

Army Regulation 600-7

Personnel-General

**Unlawful
Discrimination
on the Basis of
Disability in
Programs and
Activities
Receiving
Federal Financial
Assistance From
or Conducted By
the Department
of the Army**

Headquarters
Department of the Army
Washington, DC
10 March 2020

UNCLASSIFIED

SUMMARY of CHANGE

AR 600–7

Unlawful Discrimination on the Basis of Disability in Programs and Activities Receiving Federal Financial Assistance From or Conducted By the Department of the Army

This major revision, dated 10 March 2020—

- o Changes title from “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army” to “Unlawful Discrimination on the Basis of Disability in Programs and Activities Receiving Federal Financial Assistance From or Conducted By the Department of the Army” (cover).
- o Updates roles, responsibilities, and operational requirements (para 1–4).
- o Updates suggested improvements to Deputy Assistant Secretary of the Army for Equity and Inclusion (para 1–4e).
- o Updates new construction and alterations of facilities to include guidance from Department of Justice applicable standards for compliance (para 3–3).
- o Adds complaint resolution and enforcement procedures applicable to programs and activities conducted by Department of the Army components (chap 4).
- o Updates complaint processing with new timelines consistent with Department of Defense and Department of Justice guidelines (chap 4).
- o Incorporates mediation into complaint resolution (para 4–5).
- o Incorporates annual reports (para 4–9).
- o Adds duration of assurance to include real property, personal property, and other forms of assistance (para 5–4).
- o Adds continuing state and block grant programs (para 5–5).
- o Adds pre-award compliance (para 5–7).
- o Adds desk audit application review, pre-award and post-approval reviews for compliance (paras 5–7 and 5–8).
- o Implements internal control provisions in accordance with AR 11–2 (app B).
- o Updates terminology from handicap to persons with disabilities (throughout).

Effective 10 April 2020

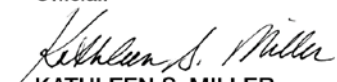
Personnel-General

**Unlawful Discrimination on the Basis of Disability in Programs and Activities
Receiving Federal Financial Assistance From or Conducted By the Department of
the Army**

By Order of the Secretary of the Army:

JAMES C. MCCONVILLE
General, United States Army
Chief of Staff

Official:


KATHLEEN S. MILLER
Administrative Assistant
to the Secretary of the Army

ipients of federal financial assistance disbursed by the Department of the Army, and to programs and activities receiving or benefitting from federal financial assistance insofar as they affect persons with disabilities in the United States. This regulation applies only to Department of the Army appropriated and nonappropriated fund activities, their employees, and applicants for employment.

Proponent and exception authority.

The proponent of this regulation is the Assistant Secretary of the Army (Manpower and Reserve Affairs). The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the

policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process.

This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see app B).

Supplementation.

Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Assistant Secretary of the Army (Manpower and Reserve Affairs) (DASA–EI), 111 Army Pentagon, Washington, DC 20310–0111.

Suggested improvements.

Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (DASA–EI), 111 Army Pentagon, Washington, DC 20310–0111.

Distribution.

This regulation is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

History. This publication is a major revision.

Summary. This regulation implements guidance published by the Department of Justice and the Department of Defense and prescribes policy and procedures for implementing the Department of the Army equal employment opportunity programs.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. This regulation also applies to applicants for and re-

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Glossary

Chapter 1 Introduction

1–1. Purpose

This regulation prescribes policy and procedures for prohibiting discrimination based on disability in Department of the Army (DA) programs and activities receiving federal financial assistance (FFA) disbursed and conducted by DA. This regulation addresses Title 29, United States Code, Section 701 et seq. (29 USC 701 et seq.) (known as the Rehabilitation Act of 1973); Section 508 of the Rehabilitation Act of 1973, as amended (29 USC 794d); and 42 USC 4151 et seq. (known as the Architectural Barriers Act of 1968), including how these statutes are applied to individuals who are not directly employed by the DA, to include: Family members, veterans, students, patients at medical treatment facilities, the general public, and non-Army affiliated staff.

1–2. References and forms

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

Responsibility for implementing this regulation extends from the Secretary of the Army through the chain of command to commanders, managers, and supervisors at all levels. All Army organizations will develop an effective civil rights program prohibiting discrimination on the basis of disability.

a. Assistant Secretary of the Army (Acquisition, Logistics, and Technology). The ASA (ALT) is responsible for implementing this regulation as it applies to those programs involving the loan or other disposition of surplus personal property to non-federal agencies or activities.

b. Assistant Secretary of the Army (Civil Works). The ASA (CW) will ensure that engineering plans, policies, and procedures comply with federal accessibility guidelines and that collaborative efforts are made with stakeholders to correct access issues, barriers, or other engineering matters.

c. Assistant Secretary of the Army (Financial Management and Comptroller). The ASA (FM&C) is responsible for the formulation of accounting and finance policies associated with the programs referenced in this regulation.

d. Assistant Secretary of the Army (Installations, Energy, and Environment). The ASA (IE&E) establishes policies and procedures, as required by federal laws and guidelines, to eliminate architectural, transportation, and communication barriers that impact persons with disabilities (PWD), and to ensure that facility accessibility surveys are conducted on a regularly scheduled basis to identify any architectural barriers that impede PWD.

e. Assistant Secretary of the Army (Manpower and Reserve Affairs). The ASA (M&RA) has overall policy and supervisory responsibility as outlined in 10 USC 7016 and delegates the management of the functional and programmatic responsibilities to the Deputy Assistant Secretary of the Army for Equity and Inclusion (DASA–EI).

(1) The DASA–EI has overall policy and supervisory responsibility for development and implementation of a civil rights program including disseminating information on policies, programs, and initiatives to prevent unlawful discrimination. The DASA–EI will appoint a program manager responsible for developing and implementing policies which promote access for individuals with disabilities, to include disabled veterans and members of the public, as required by the Architectural Barriers Act and Sections 501, 504, and 508 of the Rehabilitation Act. The program manager will conduct compliance reviews of applicants for and recipients of FFA. The program manager ensures compliance with applicable Department of Justice (DOJ) and Equal Employment Opportunity Commission (EEOC) guidance, and all implementing DOD issuances and regulations.

(2) The Deputy Assistant Secretary of the Army for Civilian Personnel will coordinate with the DASA–EI on matters impacting the management of human capital and civilian personnel policy and ensure that the Army human capital community includes DASA–EI requirements in all human capital strategies and policies for civilian personnel.

f. Chief Information Officer/G–6. The CIO/G–6 is responsible for implementing 29 USC 794d of the Rehabilitation Act (known by the common name Section 508). AR 25–1 and DA Pam 25–1–1 provide Section 508 implementing guidance requiring that Army organizations ensure employees and members of the public with disabilities have access to information and data comparable to that of individuals without disabilities when developing, procuring, maintaining, or using electronic and information technology.

g. Labor counselors, staff judge advocates, and organization legal advisors. Labor counselors, staff judge advocates, and organization legal advisors will—

(1) Provide legal guidance and advice on civil rights matters related to unlawful discrimination on the basis of disability in programs and activities receiving FFA from or conducted by DA.

(2) Provide legal guidance and advice through various complaint processing venues.

h. Equal employment opportunity officers. EEO officers will—

(1) Act as advisors to commanders/directors and ensure inquiries and investigations are conducted within prescribed timelines on unlawful discrimination on the basis of disability in programs or activities receiving FFA from DA.

(2) Appoint installation or organizational PWD program managers to manage and assist in this endeavor. The Deputy Assistant Secretary of the Army PWD Program Manager will appoint an individual responsible for developing and implementing policies which promote access for PWD, to include disabled veterans and members of the public, as required by the Architectural Barriers Act and Sections 501, 504, and 508 of the Rehabilitation Act.

i. Commanders and directors. Commanders and directors will—

(1) Carry out responsibilities prescribed by this regulation.

(2) Provide required reports and information to DASA–EI or designee in a timely manner.

(3) Assign sufficient personnel to implement and ensure effective enforcement of provisions as outlined.

(4) Ensure employees and members of the public with disabilities have access to information and data comparable to that of individuals without disabilities when developing, procuring, maintaining, or using electronic and information technology in accordance with Section 508 (as amended) and AR 25–1.

j. Managers and supervisors. Managers and supervisors will—

(1) Support the Army’s EEO/civil rights, applicable laws, Executive Orders, regulations, and implementing guidelines with respect to unlawful discrimination on the basis of disability in programs and activities receiving FFA from or conducted by DA.

(2) Consult with EEO/Legal when made aware of circumstances and or complaints pertinent to this regulation.

k. Recipients. See glossary for definition. Responsibilities are outlined in paragraphs 2–4, 2–5, 3–5, and chapter 4 of this regulation.

