services, tours, or other ceremonies held on or in DA property.

e. Historic vessels.

f. Historic buildings and properties maintained by a DA activity; properties designated as historic under a statute of the appropriate State or local governmental body. (See glossary for explanation of the term historic property.)

g. Schools operated by DA within the United States (pursuant to sec 6 of Public Law 81-874 and sec 241, title 20, United States Code (1976)).

h. Donation of surplus or obsolete Army uniforms and combat items to the following:

- (1) Veterans' organizations.
- (2) Soldiers monument associations.
- (3) Museums. (See paras 3-5 and 3-6.)
- (4) Incorporated municipalities.

i. Programs and activities conducted by DA and recipients that are not included in this chapter will be held accountable for provisions in this regulation.

Section II Guidelines for Determining Discriminatory Practices

2-4. General prohibitions against discrimination

a. No qualified handicapped person will, on the basis of handicap, be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity that is conducted by DA or that receives or benefits from Federal financial assistance disbursed by DA.

b. A recipient or DA component may not—

(1) Directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(a) Provide different or separate aid, benefits, or services to handicapped persons than provided to others; an exception would be unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are equal to those provided to others.

(b) Deny a qualified handicapped person the opportunity to take part in or benefit from the aid, benefit, or service.

(c) Afford a qualified handicapped person an opportunity to take part in or benefit from the aid, benefit, or service that is not equal to that afforded others.

(d) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that afforded to others.

(e) otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity granted to others receiving the aid, benefit, or service.

(2) Deny a qualified handicapped person the opportunity to take part in programs or activities that are not separate or different from regular programs or activities; this will be true even if such separate or different programs and activities are permissible under (1)(a) above.

(3) Provide assistance to an agency, organization, or person that discriminates on the basis of handicap in providing aid, benefit, or service to beneficiaries of the recipient's program or activity.

(4) Deny, on the basis of handicap, a qualified handicapped person the opportunity to take part as a member of planning or advisory boards.

(5) Use, directly or through contractual or other arrangements, criteria or methods of administration that—

(a) Subject qualified handicapped persons to discrimination on the basis of handicap.

(b) Defeat or substantially impair accomplishment of the objectives of the recipient's or DA component's program or activity with respect to handicapped persons.

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

c. In determining the site or location of a facility, a recipient or DA component may not make selections that—

(1) Exclude 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.

(2) Defeat or substantially impair, with respect to handicapped persons, the accomplishment of objectives of the program or activity.

d. Recipients and DA components will—

(1) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(2) Take appropriate steps to—

(a) Make communications with their applicants, employees, and beneficiaries available to persons with impaired vision and hearing.

(b) Ensure that no handicapped individual is denied the benefits of, excluded from taking part in, or otherwise subjected to discrimination because of the absence of auxiliary aids. Examples of these

aids are as follows: certified sign-language interpreters, telecommunication devices (TDDs), or other telephonic devices for individuals with impaired sensory, manual, or speaking skills.

e. This section may not be interpreted to prohibit exclusion of the following:

(1) Persons who are not handicapped from benefits, programs, and activities limited by Federal statute or executive order to handicapped persons.

(2) One class of handicapped persons from a program or activity limited by Federal statute or executive order to a different class of handicapped persons.

2-5. Prohibitions against employment discrimination by recipients

Prohibition against discrimination in employment applies to the following:

a. Recruitment, advertising, and processing of applications for employment.

b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.

c. Rates of pay or any other form of compensation, and changes in compensation.

d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

e. Leaves of absence, sick leave, or any other leave.

f. Fringe benefits available by virtue of employment, whether or not administered by the recipient.

g. Selection and financial support for training; these criteria include apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training.

h. Programs and activities sponsored by the employer; these include social and recreational programs.

i. Any other term, condition, or privilege of employment.

Chapter 3 Program Accessibility

Section I Accessibility

3-1. General requirements

Because the facilities of a recipient or DA component are inaccessible to or not usable by handicapped persons, no qualified handicapped person will be denied the benefits of, or be excluded from taking part in, or be subjected otherwise to discrimination under any program or activity—

a. That receives or benefits from Federal assistance disbursed by DA.

b. Conducted by DA.

3-2. Existing facilities

a. A recipient or DA component will operate programs or activities so that they are readily accessible to, and usable by, handicapped persons. However, this does not necessarily require a recipient or DA component to make each of its existing facilities or every part usable by handicapped persons.

(1) Guidance in determining accessibility of facilities is discussed in Office of the Chief of Engineers Manual EM 1110-1-103.

(2) Inquires on specific accessibility design problems should be addressed to the ASA(M&RA) or designee.

b. Structural changes necessary to make programs or activities in existing facilities accessible to the extent required by paragraph 3-1 will be made as discussed below.

(1) Such changes will be made as soon as practicable, but no later than 2 years after the effective date of this regulation. However, DA components concerned may extend this period of time if the following conditions apply:

(*a.*) The program or activity is a particular mode of transportation (such as a subway station) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities.

(*b.*) Other accessible modes of transportation are available.

Note. This extension will be for a reasonable and definite period; this period will be determined after consultation with the ASA(M&RA) or designee.

(2) The recipient or DA component will develop a transition plan containing steps necessary to complete the changes. This plan will be developed—

(*a.*) With the assistance of interested persons or organizations.

(*b.*) Within a period of time to be established in each DA component's guidelines.

(3) The recipient or DA component will make a copy of the transition plan available for public inspection. At a minimum, the plan will include the information listed below.

(*a.*) Identity of physical obstacles in the facilities that limit accessibility to handicapped persons.

(*b.*) Description in detail of the methods that will be used to make the facilities accessible.

(*c.*) Specific schedule for taking steps necessary to achieve full accessibility; if the time period is longer than 1 year, steps will be identified that will be taken during each year of the transition period.

(*d.*) Indication of the person responsible for implementing the transition plan; this indication will include last name, first name, and middle initial.

c. A recipient or DA component may comply with paragraph 3-2 through the means listed below.

(1) Acquisition or redesign of equipment, such as TDDs or other telephonic devices for the deaf.

(2) Relocation of classes or other services to accessible buildings.