1–5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in ARIMS/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

1–6. Policy program overview

a. It is the Army’s policy that no qualified person with a disability will be subjected to discrimination on the basis of disability in any program or activity receiving or benefitting from FFA disbursed by DA. Furthermore, it is also the goal of the Army to provide reasonable accommodation for employees and applicants with disabilities and visitors, when applicable. Guidelines for determining actions that discriminate against PWD are discussed in chapter 2, section II.

b. This regulation does not apply to:

(1) Any assistance to individuals who are the ultimate beneficiary under any program or activity.

(2) Procurement contracts.

(3) Money paid, property transferred, or other assistance extended under any program or activity before January 7, 1965.

(4) Persons without disabilities excluded from specified benefits, programs, or activities limited by federal laws or Executive Orders to PWD or the exclusion of a specific class of PWD from aids, benefits, or services limited by federal laws or Executive Orders to a different class of PWD.

Chapter 2 Discriminatory Practices

Section I

Types of Programs and Activities

2–1. General coverage

Existing programs and activities that are assisted or conducted Armywide and are subject to this regulation, though not specified or listed in this section, are covered. Activities must report new programs and undertakings subject to this regulation to the DASA–EI or designee within 15 calendar days of their creation or funding. Assurance of implementation will be reviewed during staff assistance visits or similar agency reviews.

2–2. Federal programs

FFA 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, including 10 USC 2541, 10 USC 2571, 10 USC 2576, 10 USC 2662, 10 USC 8678, 10 USC 8761, 10 USC 8762, 10 USC 8765, 10 USC 8766, 10 USC 8767, 40 USC Chapter 5 USC 1101, and Executive Order 13160.
- b.* The Civilian Marksmanship Program (see 36 USC Chapter 407).
- c.* U.S. Army Corps of Engineers (USACE) assistance in construction of works for restoration and protection of shores (see 33 USC 426e).
- d.* Construction and operation of public parks and recreational facilities in water resource development projects under DA administrative jurisdiction (see 54 USC 306121).
- e.* Payment to states of lease receipts from lands acquired by the United States for flood control, navigation, and allied purposes (see 33 USC 701c-3).
- f.* Grants of easements without consideration, or at nominal or reduced consideration, on land under DA control at water resource development projects (see 10 USC 2668, 10 USC 2679, 33 USC 558c, 33 USC 702d-1, 40 USC 1314, and 43 USC 961).
- g.* USACE assistance in construction of small boat-harbor projects (see 33 USC 540 and 33 USC 577).
- h.* Emergency bank protection works constructed by USACE for protection of highways, bridge approaches, and public works (see 33 USC 701s).
- i.* USACE contracts for protection, alteration, reconstruction, relocation, or placement of structures facilities (see 33 USC 633).
- j.* Provision of specialized services or technical information by USACE to state and local governments for control of aquatic plant growths in rivers, harbors, and allied waters (see 33 USC 610).
- k.* Provision of specialized services by USACE to any state for preparation of comprehensive plans for drainage basins located within the boundaries of said State (see 42 USC 1962d-16).
- l.* Provision of specialized services by USACE to improve channels for navigation (see 33 USC 603a).
- m.* Provision of specialized service by the USACE to reduce flood damage (see 33 USC 701g).
- n.* U.S. Soldiers' and Airmen's Home.

2–3. Programs and activities that affect persons with disabilities

All programs and activities conducted by DA that affect PWD in the United States are subject to this regulation. These programs and activities include, but are not limited to:

- a.* Promulgation of rules and regulations for public comment in a manner that grants PWD a reasonable opportunity for such comment; an example is making 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.* Hospitals and medical facilities.
- g.* Historic buildings and properties maintained by a DA activity; properties designated as historic under a statute of the appropriate state or local governmental body.
- h.* Schools operated by DA within the United States.

- i.* Donation of surplus or obsolete Army uniforms and combat items to the following: veterans' organizations, Soldiers' monument associations, museums, and incorporated municipalities.
- j.* Programs and activities conducted by DA and recipients 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 PWD will, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that is conducted by DA or that receives or benefits from FFA 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 disability—

(*a*) Provide different or separate aids, benefits, or services than are provided to others; an exception would be unless such action is necessary to provide qualified PWD with aid, benefits, or services that would otherwise limit a qualified PWD in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(*b*) Deny a PWD the opportunity to participate in, or benefit from, services provided.

(*c*) Afford a qualified PWD an opportunity to participate in, or benefit from, an aid, benefit, or service that is not equal to that afforded others.

(*d*) Provide a qualified PWD with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

(2) Deny a qualified PWD the opportunity to participate 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 paragraph 2–4*b*(1)(*a*).

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

(4) Deny a qualified PWD the opportunity to participate as a member of planning or advisory boards, or otherwise limit the enjoyment of any privilege or opportunity.

(5) Generally ask about the nature or extent of a person's disability when determining the need for a service animal.

(6) Require documentation, such as proof that the animal has been certified, trained, or licensed as a service or assistance animal.

(7) Make inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for a PWD (for example, the dog is observed guiding a PWD who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(8) Directly or through contractual or other arrangements use criteria or methods of administration that have the purpose or effect of:

(*a*) Subjecting qualified PWD to discrimination on the basis of disability.

(*b*) Defeating or substantially impairing accomplishment of the objectives of the recipient's or DA component's program or activity with respect to PWD.

(*c*) Perpetuating the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(9) In determining the site or location of a facility, a recipient or a DA component may not make selections that have the purpose or effect of:

(*a*) Excluding PWD from, denying them the benefits of, or otherwise subjecting them to discrimination.

(*b*) Defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to PWD. This includes adding a surcharge on PWD to cover the costs of auxiliary aids or program accessibility that are required to provide the individual or group with the equitable treatment required by Section 508 of the Rehabilitation Act or this regulation.

(*c*) Imposing or applying eligibility criteria that screen out individuals or classes of PWD from fully enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(*d*) Administering a licensing or certification program in a manner that subjects qualified PWD to discrimination on the basis of disability, or establishing requirements for the programs or activities of licensees or certified entities

that subject qualified PWD to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient or DA component are not covered by this regulation.

(e) Imposing or applying eligibility criteria that screen out, or tend to screen out, individuals or classes of PWD from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(f) Placing a surcharge on individuals or groups or PWD to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by Section 504 of the Rehabilitation Act or this regulation.

(g) Excluding or otherwise denying equal services, programs, or activities to an individual or entity because of their known relationship or association with a PWD.

c. Language in this regulation will not be construed to require a PWD to accept an accommodation, aid, service, opportunity, or benefit provided in accordance with this regulation that the individual chooses not to accept.

d. This regulation does not prohibit a recipient or DA component from providing benefits, services, or advantages to individuals or particular classes of PWD beyond those required by this regulation.

e. This regulation does not require a recipient or DA component to permit an individual to participate in or benefit from the services, programs, or activities of that recipient or DA component when that individual poses a direct threat to the health or safety of others. In determining whether an individual poses a direct threat to the health or safety of others, a recipient or DA component must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of the risk; the probability the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures, or the provision of auxiliary aids or services, will mitigate the risk.

f. A recipient and DA component will not deny personal assistance services to certain persons with a targeted disability.

g. Recipients and DA components will—

(1) Administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified PWD.

(2) Take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

(a) Appropriate steps to ensure effective communication include developing, procuring, maintaining, or using electronic and information technology that are accessible to and usable by PWD, unless an undue burden would be imposed.

(b) Recipients and DA components are considered in compliance with this policy if they meet the specific technical accessibility standards and functional performance criteria set out in Section 508 of the Rehabilitation Act and implementing regulations.

(c) Recipients and DA components will furnish appropriate auxiliary aids and services when required by law to afford qualified PWD (including applicants, participants, companions, and members of the public) an equal opportunity to participate in and enjoy the benefits of a service, program, or activity. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the PWD; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a recipient or Army component will give primary consideration to the PWD's request. To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in a way that protects the privacy and independence of the PWD.

(d) A recipient or DA component that chooses to provide required qualified interpreters via video remote interpreting services will—

1. Ensure that it provides real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images.

2. Provide a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position.

3. Transmit a clear, audible transmission of voices.

4. Afford adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the equipment.

(3) Modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(a) A recipient or DA component may ask a PWD to remove a service animal from the premises if the animal is out of control and the animal's handler does not take effective action or the animal is not housebroken.

(b) A service animal will have a harness, leash, or other tether, unless either the handler's disability prevents use of such controls or their use would interfere with the service animal's safe, effective performance of work or tasks.

(c) Service animals may accompany PWD in all areas of a recipient's or DA component's facilities where members of the public; participants in services, programs, or activities; or invitees, as relevant, are allowed to go.

(d) Service animals may accompany PWD in all areas of medical facilities operated by a recipient or DA component that are unrestricted to inpatients, outpatients, or visitors, provided that the service animal does not pose a direct threat and that the presence of the service animal would not require a fundamental alteration in the medical facility's policies, practices, or procedures. Areas where a service animal will generally not be permitted access include operating rooms and patient units where a patient is immunosuppressed or in isolation for respiratory, enteric, or infectious precautions.

(e) A recipient or DA component will not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees or to comply with other requirements generally not applicable to people without pets. If a recipient or DA component normally charges individuals for the damage they cause, a PWD may be charged for damage caused by their service animal.

(f) A recipient or DA component will permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

(1) A recipient or DA component will make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless they can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements.

(2) In determining whether a particular other power-driven mobility device can be allowed in a specific facility, a recipient or DA component will consider:

(a) The type, size, weight, dimensions, noise, and speed of the device.

(b) The facility's amount of pedestrian traffic, which may vary at different times of the day, week, month, or year.

(c) The facility's design and operational characteristics (for example, whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user).

(d) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility.

(e) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with federal land management laws and regulations.

(i) Recipients or DA components will ensure that PWD are not denied the benefits of, excluded from taking part in, or otherwise subjected to discrimination because of the absence of auxiliary aids. Examples include certified sign language interpreters, telecommunications devices, and electronic devices for individuals with impaired sensory or speaking skills.

(j) A recipient or DA component may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the recipient or DA component must ensure that its safety requirements are based on actual risks, not on speculation, stereotypes, or generalizations about PWD.

(k) A recipient or DA component will provide personal assistance services to certain employees with targeted disabilities in accordance with the EEOC's Final Rule on Affirmative Action for People with Disabilities in Federal Employment, dated 3 January 2017 (<https://www.eeoc.gov/laws/regulations/qanda-ada-disabilities-final-rule.cfm>).

(l) A recipient or DA component will ensure that the international symbol for accessibility is used at each accessible entrance of a facility.

2-5. Prohibitions against employment discrimination by recipients

a. No qualified PWD will, on the basis of disability, be subjected to discrimination in employment under any program or activity to which this regulation applies. Prohibition against discrimination is on the basis of disability under any service, program, or activity conducted by a recipient.

b. For the purposes of this regulation, the requirements of 42 USC Chapter 126, Subchapter 1 (known as Title I of the Americans with Disabilities Act (ADA)), as established by Part 1630, Title 29, Code of Federal Regulations (29 CFR 1630), apply to employment in any service, program, or activity conducted by a recipient if that recipient is also subject to the jurisdiction of Title I of the ADA.

2–6. Prohibitions against unlawful employment discrimination by a Department of the Army component

a. This regulation does not cover the responsibilities of DA components regarding employment nondiscrimination and affirmative action applicable to individuals with disabilities. However, it should be noted that the nondiscrimination and affirmative action provisions of Section 501 of the Rehabilitation Act, the implementing regulations at 29 CFR 1630, and the specific policies set out in EEOC Management Directive 715 apply to applicants to and employees of DA components.

b. Further, this regulation does not cover the substantive obligations of DA components regarding accessible information and communication technology. However, it should be noted that Section 508 of the Rehabilitation Act, its implementing regulations, and DODM 8400.01 specify that federal agencies, including DA components, must ensure that DOD employees with disabilities and members of the public seeking information or services from the DOD have access to and use of information and data. Such access and use must be comparable to the access and use by individuals without disabilities, unless an undue burden would be imposed, to the extent required by Section 508 of the Rehabilitation Act.

Chapter 3 Program Accessibility

Section I

Accessibility

3–1. General requirements

While facilities belonging to a recipient or a DA component may be inaccessible by a PWD, no qualified PWD will be denied the benefits of, or be excluded from taking part in, or be subjected to discrimination under any program or activity that receives benefits from federal assistance disbursed or conducted by DA.

3–2. Existing facilities

a. A recipient or DA component will operate each service, program, or activity so that when viewed in its entirety, it is readily accessible to and usable by PWD. This paragraph does not require a recipient or DA component to:

- (1) Make each of its existing facilities accessible to and usable by PWD.
- (2) Take any action that would threaten or destroy the historic significance of an historic property.
- (3) Take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or result in undue financial and administrative burdens.

b. A recipient or DA component must comply with all requirements pertaining to the following:

- (1) Acquisition or redesign of equipment.
- (2) Reassignment of services to an accessible building.
- (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) Alteration of existing facilities and construction of new facilities.
- (5) Use of other conveyances that result in making its services or programs readily accessible to and usable by PWD.

c. 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 paragraph.

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

e. A recipient or DA component that employs 50 or more persons will develop a transition plan in the event that structural changes to facilities will be undertaken to achieve program accessibility. The transition plan must set out the steps necessary to complete required changes.

- (1) A copy of the transition plan will be made available for public inspection.
- (2) If the recipient or DA component has responsibility or authority over streets, roads, or walkways, its transition plan will include a schedule for providing curb ramps or other sloped areas where pedestrian walkways cross curbs.

The recipient or DA component will give priority to walkways serving entities covered by Section 504 of the Rehabilitation Act, followed by walkways serving other areas.

(3) The plan will, at a minimum—

(a) Identify physical obstacles in the recipient's or DA component's facilities that limit the accessibility of its programs or activities to PWD.

(b) Describe in detail the methods to be used to make the facilities accessible.

(c) Specify the schedule for taking the steps necessary to achieve compliance with this paragraph and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period.

(d) Identify the official responsible for implementation of the plan.

(4) If a recipient or DA component has complied with the transition plan requirements of Section 504 of the Rehabilitation Act in a previous year, then these requirements will apply only to those policies and practices that were not included in the previous transition plan.

3–3. New construction and alterations

a. Design and construction. Each new facility constructed by, on behalf of, or for the use of a recipient will be designed and constructed in such a manner that the facility is readily accessible to and usable by PWD if the construction was commenced after July 3, 1980.

b. Alteration. Each facility or part of a facility, which is altered by, on behalf of, or for the use of a recipient after July 3, 1980 in a manner that affects or could affect the usability of the facility or part of the facility will to the maximum extent feasible be altered in such manner that the altered portion of the facility is readily accessible to and usable by PWD.

c. Accessibility standards, compliance dates, and triggering events. Table 3–1 provides a matrix showing the accessibility standards that must be used in order to comply with 28 CFR 42.522.

(1) New construction and alterations of buildings or facilities undertaken on or after March 7, 1988, but before December 30, 2019 will comply with the Uniform Federal Accessibility Standards (UFAS).

(2) New construction and alterations of buildings or facilities undertaken after December 30, 2019 but before December 30, 2020 must comply with either UFAS or the 2010 ADA Standards for Accessible Design, known as the 2010 Standards.

(3) New construction and alterations of buildings or facilities undertaken on or after December 30, 2020 must comply with the 2010 Standards.

(4) New construction and alterations of buildings or facilities undertaken in compliance with the 2010 Standards will comply with the scoping and technical requirements for a “public building or facility” regardless of whether the recipient is a public entity as defined in 28 CFR 35.104 or a private entity.

(5) Departures from particular requirements of either standard by the use of other methods will be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(6) For purposes of compliance with UFAS, section 4.1.6(1)(g) of UFAS will be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of PWD.

d. Triggering events for compliance with accessibility standards. For the purposes of this regulation, ceremonial groundbreaking or razing of structures prior to site preparation will not be considered to commence or start physical construction or alterations.

(1) *Private entities.*

(a) Private entities may choose one of the standards specified in paragraphs 3–3c(1) through 3–3c(3) if: the last application for a building permit or permit extension for such construction or alterations is certified to be complete by a state, county, or local government; or, in those jurisdictions where the government does not certify completion of applications, the last application for a building permit or permit extension is received by the state, county, or local government; or, where no permit is required, physical construction or alterations have commenced on or after December 30, 2019 and before December 30, 2020.

(b) Private entities must comply with paragraphs 3–3c(1) through 3–3c(3) if: the last application for a building permit or permit extension for such construction or alterations is certified to be complete by a state, county, or local government; or, in those jurisdictions where the government does not certify completion of applications, the last application for a building permit or permit extension is received by the state, county, or local government; or, in jurisdictions where no permit is required, physical construction or alteration has commenced on or after December 30, 2020.

(2) *Public entities.*

(a) Public entities may choose one of the standards specified in paragraphs 3–3c(1) through 3–3c(3) if new physical construction or alterations commence after December 30, 2019 but before December 30, 2020.