(3) Assignment of aides to beneficiaries, such as—

(*a.*) Readers.

(*b.*) Certified sign-language interpreters.

(*c.*) Home visits.

(*d.*) Delivery of health, welfare, or other services at accessible alternative sites.

(4) Alterations of existing facilities and construction of new facilities, under this subsection and paragraph 3-3.

(5) Other methods that make the program or activity accessible to handicapped persons.

d. A recipient or DA component is not required to make structural changes in existing facilities when other methods are available to achieve compliance with this section.

e. In choosing among alternatives for meeting the requirements of this section, a recipient or DA component will give priority to methods that offer programs and activities to handicapped persons in the most integrated setting appropriate with non-handicapped persons.

3-3. New construction

New facilities and alterations to existing facilities will be designed and constructed to be accessible and usable by handicapped persons. (See Office of the Chief of Engineers Manual EM 1110-1-103.) Inquiries about specific accessibility design problems should be addressed to the ASA(M&RA) or designee.

3-4. Reasonable accommodation

a. A recipient or DA component will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. An exception is if the recipient or DA component demonstrates to the ASA(MRA) or designee that the accommodation would impose an undue hardship on operation of the program.

b. "Reasonable accommodation" includes the following:

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

(2) Job restructuring.

(3) Part-time or modified work schedules.

(4) Acquisition or modification of equipment or devices, such as TDDs or other telephonic instruments.

(5) Provision of readers or certified sign-language interpreters.

c. In determining whether an accommodation would impose an undue hardship on operation of a recipient's or DA component's program, the ASA(MRA) or designee will consider the following factors, at a minimum:

(1) Overall size of the recipient's or DA component's installation or activity's program or activity; examples are number of employees, number and type of facilities, and size of budget.

(2) Size of the recipient's or DA installation or activity's operations; "operation" here will include composition and structure of the recipient's or DA component's installation or activity work force.

(3) Nature and cost of accommodation needed.

d. A recipient or DA component installation or activity may not deny employment opportunity to a qualified handicapped employee or applicant for employment; this is true if the basis for the denial is the need to make reasonable accommodation to physical or mental limitations of the employee or applicant.

Section II Specific Accessibility

3-5. Historic properties

a. In the case of historic properties, program accessibility will mean that, when viewed in their entirety programs are usable by handicapped persons. (See the glossary for explanation of the term historic property.) Because the primary benefit of historic properties is the experience of the property itself, priority will be given to those methods of achieving program accessibility that make the historic property physically accessible to handicapped persons.

b. Methods of achieving program accessibility to otherwise inaccessible areas or features of historic properties include the following:

(1) Making physical alterations that give handicapped persons access.

(2) Using audiovisual materials and devices.

(3) Assigning individuals to guide handicapped persons.

(4) Adopting other innovative methods.

c. When program accessibility cannot be achieved without causing a substantial impairment of significant historic features, modification or waiver of access standards may be sought from the ASA(M&RA) or designee.

(1) A decision to grant a modification or waiver will be based on consideration of the following:

(a) Scale of the property, reflecting its ability to absorb alterations.

(b) Use of the property, whether primarily for public or private purposes.

(c) Importance of historic features of the property to conducting the program.

(d) Costs of alterations, compared to the increase in accessibility.

(2) The ASA(M&RA) or designee—

(a) Periodically will review waivers granted under this paragraph.

(b) May withdraw waivers if technological advances or changes warrant.

d. The decision by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) or designee to grant a modification or waiver of access standards is subject to section 106 of the National Historic Preservation Act (PL 89-665), as amended. Section 106 reads as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation

established under title II of this Act a reasonable opportunity to comment with regard to such undertaking."

e. The decision cited in *d* above will be based on title 36, Code of Federal Regulations, chapter VIII, part 800 (36 CFR 800). When the property is federally owned, or when Federal funds may be used for alterations, the ASA(M&RA) or designee will obtain comments (as cited in sec 106 quoted in *d* above) under 36 CFR 800 before effecting structural alterations.

3-6. Military museums

a. When military museums are involved, program accessibility will mean that the following are accessible and usable by handicapped persons:

(1) Exhibits.

(2) Displays.

(3) Tours.

(4) Lectures.

(5) Circulating or traveling exhibits.

(6) Other programs.

b. Methods of making museum programs accessible are discussed below. Commanders of DA installations and activities are encouraged to use "Museum and Handicapped Students: Guidelines for Educators." This is published by the National Air and Space Museum, Smithsonian Institution, WASH DC 20560; it is available through that address.

(1) Deaf and hearing-impaired persons, by—

(a) Training museum staff in sign-language.

(b) Providing qualified sign-language interpreters to accompany deaf or hearing-impaired visitors.

(c) Insuring that clear, concise language is used on all museum signs and display labels.

(d) Providing amplification devices.

(e) Providing printed scripts for films, videotapes, lectures, and tours.

(2) Blind and visually impaired persons, by—

(a) Providing museum catalogs in large-print editions printed over braille.

(b) Providing cassette tapes, records, or discs for museum tours or exhibits.

(c) Providing readers to accompany blind or visually impaired visitors.

(d) Using large-print and braille display cards at exhibits.

(e) Providing raised-line maps of museum buildings.

(f) Using raised-line drawings, reproductions, or models of large exhibits for tactile experiences, when touching of exhibits is prohibited.

(g) Placing large-print and braille signs to identify galleries, elevators, restrooms, and other service areas.

(h) Permitting guide dogs in all museum facilities.

(3) Other physically impaired persons, by—

(a) Lowering display cases.

(b) Spacing exhibits to make movement easier.

(c) Using ramps in galleries.

(d) Increasing lighting in exhibit areas, to ease viewing from a distance.

(e) Providing places to sit in exhibit areas.

(f) Making restrooms accessible.

(g) Using large-print exhibit display cards to ease reading from a distance.

(h) Sensitizing museum staff members to consider the needs of handicapped visitors when organizing exhibits.

c. Recipients may not take part in a contractual or other relationship that subjects qualified handicapped applicants or employees to discrimination prohibited by this section. These include relationships with—

(1) Employment and referral agencies.

(2) Labor unions.

(3) Organizations providing or administering fringe benefits to employees of the recipient.