(b) Public entities must comply with paragraphs 3–3c(1) through 3–3c(3) if new physical construction or alterations commence on or after December 30, 2020.

e. *Compliance with the Architectural Barriers Act.* Nothing in this paragraph relieves recipients whose facilities are covered by the Architectural Barriers Act, as amended, from the responsibility of complying with the requirements of that Act and any implementing regulations.

(1) New facilities, as well as alterations to existing facilities, will be designed and constructed for accessibility and usability by PWD. Inquiries about specific accessibility design problems should be addressed to the DASA–EI or designee.

(2) Recipients and DA components must comply with the applicable policies and standards governing alterations, new construction, and leasing of facilities set out in Deputy Secretary of Defense Memorandum, Access for People with Disabilities, dated October 31, 2008 (<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/background/dod-memorandum>); the Federal Acquisition Regulation (<https://www.acquisition.gov/>); the ADA and Architectural Barriers Act regulations; 36 CFR 1191; and any other applicable DOD-specific standards established pursuant to Section 504 of the Rehabilitation Act.

Table 3–1
Table of applicable standards for complying with 28 CFR 42.522

Compliance dates for new construction and alterations	Applicable standards for complying with 28 CFR 42.522
After March 7, 1988 and before December 30, 2019	UFAS
After December 30, 2019 and before December 30, 2020	UFAS or the scoping and technical requirements for a “public building or facility” in the 2010 Standards
On or after December 30, 2020	The scoping and technical requirements in the 2010 Standards for a “public building or facility”

Section II

Specific Accessibility

3–4. Historic properties

a. In the case of historic properties, program accessibility will mean, when viewed in their entirety, programs are usable by PWD. Considering the primary benefit of historic properties is the experience of the property itself, priority will be given to those methods of achieving program accessibility which makes the historic property physically accessible to PWD.

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

- (1) Making physical alterations that give PWD access.
- (2) Using audiovisual materials and devices.
- (3) Assigning guides to PWD.
- (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 DASA–EI or designee. A decision to grant a modification or waiver will be based on consideration of the following:

- (1) Scale of the property, reflecting its ability to absorb alterations.
- (2) Use of the property, whether primarily for public or private purposes.
- (3) Importance of historic features of the property to conducting the program.
- (4) Costs of alterations, compared to the increase in accessibility.

d. The DASA–EI or designee—

- (1) Will periodically review waivers granted under this paragraph.
- (2) May withdraw waivers if technological advances or changes warrant.

e. The decision by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) or designee to grant a modification or waiver of access standards is subject to 54 USC 306108 (part of the National Historic Preservation Act, as amended), which reads: “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, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.”

f. The decision cited in paragraph 3–4*e* will be based on 36 CFR 800. When the property is federally owned, or when federal funds may be used for alterations, the DASA–EI or designee will obtain comments under 36 CFR 800 as described in 54 USC 306108 before effecting structural alterations.

3–5. Facilities receiving federal financial assistance from Department of the Army

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

- (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 in this paragraph. Commanders of DA installations and activities are encouraged to use the Museum and Disabled Students: Guidelines for Educators. This guide is published by the National Air and Space Museum, Smithsonian Institution, Washington, DC 20560–0009, where it can also be obtained.

c. Methods of achieving accessibility of hearing impaired will be made by:

- (1) Training museum staff in sign language.
- (2) Providing qualified sign language interpreters to accompany hearing impaired visitors.
- (3) Ensuring clear, concise language is used on all museum signs and display labels.
- (4) Providing amplification devices.
- (5) Providing printed scripts for films, lectures, and tours.

d. Methods of achieving accessibility for seeing impaired will be made by:

- (1) Providing museum catalogs in large-print editions printed over braille.
- (2) Providing multimedia for museum tours or exhibits.
- (3) Providing readers to accompany blind or visually impaired visitors.
- (4) Using large-print and braille display cards at exhibits.
- (5) Providing raised-line maps of museum buildings.
- (6) Using raised-line drawings, reproductions, or models of large exhibits for tactile experiences when touching of

exhibits is prohibited.

- (7) Placing large-print and braille signs to identify galleries, elevators, restrooms, and other service areas.
- (8) Permitting guide dogs in all museum facilities.

e. Methods of achieving accessibility for physically impaired persons will be made by:

- (1) Lowering display cases.
- (2) Spacing exhibits to make movement easier.
- (3) Using ramps in galleries.
- (4) Increasing lighting in exhibit areas to ease viewing from a distance.
- (5) Providing places to sit in the exhibit areas.
- (6) Making restrooms accessible.
- (7) Using large-print exhibit display cards to ease reading from a distance.
- (8) Sensitizing museum staff members to consider the needs of disabled visitors when organizing exhibits.

f. Recipients may not take part in a contractual or other relationship that subjects qualified disabled applicants or employees to discrimination prohibited by this paragraph. 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.

g. Recipients will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee; exceptions exist when the recipient can show that the accommodation would impose an undue hardship on the operation of the program. “Reasonable accommodation” includes, but is not limited to, providing—

- (1) Ramps.
- (2) Accessible restrooms and drinking fountains.
- (3) Interpreters for individuals who are hearing impaired.
- (4) Readers for blind employees.
- (5) Amplified telephones.
- (6) Teletypewriters (TTYs) or telecommunications devices and tactile signs on elevators.
- h. Recipients—*
 - (1) May not use employment tests or criteria that discriminate against PWD.
 - (2) Will ensure employment tests are adapted for use by persons who have disabilities which impair sensory, manual, or speaking skills.
 - (3) May not conduct a pre-employment medical examination or make a pre-employment inquiry about—
 - (a) Whether an applicant is a disabled person.
 - (b) The nature or severity of a disability.
 - (4) May make, however, a pre-employment inquiry into an applicant’s ability to perform job-related functions.
- i. Recipients may invite applicants for employment to indicate whether and to what extent they are disabled when the recipient is taking—*
 - (1) Remedial action to correct effects of past discrimination.
 - (2) Voluntary action to overcome effects of conditions that have resulted in limited participation by PWD.
- j. Material in paragraph 3–5i pertains only if the recipient makes clear to 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.
 - (c) Will not subject the applicants to any adverse treatment, if refused.
 - (d) Will be used only under this regulation.
- k. Nothing in this paragraph 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 disability.
 - (2) Information obtained under this paragraph concerning medical condition or history of applicants is collected and maintained on separate forms and these forms are accorded confidentiality as medical records, with the following exceptions:
 - (a) Supervisors and managers may be informed about:
 - 1. Necessary restrictions on work or duties of PWD.
 - 2. Necessary accommodations.
 - (b) First aid and safety personnel may be informed, when appropriate, if a disability might require emergency treatment.
 - (c) Government officials investigating compliance with this regulation will be provided relevant information on request.
 - (3) The results of such an examination are used only under this regulation.

Chapter 4 Complaint Resolution and Enforcement Procedures Applicable to Recipients of Federal Financial Assistance

4–1. Filing a complaint

- a.* An individual who believes they have been subjected to discrimination prohibited by Section 504 of the Rehabilitation Act and this regulation should, alone or through a representative, file a written complaint with the responsible servicing organization.
- b.* A complaint must be filed no later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the DASA–EI or designee.
- c.* The filing of a grievance with the recipient of the FFA does not satisfy this requirement.
- d.* For the complaint to be complete, it must contain:
 - (1) The complainant’s contact information, including name, address, telephone number, or email address.

- (2) The basis of the complaint, including:
 - (a) In the case of a complaint involving Section 504 of the Rehabilitation Act, a detailed description of the alleged unlawful discrimination on the basis of disability. The description must contain sufficient information to establish the facts that led the complainant to believe that discrimination occurred and when the discrimination took place. The description should include the when, where, how, and why of the alleged discrimination.
 - (b) The nature of the individual's disability as it relates to the complaint.
 - (c) Identification of the individual, agency, or organization alleged to have discriminated unlawfully on the basis of disability. At a minimum, include the name and address.
- (3) The complainant's electronic or physical signature.
- (4) The names of and basic contact information for any individuals, if known, that the DA component could contact for additional information to support or clarify the complainant's allegations.
- e. DA components are required to maintain a log of complaints filed involving Section 504 of the Rehabilitation Act. Each entry should identify:
 - (1) Each complainant described in the complaint.
 - (2) The recipient or sub recipient, if applicable.
 - (3) The individual, party, or organization charged with the alleged discriminatory behavior.
 - (4) The nature of the complaint.
 - (5) The date the complaint was filed.
 - (6) The current status or disposition, including the date(s), of the complaint investigation.
 - (7) Other pertinent information.

4-2. Receipt of complaint

Upon receiving a complaint by a DA employee or a member of the public, the DA component must:

- a. Confirm that the complaint was filed with the correct DOD component. If determined that the complaint was filed with the incorrect component, immediately notify the Assistant Secretary of the Army (Manpower and Reserve Affairs) (DASA-EI), 111 Army Pentagon, Washington, DC 20310-0111.
- b. Within 14 days of receipt, transmit any complaint alleging discrimination on the basis of disability to ASA (M&RA) (DASA-EI).
- c. Forward complaints alleging failure by a DA component to make electronic or information technology accessible, filed with the incorrect component, to the correct DA component immediately. Provide a copy of the complaint to ASA (M&RA) (DASA-EI).
- d. Evaluate the complaint to determine whether the complaint:
 - (1) Was filed with the DA component in error.
 - (a) If the complaint should have been filed with a different DOD component, the receiving DA component must forward the complaint to the correct DOD component.
 - (b) If the complaint should have been filed with another government agency, the DA component must forward the complaint to the correct agency.
 - (2) Should be processed in coordination with another DOD component.
 - (3) May be dismissed without investigation for failure to state a claim, in accordance with this regulation. The DA component must notify the complainant and ASA (M&RA) (DASA-EI), in writing, if the complaint is dismissed without investigation.
 - (4) Will not be investigated because the complaint lacks good cause to investigate.
 - (a) Even if a complaint meets the formal requirements for a complaint, a DA component is not required to investigate the complaint if it lacks good cause (for example, a pending lawsuit or an investigation by another DA component or federal agency).
 - (b) The DA component must notify the complainant and DASA-EI if it does not investigate because the complaint lacks good cause. The notice must be in writing and include the reason it will not investigate.
 - (5) Requires additional information to begin an investigation. Within 30 days of receipt of the complaint, the DA component must request any additional information needed from a complainant to fulfill the requirements of a thorough investigation. If the DA component does not receive this requested additional information within 30 days of the request, the complaint may be dismissed.
 - (6) Is complete and the DA component should begin investigation.
- e. Send written notification to the complainant if the DA component does not investigate the complaint.
- f. Provide the recommended administrative decision, referred to DASA-EI, within 180 calendar days of receipt of the complaint by the DA component with jurisdiction over the complaint.

4–3. Investigation of complaints

a. Prompt investigation. If it is determined that the complainant has adequately stated a claim of unlawful discrimination in violation of Section 504 of the Rehabilitation Act, a prompt investigation must begin—

- (1) Of all accepted complaints filed in accordance with this regulation.
- (2) Following the procedures in this paragraph.
- (3) Unless all parties agree to delay the investigation pending settlement negotiations.

b. Delegation of investigation to a recipient. The DA component with jurisdiction over the complaint—

(1) Retains responsibility over the investigation and disposition of each complaint, even if delegated to a recipient for investigation.

(2) Notifies a recipient if the DA component requires or permits the recipient to investigate the complaint.

(3) Oversees and reviews the recipient’s investigation of complaints in accordance with approved investigation standards and procedures.

c. Report of investigation.

(1) Within 180 days of receipt of the complaint, the DA component must include a report of investigation in the recommended administrative decision.

(2) The report of investigation should include:

(a) Complaint claim and allegations.

(b) Procedural history.

(c) Findings of fact.

(d) Names of individuals interviewed during the investigation.

(e) Evidence reviewed.

(f) Investigation assessment.

(g) Analysis and determinations.

(h) Additional relevant information.

(i) Investigator’s recommendation for disposition.

4–4. Administrative decision

a. Recommended administrative decision.

(1) At completion of the investigation, the DA component must provide DASA–EI with a recommended administrative decision that includes:

(a) The recommended disposition of the complaint.

(b) The report of investigation.

(c) The settlement agreement, if applicable.

(d) Coordination with the DA’s legal office.

(2) After reviewing the recommended administrative decision submitted by DASA–EI, the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) may:

(a) Approve the results as the DA final administrative decision.

(b) Request further investigation by the DA component.

(c) Issue a DOD final administrative decision, which includes a finding of noncompliance, and require the DA component to take appropriate corrective action in accordance with this paragraph.

(d) Issue a DOD final administrative decision in which the DA component is found to be in compliance.

(e) As needed, issue affirmative recommendations to the DA component regarding exemplary practices and proactive measures that could reduce the risk of future complaints.

b. Notice. After the USD (P&R) approves the final administrative decision, the DA component must notify, in writing:

(1) The complainant of the final disposition of the complaint including notice of the complainant’s right to appeal the decision to U.S. Federal District Court in the case of unlawful discrimination on the basis of disability in violation of Section 508 of the Rehabilitation Act.

(2) The recipient of the final disposition of the complaint.

4–5. Mediation

a. Mediation of complaints.

(1) Mediation is a method of alternative dispute resolution (ADR) that involves a neutral party helping the parties to find a solution to their dispute. DA components are encouraged to explore the use of both formal and informal mediation to resolve complaints. If formal mediation is used, DA components must comply with this paragraph.

(2) The referring DA component may request the participation of the recipient and the complainant in the mediation process, although both parties need not meet with the mediator at the same time.

(3) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, the agreement must be in writing and signed by both parties. The mediator must send a copy of the settlement to the referring DA component.

(4) If mediation is used, and the complaint is still unresolved after 60 days, the mediator must return the complaint to the referring agency for initial investigation. The mediator may return the complaint at any time before the end of the 60-day period if it appears the complaint cannot be resolved through mediation.

(5) To dismiss the complaint pursuant to the settlement agreement, the DA component must issue a recommended administrative decision in accordance with paragraph 4–4a.

(6) No further action will be taken based on the complaint unless it appears a party to the complaint failed to comply with the agreement.

b. Mediation of finding of noncompliance.

(1) Following a finding of noncompliance, the referring DA component may request the recipient participate in the mediation process to resolve issues of noncompliance in accordance with paragraphs 4–6 and 4–7. Both parties need not meet with the mediator at the same time.

(2) If the parties reach a mutually satisfactory resolution of the complaint during the mediation period:

(a) The agreement must be in writing and signed by both parties.

(b) The mediator must send a copy of the settlement to the referring DA component.

c. Confidentiality. The mediator must protect the confidentiality of all information obtained in the course of the mediation process. Mediators are restricted from testifying in any adjudicative proceeding, producing any document, or otherwise disclosing any information obtained in the course of the mediation process without prior approval of the DA component appointing the mediator.

d. Limits of mediation. The mediator must limit investigations of similar claims that attempted and failed to succeed through mediation.

e. Alternative dispute resolution. If ADR is used, all procedures must comply with DODI 5145.05.

4–6. Findings of noncompliance and voluntary compliance

a. Preliminary findings of noncompliance. If the DA component issues the recipient a preliminary finding of noncompliance with Section 504 of the Rehabilitation Act, the DA component must provide the recipient:

(1) A description of the violation.

(2) The actions necessary to achieve compliance with this regulation.

(3) A suspense date for completion of the corrective actions.

b. Recipient response. After receiving the notice of the preliminary finding of noncompliance, the recipient may:

(1) Accept the DA component’s recommendations.

(2) Submit a written response rejecting the DA component’s recommendations on either of the following grounds:

(a) They are insufficient to demonstrate that the preliminary findings are incorrect; or

(b) Compliance may be achieved through steps other than those recommended by the DA component.

c. Voluntary compliance.

(1) DA components must attempt to secure voluntary compliance from programs or activities found to be in noncompliance with this regulation. Recipients may be required to take remedial actions to overcome the effects of unlawful discrimination in violation of this regulation.

(2) If the recipient does not take one remedial action as outlined, the DA component must send a formal written determination of noncompliance to the recipient and a copy to the United States Assistant Attorney General for the Civil Rights Division.

d. Final findings of noncompliance.

(1) After completing paragraphs 4–6a and 4–6b, the DA component may:

(a) Approve the results of the preliminary findings of noncompliance as the DA final findings of noncompliance.

(b) Come to a determination with the recipient for final findings of noncompliance.

(2) All final findings of noncompliance must:

(a) Be in writing.

(b) Set forth the specific steps the recipient has agreed to take.