(4) Organizations providing training and apprenticeship programs.

d. Recipients will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee; an exception is if the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program. "Reasonable accommodation" here includes, but is not limited to, providing—

- (1) Ramps.
- (2) Accessible restrooms and drinking fountains.
- (3) Interpreters for deaf employees.
- (4) Readers for blind employees.
- (5) Amplified telephones.
- (6) TDDs such as teletypewriters (TTYs) or telephone writers.
- (7) Tactile signs on elevators.

e. Recipients—

(1) May not use employment tests or criteria that discriminate against handicapped persons.

(2) Will insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(3) May not conduct a preemployment medical examination or make a preemployment inquiry about—

- (a) Whether an applicant is a handicapped person.
- (b) The nature or severity of a handicap.

(4) May make, however, a preemployment inquiry into an applicant's ability to perform job-related functions.

f. Recipients may invite applicants for employment to indicate whether and to what extent they are handicapped, when the recipient is taking—

(1) Remedial action to correct affects of past discrimination.

(2) Voluntary action to overcome affects of conditions that have resulted in limited participation by handicapped persons.

g. Material in *f* above pertains only if the recipient makes clear to the applicants that—

(1) The information is intended for use solely in connection with the recipient's—

- (a) Remedial action obligations.
- (b) Voluntary affirmative action efforts.

(2) The information—

- (a) Is being requested on a voluntary basis.
- (b) Will be kept confidential (as provided in *i* below).

(c) Will not subject the applicants to any adverse treatment, if refused.

(d) Will be used only under this regulation.

h. Nothing in this section will prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty, if—

(1) All entering employees are subjected to such an examination, regardless of handicap.

(2) The results of such an examination are used only under this regulation.

i. Information obtained under this section concerning medical condition or history of applicants will be collected and maintained on separate forms; these forms will be collected and maintained on separate forms; these forms will be accorded confidentiality as medical records, with the following exceptions:

(1) Supervisors and managers may be informed about—

- (a) Restrictions on work or duties of handicapped persons.
- (b) Necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if a handicapping condition might require emergency treatment.

(3) Government officials investigating compliance with this regulation will be provided relevant information on request.

Chapter 4 Complaints and Findings

Section I Complaints

4-1. Introduction

a. The system for processing complaints outlined in this chapter covers complainants, recipients (grantees), and members of the general public. Because of handicaps, these persons are precluded from taking part in or attending certain programs, or gaining access to federally owned or leased buildings, Army posts, camps, or stations, because of architectural design or other barriers.

b. Complaints will be received by the Equal Employment Opportunity (EEO) officer at the location where the alleged discriminatory incident occurred, if it occurs on a military installation. Complainants also may choose to file their complaint directly with the ASD(MRA&L). (See para 4-2c.)

c. If a recipient is alleged to have contributed to a discriminatory practice, the complainant may file a written complaint with the EEO officer assigned to the installation or activity funding the program or project. DA components also receive funds for or provide programs or projects for public consumption. Therefore, they are required to display posters or other conspicuous notices to inform attendees or participants of their rights to file complaints of discrimination based on handicap, in connection with programs or projects conducted by DA.

4-2. Filing a complaint

a. A person who feels that he or she, or any group or class of persons, has been discriminated against on the basis of handicap can individually or through a representative file a complaint of discrimination within 60 calendar days of the alleged discriminatory incident. The EEO officer will have the authority to reject the complaint if it is not received in the EEO office within 60 days.

b. The complaint must be—

(1) Filed in writing.

(2) Signed by the complainant or the complainant's authorized representative.

(3) Submitted to the EEO officer having operating or servicing responsibility at the site or location where the alleged discriminatory incident occurred.

c. Complaints may be filed directly with the ASD(MRA&L) if the—

(1) Incident occurred on an Army post, camp, or station.

(2) Program or project was conducted by DA.

d. A copy of each complaint received by a local servicing EEO officer or designee will be forwarded by the EEO officer to HQDA(SAMR-OEPGR), WASH DC 20310 and ASD(MRA&L EO/SP), WASH DC 20310 within 10 calendar days after receipt. This reporting requirement has been assigned OMB No. 0704-0162.

e. The complaint must indicate how and by whom the complainant was discriminated against. The case will be closed after 30 days if the complainant does not provide the information listed below.

(1) When the discriminatory incident occurred.

(2) Name, address, telephone number, and other pertinent data about the complainant.

(3) Full description of what actually transpired.

(4) Specific request to have the incident investigated.

(5) What the complainant views as proper corrective action to alleviate future occurrences.

4-3. Investigating a complaint

a. Thirty calendar days will be allowed for investigation by any of the following:

(1) The local servicing EEO officer.

(2) The person designated by the local servicing EEO officer to conduct the investigation.

(3) The individual designated at the ASD(MRA&L) level.

b. Investigations by recipients will be conducted under the following procedures:

(1) Commander of a DA installation or activity may require or permit recipients to investigate complaints alleging violation of this regulation by—

(a) Insuring that the recipient investigates the complaints under standards, procedures, and requirements prescribed by this regulation.

(b) Requiring the recipient to submit a written report of each complaint and investigation to the DA installation or activity.

(c) Retaining a review responsibility over the investigation and disposition of each complaint.

(d) Ensuring that each complaint investigation is completed within 180 calendar days of receipt of the complaint by the proper DA installation or activity; an exception is an extension of time granted for good cause by the ASA(M&RA) or designee.

(e) Requiring the recipient to maintain a log of all complaints filed against the recipient.

(2) DA installations or activities that require or permit complaint investigations to be conducted by recipients will review recipient complaint investigations under this regulation.

c. A case file will be—

(1) Established for each complaint filed.

(2) Kept by the EEO officer for 3 years.

d. The complaint will be acknowledged within 10 calendar days of receipt by the EEO officer. Should the EEO officer determine that a complaint will be investigated, the following will be forwarded to the person designated to conducting the investigation (if other than the EEO officer):

(1) Copy of the letter of acknowledgment.

(2) Other relevant information.

e. The local EEO officer or the person designated at the ASD (MRA&L) level has the ultimate responsibility to assure that the person designated to investigate the alleged discriminatory incident obtains information, documentation, and statements necessary to investigate the complaint properly and adequately.

f. The investigative process will be completed within 30 calendar days after acknowledging receipt of complaint. A finding will be rendered by the commander or designee within 10 calendar days after the close of the investigation. The commander or designee can accept, reject, or modify the finding.

g. Withdrawal of complaint should be accepted only when the letter of withdrawal contains clear information suggesting that the complainant made the decision to withdraw on his or her own volition, without undue influence from the agency or recipient.

4-4. Information requirements

a. Installation EEO officers will maintain a log of all complaints filed with the EEO office. They also will notify (telephonically or by mail) the major Army command (MACOM) EEO office to assure that a simultaneous log is maintained. The log should include—

(1) Name and address of the complainant.

(2) Recipient's name and address (if applicable).

(3) Basis for the complaint.

(4) Current status.

b. MACOM EEO officers will submit the following reports to HQDA(SAMR-CPP&EO), Room 1E615, The Pentagon, WASH DC 20310 by 20 December and 20 June:

(1) A narrative summary report on complaints. This reporting requirement has been assigned RCS DD-M(SA) 1596.

(2) An Estimating Cost Report (DODI 5000.22).

Section II Findings

4-5. Written notification of findings

a. The complainant will receive written notification outlining the finding from the installation commander or the EEO officer within 14 calendar days after the 30th day or close of investigation, whichever comes first.

b. This notification must indicate whether or not discrimination

or other violation occurred. If no discrimination is found, the complainant will be—

(1) Notified in writing.

(2) Informed of avenues of redress.

4-6. Finding of alleged discrimination or noncompliance

a. With a finding of discrimination, the EEO officer will recommend corrective action to the installation commander concerned or to the recipient.

b. When the investigation reveals that discrimination or a violation of this regulation has occurred, the EEO officer will issue a written notification outlining—

(1) The violation.

(2) Recommended corrective action.

(3) Suspense date for completion of corrective action.

c. Written notification and recommended corrective action will be forwarded to the commander or recipient (if applicable) within 14 calendar days after completion of the investigation; copies will be sent to HQDA (SAMR-OEPGR), WASH DC 20310 and the complainant. Also, each DA installation or activity commander will submit a narrative report by memorandum to the ASD(MRA&L) or designee when the DA installation or activity commander notifies an applicant or recipient that noncompliance with this regulation is indicated. The report, which has been assigned RCS DD-M(AR) 1597, will include the following information:

(1) Recipient's name (last name, first, and middle initial), if this refers to a person.

(2) Address (street address, city, state, and ZIP Code).

(3) The date (year, month, day).

(4) Nature of the finding.

(5) Name of the applicable federally assisted program or activity.

4-7. Finding of no discrimination

If the investigation reveals no discrimination or violation of this regulation, written notification will be forwarded within 14 calendar days after completion of the investigation to the following:

a. Installation commander.

b. Recipient.

c. Complainant.

d. HQDA(SAMR-OEPGR), WASH DC 20310.

4-8. Appeal of finding

a. If a complainant is dissatisfied with a local finding, he or she may appeal to HQDA(SAMR-OEPGR), WASH DC 20310 within 30 calendar days of receipt of the written notification that—

(1) Sets forth the finding.

(2) Informs the complainant of the right to further appeal.

b. The appeal to HQDA is—

(1) Automatic, if the complainant is dissatisfied with the local finding.

(2) Not constrained by any criteria other than time.

c. If the complainant is further dissatisfied with the HQDA decision, he or she may appeal to the ASD(MRA&L) (ATTN: Office, Deputy Assistant Secretary of Defense (EO/SP)), Room 3E314, The Pentagon, WASH DC 20310. An appeal to ASD(MRA&L) must be based on one of the following three reasons:

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involves—

(a) An erroneous interpretation of law or regulation.

(b) A misapplication of established policy.

(3) The previous decision is of—

(a) A precedential nature involving new or unreviewed policy considerations that may have an affect beyond the actual case at hand.

(b) Such an exceptional nature as to merit the personal attention of the ASD(MRA&L).

d. If the complainant is still dissatisfied with the finding or decision after the administrative process has been exhausted, he or she may file a civil action in a US District Court.

e. An extension of the time limit for filing may be granted by the

EEO officer or appropriate ASD that he or she was prevented from the timely filing of an appeal for the following reasons:

- (1) Not notified of the time limit.
- (2) Experienced circumstances beyond his or her control.

f. If a complainant files a timely complaint for appeal, but no decision is rendered by the DCP&EO within 180 calendar days, the complainant may file a civil action in a US District Court. This civil action may be filed without going through the administrative process.

Chapter 5 Assurances

5-1. Required assurances

a. All recipients will file written assurances in their programs or activities will be conducted under this regulation. Recipients who are now receiving assistance from DA will have 6 months from the date of publication of this regulation to fill out and return the assurance form. New recipients must sign the assurance form prior to receiving assistance. The sample format is at appendix A. If a recipient fails to provide an assurance that conforms to the requirements of this section, the DA installation or activity commander will attempt to gain compliance under paragraphs 5-3, 5-4, and 5-5; this will hold true provided installation or activity commanders will continue the assistance, while proceedings required by paragraphs 6-6, 6-7, and 6-8, and chapters 7, 8, and 9 are pending.

b. The DA installation or activity commander will—

- (1) Advise each recipient of the—
 - (a) Required elements of the assurance.
 - (b) Extent to which those receiving assistance from the recipients will be required to execute similar assurances, with respect to each program or activity.

(2) Ensure that each assurance does the following:

(a) Obligates the recipient to advise the DA installation or activity commander of receipt of complaints that allege discrimination against handicapped persons.

(b) Obligates the recipient to collect and provide items of information that the DA installation or activity commander requires.

(c) Is made applicable to any Federal financial assistance that might be disbursed by a DA installation or activity without submission of a new application.

(d) Obligates the recipient, when the financial assistance is in the form of property, for the period during which the property is used under a financial assistance agreement, or possessed by the recipient.

(e) Includes a provision recognizing that the US Government has the right to seek judicial enforcement of section 504 of the Rehabilitation Act of 1973 (as amended) and this regulation.