(c) Be signed by:

1. The DA component.

2. The recipient’s designated official or designee with authority to legally bind the recipient.

4-7. Enforcement actions available to Department of the Army components to ensure compliance

a. General enforcement. If the DA component is unable to achieve voluntary compliance from the recipient through informal means, the DA component may select from among the available sanctions the method it believes will best secure compliance. The DA component must:

- (1) Make an official determination of noncompliance.
- (2) Notify the applicant or recipient; the USD (P&R); and the Director, Office of Diversity Management and Equal Opportunity (ODMEO) of the finding of noncompliance.
- (3) Consider alternative courses of action consistent with achievement of the objectives of the statutes authorizing the particular financial assistance.
- (4) Afford the applicant or recipient an opportunity for a hearing or ADR. If ADR is used, all procedures must comply with DODI 5145.05.

b. Specific enforcement actions for failure to comply with the assurance requirements. If the applicant or recipient fails or refuses to furnish an assurance in accordance with chapter 5, section I and the DA component is unable to achieve voluntary compliance from the recipient through informal means, the DA component may enforce compliance with this regulation by:

- (1) Suspension or termination of or refusal to grant or to continue FFA or by any other means authorized by law in accordance with this paragraph and paragraph 4-8.
- (2) Referring the applicant or recipient to the DOJ with a recommendation that appropriate proceedings be brought to enforce any rights of the United States pursuant to any law of the United States, or any assurance or other contractual undertaking.
- (3) Initiating any applicable proceeding authorized under state or local law.

c. Hearings information.

(1) *Opportunity for hearing.* Whenever an opportunity for a hearing is required pursuant to this regulation, reasonable notice must be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice must advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(a) Fix a date not less than 20 calendar days after the date of such notice within which the applicant or recipient may request of the responsible DOD official that the matter be scheduled for hearing.

(b) Advise the applicant or recipient the matter in question has been scheduled for a hearing at a stated time and place.

1. The hearing time and place must be reasonable and must be subject to change for cause.
2. The complainant, if any, must be advised of the hearing time and place.
3. An applicant or recipient may waive a hearing and submit written information and argument.
4. The failure of an applicant or recipient to request a hearing in accordance with this paragraph or to appear at a hearing for which a date has been set will be deemed to be a waiver of the right to a hearing pursuant to 42 USC 2000e et seq. (known as the Civil Rights Act of 1964) and this regulation, and consent to the making of a decision on the basis of such information as is available.

(2) *Time and place of hearing.* Hearings must be conducted by Defense Office of Hearings and Appeals (DOHA) at a location within 150 miles of the applicant's or recipient's residence or by video teleconference (VTC) at a time fixed by the administrative judge unless the administrative judge determines the convenience of the applicant or recipient or of the component requires that another place (or use of VTC) be selected.

(3) *Hearing examiner.* The examiner must be a DOHA administrative judge, who must be a person admitted to practice law before a federal court or the highest court of a state.

(4) *Right to counsel.* In all proceedings in this paragraph, the applicant or recipient and the responsible DA component must have the right to be represented by counsel.

(5) *Finding of noncompliance.* Where noncompliance is found in the hearing proceeding and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, the DA component may proceed with the procedures in paragraph 4-8 of this regulation and conclusively refuse assistance.

4-8. Termination of or refusal to grant or continue federal financial assistance

No order suspending, terminating, or refusing to grant or continue FFA will become effective until:

a. The responsible DA component has advised the applicant or recipient of the failure to comply and has determined compliance cannot be secured by voluntary or alternative means.

b. There has been an express finding, after an opportunity for a hearing (as provided in paragraph 4-7c), of a failure by the applicant or recipient to comply with a requirement imposed by or in accordance with this regulation.

- c. The DOJ has been notified of the termination or refusal decision.
- d. The action has been approved by the Secretary of Defense.
- e. Thirty days after the Secretary of Defense has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue FFA must be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and must be limited in its effect to the particular program, or part thereof, in which noncompliance has been found.

4–9. Summary report of complaints

DA components must submit to the Director, ODMEIO an annual report summarizing the log of complaints received. This information will be compiled by ASA (M&RA) (DASA–EI) in accordance with DODD 1020.1, paragraph 7.

4–10. Coordination with other agencies

a. Cooperation with other agencies. If, while conducting a compliance review or investigation, it becomes evident that another agency has jurisdiction over the subject matter, the DA component will cooperate with that agency during the investigation. Pursuant to 28 CFR 42.413, the DA component must:

- (1) Forward the complaint to the other agency if it determines that the complaint was filed incorrectly with the DA.
- (2) Coordinate its efforts with the other agency to the extent consistent with the federal statutes under which the assistance is provided.
- (3) Designate one of the agencies, via written delegation agreement, to be the lead agency for this purpose. When an agency other than the DA component serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency must have the same effect as though the action had been taken by the DA component. Both agencies must adopt written procedures to assure that the same standards of compliance with Section 504 of the Rehabilitation Act are used at the operational levels by each of the agencies.

b. Cooperation with the U.S. Access Board. The U.S. Access Board and ODMEIO will enter into an agreement regarding the referral of complaints relating to accessibility of DOD facilities under the Architectural Barriers Act. ODMEIO will refer such complaints to the appropriate DOD components for processing.

4–11. Coordination between Department of Defense components

When several recipients are receiving assistance for the same or similar purposes from two or more DOD components, the DA components may negotiate a proposed written delegation agreement.

- a.* The delegation agreement must:
 - (1) Assign responsibility to one of the DOD components to ensure compliance with this regulation.
 - (2) Provide for the notification to recipients and responsible program officials of the assignment of enforcement responsibility.
- b.* No delegation agreement will be effective until it is approved by the USD (P&R) or designee.

4–12. Complaints of unlawful employment discrimination on the basis of disability filed against recipients of federal financial assistance

Procedures for coordinating the investigation of complaints or charges of employment discrimination based on disability against recipients of FFA, when jurisdiction exists under both the ADA and Section 508 of the Rehabilitation Act, are governed by 29 CFR 1614.

Chapter 5

Assurance Requirements and Compliance Information and Procedures Applicable to Recipients of Federal Financial Assistance

Section I

Assurance Requirements for Applicants and Recipients

5–1. Required assurances

a. Applicants for and recipients of FFA must submit a written assurance stating that, with respect to its programs or activities that receive FFA, they will comply with the requirements of Section 508 of the Rehabilitation Act and

this regulation. Applicants must also submit any additional information that the DA component determines is necessary for a pre-award review. The applicant or recipient's acceptance of FFA is an acceptance of the obligation of this assurance and this paragraph.

b. At a minimum, the assurance must state that:

- (1) It is provided as a condition for the receipt of federal funds.
- (2) The applicant or recipient agrees to:
 - (a)* Compile and maintain required records.
 - (b)* Submit reports on its programs as required by the DA component.
- (3) Where a recipient makes the funds available to subrecipients, subcontractors, or subgrantees, the applicant or recipient will notify and require the subrecipients, subcontractors, or subgrantees to comply with Section 508 of the Rehabilitation Act and this regulation.
- (4) It provides a basis for judicial enforcement.

c. Recipients who are receiving assistance from DA will have 6 months from the date of publication of this regulation to fill out and return the assurance statement. New recipients must sign the assurance form prior to receiving assistance. If a recipient fails to provide an assurance that conforms to the requirements of this paragraph, the DA commander or director will attempt to gain compliance. The DA commander or director 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 PWD.
 - (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 FFA 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 indicating the U.S. Government has the right to seek judicial enforcement of Section 508 of the Rehabilitation Act (as amended) and this regulation.

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

a. Commanders and directors will require recipients to conduct a self-evaluation with the assistance of interested persons; these interested persons will include PWD 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 FFA disbursed by DA. When appropriate, commanders or directors will require recipients to consult at least annually with interested persons or organizations that represent them.

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

- (1) Evaluate effects of policies and practices for compliance with this regulation and applicable supplementary guidelines.
- (2) Modify policies that do not meet the requirements of paragraph 5–2*b*(1).
- (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 DASA–EI or designee on request, the following information:

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

- (1) Posting notices and publishing announcements in newspapers and magazines and publications.
- (2) 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 paragraphs 5–3*a* and 5–3*b*. This may be accomplished by—

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

5–4. Duration of assurance

a. Real property. These headings may be added to the table when a DA component awards assistance in the form of: real property, or assistance to acquire real property, or structures on the property. The assurance will obligate the recipient or transferee during the period the real property or structures are used for the purpose for which FFA is extended, or for another purpose in which similar services or benefits are provided. The transfer instrument must contain a covenant running with the land which assures nondiscrimination. Where applicable, the covenant must also retain a right for the DA component to recover the property if the covenant is broken.

b. Personal property. When a DA component provides assistance in the form of personal property, the assurance will obligate the recipient for as long as it continues to own or possess the property.

c. Other forms of assistance. In all other cases, the assurance will obligate the recipient for as long as FFA is extended.