5-2. Self-evaluation and consultation with interested persons and organizations

a. Commanders of DA installations or activities will require recipients to conduct a self-evaluation with the assistance of interested persons; these interested persons will include handicapped persons or organizations that represent them. The self-evaluation will be conducted within 6 months of either of the following:

- (1) The effective date of this regulation.
- (2) First receiving Federal financial assistance disbursed by DA.

When appropriate, commanders of DA installations or activities also will require recipients to consult at least annually with these interested persons.

b. In conducting the self-evaluation, each recipient will—

(1) Evaluate effects of policies and practices for compliance with—

- (a) This regulation.
- (b) Applicable supplementary guidelines.

(2) Modify policies that do not meet the requirements in (1) above.

(3) Take appropriate remedial steps to eliminate discriminatory effects of policies or practices.

c. For at least 3 years after the completion of a self-evaluation required under this paragraph, recipients will maintain on file, make available for public inspection, and provide to the ASA(MRA) or designee on request the information listed below.

(1) List of the interested persons consulted (last names, first names, and middle initials).

(2) Description of areas examined and problems identified in those areas.

(3) Description of modifications made and remedial steps taken.

5-3. Dissemination of information

a. Within 90 days of the effective date of this regulation or of first receiving assistance from a DA component, and on a continuing basis thereafter, recipients will notify beneficiaries and employees of their rights under this regulation. Appropriate steps will be taken to notify participants, beneficiaries, applicants for employment, employees, and unions or professional organizations involved in collective bargaining or professional agreements with the recipient; employees will include those with impaired vision or hearing.

b. The notification will indicate that recipient does not discriminate on the basis of handicap, in violation of this regulation. The notification will state, when appropriate, that the recipient does not discriminate in admitting or providing access to or treating or employing persons in its programs and activities. Such notification may be accomplished by—

- (1) Posting notices.
- (2) Publishing announcements in newspapers and magazines.
- (3) Placing notices in publications.
- (4) Distributing memoranda or other written communications.

c. If a recipient publishes (or uses and makes available to participants, beneficiaries, applicants for employment, or employees) recruitment materials or publications containing general information about the recipient's program and activities, this general information will include a statement of the policy described in *a* and *b* above. This may be accomplished by—

- (1) Including appropriate inserts in existing materials and publications.
- (2) Revising and reprinting materials and publications.

d. Materials developed under this regulation will be provided to insure that all beneficiaries and employees of the recipient understand the information.

5-4. Staff responsibilities

All DA determinations of receipt compliance with this regulation will be subject to reviews by the ASA (M&RA) or designee. When responsibility for approving applications for Federal financial assistance disbursed by DA is assigned to a DA installation or activity personnel in such offices will be designated to perform the functions described in chapters 6, 7, 8, 9, and 10.

5-5. Access to records and facilities

a. Each recipient will permit access to premises by DA officials during normal business hours; this access will be especially relevant when it is necessary for conducting on-site compliance reviews or complaint investigations. These officials will be allowed to—

- (1) Photograph facilities.
- (2) Inspect and copy books, records, accounts, and other material relevant to determining the recipient's compliance with this regulation.

b. Information so obtained will be used in connection with the administration of this regulation. If the recipient does not have the information requested, the recipient will—

(1) Submit to the DCP&EO a written report that contains a certification that the information is not available; the DCP&EO's address is HQDA (SAMR), Room 1E600, Pentagon, WASH DC 20310.

(2) Describe the good-faith efforts made to obtain the information.

Chapter 6 Compliance

Section I Compliance Reviews

6-1. General

Commanders of DA installations or activities will—

- a. Determine compliance of each recipient with this regulation.
- b. Perform, when possible, compliance reviews in conjunction with review and audit efforts implementing title VI of the Civil Rights Act of 1964. (See AR 600-23.)

6-2. Desk audit application review

Before approving an application for Federal financial assistance, DA installation and activity commanders will make written determinations of whether the recipient is in compliance with this regulation. This determination will be based on a review of assurance of compliance, executed by recipients under paragraph 5-1, and other data submitted by the recipient.

a. When a determination cannot be made from the assurance and other data, the DA installation or activity commander will—

- (1) Require the recipient to submit additional information.
- (2) Take other steps as necessary to determine the recipient's compliance with this regulation.

b. If this additional information demonstrates that the recipient is in compliance with this regulation, commanders of DA installations and activities will notify the recipient promptly that the recipient is in compliance.

6-3. Preapproval on-site reviews

a. When a desk audit application review conducted under paragraph 6-2 indicates that the recipient might not be in compliance with this regulation, the DA installation or activity commander may conduct a preapproval on-site review at the recipient's facilities before approving the disbursement of Federal financial assistance to the recipient. The commander of the DA installation or activity will conduct such a review when appropriate, when the following conditions apply:

(1) If a desk audit application review that the recipient's compliance posture is questionable because of—

- (a) A history of discrimination complaints.
- (b) Current discrimination complaints.
- (c) A noncompliance determination by another Government agency or DA installation or activity.

(d) Other indications of possible noncompliance.

(2) If federal financial assistance is requested for construction, to determine whether the location and design of the project would provide service on a nondiscriminatory basis, in conformity with chapter 3, section I. An exception for construction would be extraordinary circumstances.

b. Preapproval on-site reviews will be conducted under—

- (1) This regulation's guidelines.
- (2) The provisions of paragraph 6-4 concerning postapproval reviews.

6-4. Postapproval reviews

Commanders of DA installations and activities will—

a. Establish and maintain effective programs of post-approval reviews.

b. Conduct postapproval reviews of each recipient. (Frequency and nature of these reviews are prescribed in this regulation.)

c. Require recipients periodically to submit compliance reports.

d. Record the results of the reviews; these results will include findings of fact and recommendations.

6-5. Extensions

A commander of a DA installation or activity will complete a review within 180 calendar days of the recipient's initiation. An exception will be if an extension of time is granted by the ASA(M&RA) or designee for good cause. This review will do one of the following:

a. Find the recipient to be in compliance; the recipient then will be notified of this finding.

b. Notify the recipient and the ASA(M&RA) or designee of a finding of probable noncompliance under paragraph 6-7.

Section II Effective Compliance

6-6. Violations

a. When a compliance review or complaint investigation indicates that a recipient has violated this regulation or the assurance executed under paragraph 5-1, the responsible DA installation or activity commander or the ASA(M&RA) or designee will attempt to effect compliance under paragraphs 6-7 and 6-8. The inability of a DA installation or activity commander to comply with any time frame prescribed in this regulation does not relieve a recipient of the responsibility for compliance with this regulation.

b. The DA installation or activity commander may require (when necessary to overcome the affects of discrimination in violation of this regulation) a recipient to take remedial action, with respect to handicapped persons who—

(1) Are no longer participants in the recipient's program or activity, but who were participants in the program or activity when such discrimination occurred.

(2) Would have been participants in the recipient's program or activity had the discrimination not occurred.

(3) Are presently in the recipient's program or activity but not receiving full benefits or equal and integrated treatment within the program or activity.

6-7. Written notice of violation

After evaluating the investigative report, the commander of the DA installation or activity will issue to the recipient (under para 5-3) and to the ASA(M&RA) or designee a written notice that—

a. Describes the apparent violation and corrective actions necessary to achieve compliance.

b. Extends an offer to meet informally with the recipient.

c. Informs the recipient that failure to respond to the notice within 15 calendar days of its receipt will result in initiation of enforcement procedures described in chapters 8, 9, and 10.

6-8. Attempting to achieve voluntary compliance by recipients

a. If a DA installation or activity commander issues a notice under paragraph 6-7, the commander will attempt to—

(1) Meet the recipient.

(2) Persuade the recipient to take steps necessary to achieve compliance with this regulation.

b. If a recipient agrees to take remedial steps to achieve compliance, the DA installation or activity commander will require that the agreement—

(1) Be in writing.

(2) Be signed by the head of the DA installation or activity concerned or designee.

(3) Be signed by the principal official of the recipient.

(4) Specify action necessary to achieve compliance.

(5) Be made available to the public on request.

c. If satisfactory adjustment, or a written agreement, has not been achieved within 60 calendar days of the recipient's receipt of the notice issued under paragraph 6-7, the DA installation or activity commander will—

(1) Notify the ASA(M&RA) or designee.

(2) State the reasons for failure to reach satisfactory adjustments, or written agreement.

d. The commander of the DA installation or activity will initiate the enforcement actions prescribed in chapters 8, 9, and 10, if one of the following applies:

(1) The recipient does not respond to a notice under paragraph 6–7, within 15 calendar days, if receipt of the notice and satisfactory adjustments are not made within 45 calendar days of the date of the recipient’s response.

(2) The DA installation or activity commander or the ASA(-M&RA) determines at any time within 90 days after the recipient receives a notice (under para 6–7) that, despite reasonable efforts, the recipient is not likely to comply and voluntarily.

e. If under *d* above, the DA installation or activity commander initiates enforcement action, attempts to persuade the recipient to comply voluntarily will be continued.

Chapter 7 Imposing Sanctions

7–1. Sanctions available

If a commander of a DA installation or activity has taken action under paragraphs 6–7 and 6–8, the commander may, by order, do the actions listed below. (These actions are subject to paras 7–2 and 7–3.)

a. Terminate, suspend, or refuse to grant or continue assistance to the recipient.

b. Refer the case to the Department of Justice for initiation of enforcement proceedings at a Federal, State, or local level.

c. Pursue remedies under State or local law.

d. Impose other sanctions on consultation with the ASA(M&RA) or designee.

7–2. Terminating, suspending, or refusing to grant or continue assistance

A commander of a DA installation or activity may not terminate, suspend, or refuse to grant or continue Federal financial assistance, unless—

a. Such action has been approved by the Secretary of Defense.

b. The commander has given the recipient an opportunity for a hearing (under procedures outlined in chap 8) and a finding of noncompliance has resulted.

c. Thirty calendar days have elapsed since the Secretary of Defense has filed a written report with the congressional committees that have jurisdiction over the program or activity in which the violation of this regulation exists. This report will describe the violation and action to be taken.

d. Such action affects only the particular activity or program (or portion thereof) of the recipient where the violation exists.

7–3. Other sanctions

A commander of a DA installation or activity may not impose the sanction provisions outlined in paragraphs 7–2*c* and *d*, unless—

a. The commander has given the recipient an opportunity for a hearing (under chap 8); a finding of noncompliance has resulted.

b. The action has been approved by the Secretary of Defense.

c. Ten calendar days have elapsed since the mailing of a notice informing the recipient of the—

(1) Continuing failure to comply with this regulation.

(2) Action necessary to achieve compliance.

(3) Sanction to be imposed.

d. During these 10 calendar days, the DA installation or activity command has made additional efforts to persuade the recipient to comply.

Chapter 8 Hearings, Decisions, and Notices

Section I Hearings

8–1. Reasonable notice

a. When a hearing is required by this regulation, reasonable notice will be given to the affected applicant or recipient by registered or certified mail; return receipt for this registered or certified mail will be requested. This notice will advise the applicant or recipient of the—

(1) Proposed action to be taken.

(2) Specific provisions under which the proposed action is to be taken.

(3) Matters of fact of law asserted as the basis for this action.

b. This notice also will provide for one of the following:

(1) Fix a date not less than 20 days after the date of the notice.

The applicant or recipient may request of the responsible DA official that the matter be scheduled for hearing within this time frame.

(2) Advise the applicant or recipient that the matter in question has been set for hearing at a stated place and time. This time and place—

(*a*) Will be reasonable.

(*b*) Will be subject to change for cause.

c. The complainant, if any, will be advised of the time and place of the hearing.

d. An applicant or recipient may waive a hearing, and submit written information and argument instead. Failure of an applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, will be deemed—

(1) A waiver of the right to a hearing under this regulation.

(2) Consent to the making of a decision on the basis of such information that is available.

8–2. Time and place of hearing

Hearings will be held at the DA installation or activity, at a time fixed by the responsible DA official; an exception will be if this official determines that the convenience of the applicant or recipient requires that another place be selected. Hearings will be held before the responsible DA official or, at the official’s discretion, before a hearing examiner designated by the official.