5–5. Continuing state and block grant programs

a. As a condition for the extension of FFA, any primary recipient, state, or state agency administering a program that receives continuing FFA subject to this regulation must provide to the DA component an assurance.

b. Primary recipients must sign an assurance agreeing to conduct the program in compliance with Section 504 of the Rehabilitation Act and this regulation. Where applicable, a primary recipient must collect assurances from subrecipients and submit such assurances to the DA component.

c. All recipients must sign an assurance complying with the requirements of paragraph 5–1*b*. Assurances for primary recipients disbursing funds to subrecipients must include a requirement to collect assurances from subrecipients.

Section II

Compliance Information and Procedures

5–6. Policies, procedures, and guidelines

a. Within 180 days of the effective date of this regulation, each DA component must publish supplementary policies, procedures, or guidelines for nondiscrimination on the basis of disability in the programs and activities to which it disburses FFA.

b. The policies and procedures must be reviewed and approved by the DASA–EI.

c. At a minimum, all relevant policies, procedures, and guidance must:

(1) Contain a description of the:

(*a*) Types of programs and activities covered.

(*b*) Form of the assurances that must be executed in accordance with chapter 5 of this regulation.

(2) List the data collection and reporting requirements for recipients.

(3) Identify procedures for filing, processing, investigating, and resolving complaints of discrimination on the basis of disability. Such procedures must include, at a minimum:

(*a*) Notification that the DA component may require or permit a recipient to investigate a complaint if the recipient can comply with the investigation procedures in paragraph 4–3 of this regulation and internal DA component procedures.

(b) Notification of the right, at any time, to file suit in a federal district court of competent jurisdiction and that such action immediately terminates the administrative process.

(4) Include requirements:

(a) For recipients to designate a responsible official to coordinate the implementation of the policies, procedures, and guidelines.

(b) For recipients to conduct a self-evaluation in compliance with the requirements in paragraph 5–2 of this regulation.

(c) For suggestions for affirmative action on behalf of qualified individuals with a disability.

(d) For the dissemination of program and complaint information to the public.

(e) About the frequency and nature of post-approval reviews conducted pursuant to paragraph 5–7 of this regulation.

(f) For any other actions or procedures necessary to implement this regulation.

(5) Contain examples of prohibited practices likely to arise with respect to those types of programs and activities.

d. If a DA component determines that it will not include one or more of the provisions described in this paragraph or that it is not necessary to issue such guidelines at all, the DA component must:

(1) State the reasons for such omissions in writing.

(2) Submit the reasons to the Assistant Secretary of Defense (Manpower and Reserve Affairs) (ASD (M&RA)) for review and approval.

5–7. Pre-award compliance

a. *Notice of lawsuits, pending applications, and compliance reviews.* To show compliance with this regulation regarding the program or activity receiving FFA, each applicant for DA FFA must collect and submit the following:

(1) Notice of any lawsuit pending against the applicant alleging unlawful discrimination on the basis of disability.

(2) A brief description of:

(a) Any applications pending to other federal agencies for assistance.

(b) Federal assistance being provided at the time of the application.

(3) A statement describing any civil rights compliance reviews regarding the applicant conducted during the 2-year period before the application, and information concerning the agency or organization performing the reviews.

b. *Failure to file an adequate assurance.* If an applicant for FFA fails to file an adequate assurance in accordance with this chapter, or breaches its terms, the DA will:

(1) Notify the applicant promptly of its noncompliance and state the reason for noncompliance.

(2) Make an immediate effort to secure voluntary compliance in accordance with paragraph 5–7d.

c. *Written determination of compliance.*

(1) Within the application processing period, the DA component will make a written determination of whether the applicant is in compliance with this regulation and inform the award official.

(2) This determination will be based on the submissions required by paragraph 5–3 and any other information the DA component receives during this time (including complaints) or has on file about the applicant.

(3) When the DA component cannot make a determination on the basis of this information, the DA component may also conduct an on-site review. The DA component may request additional information from the applicant, local government officials, or interested persons or organizations, including PWD or organizations representing such individuals.

(4) If, after examination, the DA component finds enough evidence to support a finding of noncompliance, it must seek voluntary compliance.

d. *Voluntary compliance.* If the review indicates noncompliance, an applicant may agree in writing to take the steps recommended by the DA component in order to come into compliance with this regulation. The DA component must approve the written agreement before any award is made.

e. *Refusal to comply.* If the applicant refuses to enter into such an agreement, the DA component must follow the procedure established by paragraph 4–7b of this regulation.

f. *Deferment.* A DA component may choose to defer action on an application for assistance pending initiation and completion of the procedures in paragraph 5–9 of this regulation.

(1) An action may only be deferred for initial or non-continuing assistance applications.

(2) An action may not be deferred if FFA is due and payable pursuant to a previously approved application.

5–8. Periodic compliance reviews of recipients

a. *Periodic review of recipients.*

(1) The DA component may conduct periodic compliance reviews, including on-site reviews, of any recipient's programs or activities receiving FFA, including the request of data and information.

(2) Whenever possible, DA components should perform this periodic compliance review in conjunction with its review and audit efforts to implement similar instructions dealing with discrimination on the basis of race, color, or national origin in programs or activities receiving FFA.

b. Notice of review. After selecting a recipient for review or initiating an investigation, the DA component must:

(1) Notify the recipient of the nature of the review or investigation.

(2) Request relevant records for the review.

(3) If applicable, notify the recipient of its opportunity, before the determination is made, to make a written submission responding to, rebutting, or denying the allegations raised in the review or complaint.

c. Post-review report.

(1) The DA component must deliver a written report to the recipient that includes:

(a) Preliminary findings of fact and deficiencies.

(b) Recommendations for achieving voluntary compliance.

(c) The determination of the recipient's compliance status.

(d) Notice of the recipient's right to engage in compliance negotiation, if applicable.

(2) Reports should be approved by the DA component's civil rights program official.

(3) Reports of preliminary findings of noncompliance must be forwarded to the U.S. Assistant Attorney General for the Civil Rights Division of DOJ; the ASD (M&RA); and the Director, ODMEQ.

5–9. Requests for data and information from or investigations by recipients

a. If necessary, the DA component may require recipients to:

(1) Maintain and submit records or data and information specific to certain programs or activities to determine if a program or activity receiving FFA is in compliance with this regulation.

(2) Investigate a complaint alleging unlawful discrimination on the basis of a disability in a program or activity receiving FFA.

b. Requests must be limited to data and information relevant in determining compliance and must be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that unlawful discrimination on the basis of disability may exist.

c. A DA component conducting a compliance review or investigating a complaint of a violation of the procedures in this regulation must notify any other affected agency upon discovery of its jurisdiction and inform the agency of the findings made. Such reviews or investigations may be made on a joint basis.

d. If a DA component requests that a recipient investigate a complaint, the DA component is still responsible for ensuring that the complaint is resolved in accordance with this regulation.

Appendix A

References

Section I

Required Publications

DODD 1020.1

Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense (Cited in para 4–9.)

36 CFR 800

Protection of Historic Properties (Cited in para 3–4*f*.) (Available at <https://www.ecfr.gov/>.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication. DOD publications are available at <https://www.esd.whs.mil/dd/>. Federal Register (FR), CFR, and USC material is available at <https://www.govinfo.gov/>.

AR 11–2

Managers' Internal Control Program

AR 25–1

Army Information Technology

AR 25–30

Army Publishing Program

AR 690–12

Equal Employment Opportunity and Diversity

DA Pam 25–1–1

Army Information Technology Implementation Instructions

DA Pam 25–403

Guide to Recordkeeping in the Army

DOD Human Goals Charter, dated April 28, 2014

(Available at https://archive.defense.gov/documents/dod-humangoals_4–28–14.pdf.)

DODD 5124.02

Under Secretary of Defense for Personnel and Readiness (USD (P&R))

DODI 5000.02

Operation of the Defense Acquisition System

DODI 5145.05

Alternative Dispute Resolution (ADR) and Conflict Management

DODM 8400.01

Accessibility of Information and Communications Technology (ICT)

DODM 8910.01, Volumes 1 and 2

DOD Information Collections Manual: Procedures for DOD Internal Information Collections (Volume 1) and Procedures for DOD Public Information Collections (Volume 2)

Executive Order 12250

Leadership and Coordination of Nondiscrimination Laws (Available at <https://www.archives.gov/federal-register/codification/executive-order/12250.html>.)

Executive Order 12892

Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (Available at <https://www.govinfo.gov/content/pkg/wcpd-1994–01–24/pdf/wcpd-1994–01–24-pg110.pdf>.)

Executive Order 12898

Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.)

Executive Order 13160

Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs (Available at <https://www.govinfo.gov/content/pkg/wcpd-2000-06-26/pdf/wcpd-2000-06-26-pg1461.pdf>.)