8–3. Hearing examiner

The hearing examiner will be a field grade official or civilian employee above the grade of GS–12 (or the equivalent); the examiner also will be a person admitted to practice law before a Federal court or the highest court of a State, Territory, Commonwealth, or the District of Columbia.

8–4. Right to counsel

In all proceedings under this chapter, the applicant or recipient and the responsible DA installation or activity commander will have the right to be represented by counsel.

8–5. Procedures

a. The recipient will receive an open hearing, at which he or she or his or her counsel may examine any witnesses present. Both the responsible DA official and the applicant or recipient will be entitled to introduce all relevant evidence on the issues at the outset of or during the hearing as—

(1) Stated in the notice for hearing.

(2) Determined by the officer conducting the hearing.

b. Technical rules of evidence will not apply to hearings conducted under this regulation. But rules or principles designed to assure production of the most credible evidence available will be applied where reasonably necessary by the officer conducting the hearing. These rules or principles also will be designed to subject testimony to test by cross-examination.

c. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered

or taken for record will be open to examination by the parties. Opportunity will be given to refute facts and arguments advanced on either side of the issues.

d. A transcript of the oral evidence will be made; an exception would be as to the extent the substance of the oral evidence is stipulated for the record.

e. All decisions will be based on the hearing record. Written findings will be made.

8-6. Consolidated or joint hearings

In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under section 504 of the Rehabilitation Act of 1973 (as amended), the ASD(MRA&L), the Secretary of a Military Department, or other responsible DA official designated by the ASD(MRA&L) after consultation with the ASD(MRA&L) may, by agreement with such other departments or agencies as applicable, provide for the following:

a. Conduct of consolidated or joint hearings.

b. The application to such hearings.

c. Application to such hearings to appropriate procedures consistent with this regulation. (Final decisions in such cases will be made under chap 9.)

Section II Decisions and Notices

8-7. Decision by a person other than the responsible DA official

a. If the hearing is held by a hearing examiner, the hearing examiner will either make an initial decision or certify the entire record; an initial decision may be made if the examiner is so authorized. The record will include the hearing examiner's recommended findings and proposed decision to the responsible DA official for a final decision. A copy of this initial decision or certification will be mailed to the applicant or recipient.

b. When the initial decision is made by the hearing examiner, the applicant or recipient may file with the responsible DA official his or her exceptions to the initial decision; reasons for the exception will be attached. This filing will be within 30 days of the mailing of such notice of initial decision.

c. In the absence of exceptions, the responsible DA official may, on the official's own motion within 45 days after the initial decision, serve on the applicant or recipient a notice that the official will review the decision.

d. On filing of exceptions or notices of review, the responsible DA official will—

(1) Review the initial decision.

(2) Issue his or her own decision, including the reasons.

e. In the absence of exceptions or notice of review, the initial decision will constitute the final decision of the responsible DA official.

8-8. Decisions on records or review by the responsible DA official

a. The applicant or recipient will be given reasonable opportunity to file briefs or other written statements of contentions to the responsible DA official when the responsible DA official does any of the following actions:

(1) Has the record certified to him or her for decision.

(2) Reviews the decision of a hearing officer, under paragraph 8-7.

(3) Conducts the hearing.

b. Copies of the final decision of the responsible DA official will be given in writing to—

(1) The applicant or recipient.

(2) The complainant, if any.

8-9. Decisions on record when a hearing is waived

When a hearing is waived under paragraph 8-1*d*, a decision will be made on the record by the responsible DA official. Copies of the decision will be given in writing to—

a. The applicant or recipient.

b. The complainant, if any.

8-10. Rulings required

Each decision of a hearing officer or responsible DA official will set forth the ruling on each finding, conclusion, or exception presented. The decision will identify the requirements imposed by this regulation with which the applicant or recipient has failed to comply.

8-11. Approval by the Secretary of Defense

a. A final decision of a responsible DA official will be transmitted promptly to the Secretary of Defense when this decision provides for the following:

(1) Suspension to grant or continue Federal financial assistance.

(2) Refusal to grant or continue Federal financial assistance.

(3) Imposition of any other sanction available under this regulation.

b. The Secretary of Defense may—

(1) Approve or vacate the decision.

(2) Remit or mitigate any sanction imposed.

c. Within 30 days, the Secretary of Defense will file a full written report of the circumstances and grounds for such action with the congressional committees having legislative jurisdiction over the programs involved.

d. Any action to suspend, terminate, or refuse to grant or continue Federal financial assistance will be limited—

(1) To the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made.

(2) In its effect to the particular program, or part thereof, in which noncompliance has been so found.

Chapter 9 Restoring Eligibility for Financial Assistance

9-1. Adverse affect

A recipient who is affected adversely by a final decision issued under chapter 8, section II may at any time request the responsible DA official to restore fully the eligibility to receive Federal financial assistance.

9-2. Restoration of eligibility

The responsible DA official will restore such eligibility immediately if the official determines that the recipient—

a. Has supplied information that demonstrates that the recipient has satisfied terms and conditions of the order entered under chapter 8, section II.

b. Is complying with this regulation.

c. Has provided reasonable assurance of continued compliance with this regulation.

9-3. Denial of eligibility

If the responsible DA official denies a request for restoration of eligibility, the recipient may submit a written request for a hearing; this written statement must state why the recipient believes the responsible DA official erred in denying the request. Following such a written request, the recipient will be given an expeditious hearing, under rules of procedure issued by the responsible DA Official; this hearing will determine whether requirements described in paragraph 9-2 have been met. While these proceedings are pending, sanction imposed by the order issued under chapter 8, section II will remain in effect.

Chapter 10

Coordination with Sections 502 and 503 of the Rehabilitation Act of 1973 (As Amended)

10-1. Developing accessibility

Commanders of DA installations or activities will use DOD 4270.1-M and Office of the Chief of Engineers Manual EM 1110-1-103 in developing requirements for accessibility of facilities. If issues with respect to section 502 of the Rehabilitation Act of 1973, as amended, that are not covered by this regulation are encountered, the ASD(MRA&L) or designee may be consulted. If necessary, the ASD(MRA&L) or designee will consult with the Architectural and Transportation Barriers Compliance Board in resolving these problems. This board can be contacted at 330 C St. SW, Room 1010, WASH DC 20202; (202) 472-2700 or (202) 245-1591.

10-2. Direct consultation

Commanders of DA installations and activities may advise recipients to consult directly with the Architectural and Transportation Barriers Compliance Board in developing accessibility criteria.

10-3. Coordination of enforcement actions

Commanders will—

a. Coordinate enforcement actions relating to the accessibility of facilities with the Architectural and Transportation Barriers Compliance Board.

b. Notify the ASD(MRA&L) or designee of this coordination.

10-4. Section 503

The commander will coordinate enforcement actions with the nearest Regional Office of Federal Contract Compliance Programs of the Department of Labor if the conditions discussed below apply. The DA installation or activity commander will notify the ASD(MRA&L) of this coordination.

a. If a recipient also is a Federal contractor subject to—

(1) Section 503 of the Rehabilitation Act of 1973, as amended.

(2) The regulations under (1) above (sec 60-741, title 41, Code of Federal Regulations).

b. If DA installation or activity commander has reason to believe that the recipient is in violation.

10-5. Employment

DA components that conduct Federal programs or activities covered by this regulation and involve employment of civilian persons to conduct such programs or activities must comply with—

a. Section 5-1 of the Rehabilitation Act of 1973, as amended.

b. Implementing rules and regulations of the Equal Employment Opportunity Commission.

**Appendix A
Format for Assurance of Compliance with the
Department of the Army Under Section 504 of the
Rehabilitation Act of 173 (As Amended)**

(Name of Recipient)

(Address)

(City or County)

(State and ZIP Code)

Hereby agrees that he or she will comply with:

- a. Section 504 of Public Law 93-112, "Rehabilitation Act of 1973" September 26, 1973 (29 U.S.C. 794) (1976);
- b. Section 111 of Public Law 93-516 "Rehabilitation Act Amendments of 1974" December 7, 1974 (29 U.S.C. 706, 780, 790) (1976); and
- c. Section 119 of Public Law 95-602, "Rehabilitation Comprehensive Services, and Development Disabilities Amendments of 1978" November 6, 1978 (sec 794, Note 29, United States Code) (supp III 1979), all requirements imposed by or pursuant to this regulation of the DA and in accordance with Section 504 of the Rehabilitation Act of 1973 (as amended), DA will prohibit discrimination based on handicap in programs and activities receiving Federal financial assistance disbursed by DA and in programs and activities conducted by DA; and **HEREBY GIVES ASSURANCE THAT** it will immediately take any measures necessary to effectuate this agreement.

If any personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant or recipient by DA or if such assistance is in the form of personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant or recipient by DA, or if such assistance is in the form of personal property or real property, or interest therein or structure thereon, then this assurance shall obligate the applicant or recipient or in the case of any transfer such as property, any transferee, for the period during which the 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, or for the period during which it retains ownership or possession of the property whichever is longer. In all other cases, this assurance shall obligate the applicant or recipient for the period during which the Federal financial assistance is extended to it by DA.

DA representatives will be allowed to visit recipient facilities. They will inspect the facilities to ensure that there are no barriers to impede the handicap's accessibility in either programs or activities. **THIS ASSURANCE** is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the applicant or recipient by DA, including installment payments after such date on account of arrangements for Federal financial aid which were approved such date. The applicant or recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant or recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the applicant or recipient.

(Date)

(Applicant or Recipient)

("By" name, title, and signature of authorized official)

Glossary

Section I Abbreviations

ASA(M&RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

ASD(MRA&L)

Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

DA

Department of the Army

DCPP&EO

Deputy for Civilian Personnel Policy and Equal Opportunity

EEO

equal employment opportunity

HQDA

Headquarters, Department of the Army

MACOM

major Army command

TDD

telephone devices for the deaf

TTY

teletypewriter

Section II Terms

Facility

All, or any portion of, buildings, structures, equipment, roads, walks, parking lots, or other real or personal property; any interest in such property.

Federal financial assistance

Grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or other arrangement by which the Federal Government provides, or otherwise makes available, assistance in the forms listed below.

a. Funds.

b. Services performed by Federal personnel; these include technical assistance, counseling, training, and provision of statistical or expert information.

c. Real and personal property; interest in or use of such property. This interest or use includes—

(1) Transfers or leases of such property for less than fair market value or for reduced consideration.

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

Handicapped person

a. Person who—

(1) Has a physical or mental impairment

that substantially limits one or more major life activities.

(2) Has a record of such an impairment.

(3) Is regarded as having such an impairment.

b. For purposes of this regulation (as it relates to employment programs of recipients) this term does not include an individual—

(1) Who is an alcohol or drug abuser.

(2) Whose current use of alcohol or drugs prevents him or her from performing the duties of the job in question.

(3) Whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others.

c. As used in this regulation, this term includes the following:

(1) Physical or mental impairment that include the following:

(*a.*) Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic; skin; and endocrine.

(*b.*) Mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(*c.*) Such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, and muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, drug abuse, and alcoholism.

(2) Impairment of major life activities that include the following: functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

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

(4) Is regarded as having an impairment, such as any of the following:

(*a.*) Physical or mental impairment that does not substantially limit major life activities, but treated by a recipient or DA as constituting such a limitation.

(*b.*) Physical or mental impairment that substantially limits major life activities only as a result of attitudes of others toward such impairment.

(5) Has none of the impairments defined in (1) through (4) above, but is treated by a recipient or the DA as having such an impairment.

Historic properties

Properties listed or eligible for listing in the National Register of Historic Places.

Qualified handicapped person

Handicapped person who with respect to—

a. Employment, can perform the essential

functions of the job in question with reasonable accommodation.

b. Services, meets the essential eligibility requirements for receiving the services in question.

Recipient

a. State or political subdivision or instrumentality thereof.

b. Public or private agency, institution, organization, or other entity.

c. Person who receives Federal financial assistance directly or through another recipient; this person includes successor, assignee, or transferee of a recipient, but not the ultimate beneficiary of the assistance.

d. Persons and entities applying to be recipients.

Substantial impairment

Significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

Section III

Special Abbreviations and Terms

There are no special terms.

Unclassified

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