Executive Order 13548

Increasing Federal Employment of Individuals with Disabilities (Available at <https://obamawhitehouse.archives.gov/the-press-office/executive-order-increasing-federal-employment-individuals-with-disabilities>.)

Management Directive 715

EEO Reporting Requirements for Federal Agencies (Available at <https://www.eeoc.gov/federal/directives/index.cfm>.)

PL 93-112

Rehabilitation Act of 1973 (Available at <https://www.govinfo.gov/content/pkg/statute-87/pdf/statute-87-pg355.pdf#page=29>.)

PL 93-516

Rehabilitation Act Amendments of 1974 (Available at <http://uscode.house.gov/statutes/pl/93/516.pdf>.)

PL 95-602

Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Available at <https://www.govinfo.gov/content/pkg/statute-92/pdf/statute-92-pg2955.pdf>.)

PL 100-259

Civil Rights Restoration Act of 1987 (Available at <https://www.govinfo.gov/content/pkg/statute-102/pdf/statute-102-pg28.pdf>.)

UFAS

(Available at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>.)

Web Content Accessibility Guidelines

(Available at <https://www.w3.org/wai/standards-guidelines/wcag/>.)

2010 ADA Standards for Accessible Design

(Available at https://www.ada.gov/2010adastandards_index.htm.)

28 CFR 35.104

Definitions

28 CFR 41

Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

28 CFR 42.413

Interagency cooperation and delegations

28 CFR 42.522

New construction

29 CFR 1614

Federal Sector Equal Employment Opportunity

29 CFR 1630

Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act

36 CFR 1191

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines

69 FR 44083

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines

10 USC 2541

Establishment of loan guarantee program

10 USC 2571

Interchange of supplies and services

10 USC 2576

Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies

10 USC 2662

Real property transactions: reports to congressional committees

10 USC 2668

Easements for rights-of-way

10 USC 2679

Installation-support services: intergovernmental support agreements

10 USC 7016

Assistant Secretaries of the Army

10 USC 8678

Chief of Naval Operations: certification required for disposal of combatant vessels

10 USC 8761

Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League

10 USC 8762

Excess clothing: sale for distribution to needy

10 USC 8765

Obsolete material and articles of historical interest: loan or gift

10 USC 8766

Loan or gift of articles to ships' sponsors and donors

10 USC 8767

Equipment for instruction in seamanship: loan to military schools

21 USC Chapter 13

Drug Abuse Prevention and Control

21 USC 321

Definitions, generally

21 USC 801 et seq.

Controlled Substances Act

21 USC 812

Schedules of controlled substances

29 USC 701 et seq.

Rehabilitation Act of 1973

29 USC 794

Nondiscrimination under federal grants and programs

29 USC 794d

Electronic and information technology (also known as Section 508)

33 USC 426e

Federal aid in protection of shores

33 USC 540
Investigations and improvements; control by Department of the Army; wildlife conservation

33 USC 558c
Rights-of-way over United States land

33 USC 577
Small river and harbor improvement projects

33 USC 603a
Removal of snags and debris, and straightening, clearing, and protecting channels in navigable waters

33 USC 610
Control of aquatic plant growths and invasive species

33 USC 633
Protection, alteration, reconstruction, relocation, or replacement of structures and facilities; contract standards; reasonable costs

33 USC 701c–3
Lease receipts; payment of portion to States

33 USC 701g
Removal of obstructions; clearing channels

33 USC 701s
Small flood control projects; appropriations; amount limitation for single locality; conditions

33 USC 702d–1
Bonnet Carre Spillway and Floodway; rights-of-way, etc., over lands

36 USC Chapter 407
Corporation for the Promotion of Rifle Practice and Firearms Safety

40 USC Chapter 5
Property Management

40 USC Subchapter II
Use of property

40 USC Subchapter III
Disposing of property

40 USC 1314
Easements

42 USC Chapter 126
Equal Opportunity for Individuals with Disabilities (also known as Title I of the Americans with Disabilities Act)

42 USC 1962d–16
Comprehensive plans for development, utilization, and conservation of water and related resources

42 USC 2000e et seq.
Civil Rights Act of 1964

42 USC 4151 et seq.
Architectural Barriers Act of 1968

42 USC 12207
Federal wilderness areas

43 USC 961
Rights-of-way for power and communications facilities

44 USC Chapter 35
Coordination of Federal Information Policy

49 USC 1101

Definitions

54 USC 306108

Effect of undertaking on historic property

54 USC 306121

Lease or exchange

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate website (<https://armypubs.army.mil/>).

DA Form 11-2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

Appendix B

Internal Control Evaluation

B–1. Function

The function covered by this evaluation is the assessment of key controls in the following areas: applications, compliance reviews, and investigations.

B–2. Purpose

The purpose of this evaluation is to assist Army organizations and personnel responsible for implementing the practices and policies of this regulation. It is intended as a guide and does not cover all controls.

B–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, simulation, or other). Answers that indicate deficiencies must be explained and the corrective action identified in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

B–4. Test questions

- a.* Are applications being properly processed, vetted, and maintained?
- b.* Is the responsible department official (RDO) available to provide assistance and guidance to recipients to ensure compliance with this regulation?
- c.* Does the RDO review the practices of the recipient to ensure compliance in accordance with this regulation?
- d.* Are complaints and other documents containing personally identifiable information safeguarded and provided on a need to know basis?
- e.* Do the investigation reports conducted by the RDO include the required information set forth by this regulation?
- f.* Are notices for hearing being given in accordance with this regulation?
- g.* Are applicants mailed decisions in accordance with this regulation?

B–5. Supersession

Not applicable.

B–6. Comments

Help make this a better tool for evaluating internal controls. Submit comments to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (DASA–EI), 111 Army Pentagon, Washington, DC 20310–0111.

Glossary

Section I

Abbreviations

ADA

Americans with Disabilities Act

ADR

alternative dispute resolution

AR

Army regulation

ARIMS

Army Records Information Management System

ASA (ALT)

Assistant Secretary of the Army (Acquisition, Logistics, and Technology)

ASA (CW)

Assistant Secretary of the Army (Civil Works)

ASA (FM&C)

Assistant Secretary of the Army (Financial Management and Comptroller)

ASA (IE&E)

Assistant Secretary of the Army (Installations, Energy, and Environment)

ASA (M&RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

ASD (M&RA)

Assistant Secretary of Defense (Manpower and Reserve Affairs)

CFR

Code of Federal Regulations

CIO

Chief Information Officer

DA

Department of the Army

DA Pam

Department of the Army pamphlet

DASA–EI

Deputy Assistant Secretary of the Army for Equity and Inclusion

DOD

Department of Defense

DODD

Department of Defense directive

DODI

Department of Defense instruction

DODM

Department of Defense manual

DOHA

Defense Office of Hearings and Appeals

DOJ

Department of Justice

EEO

equal employment opportunity

EEOC

Equal Employment Opportunity Commission

FFA

federal financial assistance

FR

Federal Register

ODMEO

Office of Diversity Management and Equal Opportunity

PL

Public Law

PWD

persons with disabilities

RDO

responsible department official

RRS–A

Records Retention Schedule–Army

TTY

teletypewriter

UFAS

Uniform Federal Accessibility Standards

USACE

U.S. Army Corps of Engineers

USC

United States Code

USD (P&R)

Under Secretary of Defense for Personnel and Readiness

VTC

video teleconference

Section II**Terms****Applicant**

One who submits an application, unsolicited proposal, plan, or other request for FFA from a DA component. An official of the DOD or DA component, as a condition of becoming a recipient, must approve the application.

Assistive technology

Any item, piece of equipment, or system—whether acquired commercially, modified, or customized—that is commonly used to increase, maintain, or improve functional capacities of PWD. The term includes traditional assistive technology hardware and software, along with mainstream technology used for assistive purposes, virtual assistive technology delivered as a web service, and products integrated into a system that provides assistive technology functions that allow PWD to access information and communication technology. Examples include: screen enlargers that act like magnifiers to help people with low vision; onscreen keyboards that allow people who are unable to use a standard keyboard to select keys using methods such as a pointing device or switch; voice recognition, instead of using a mouse or keyboard; alternative input devices that enable individuals to control their computers through means other than a standard keyboard or pointing devices such as head-operated pointing devices and sip and puff systems controlled by breathing; and screen readers that allow users who are blind to hear what is happening on their computer by converting the screen display to digitized speech.

Assurance

A legal agreement between the DA component and recipients designed to ensure recipients comply with nondiscrimination laws in their programs or activities.

Auxiliary aids and services

Includes qualified interpreters on-site or through video remote interpreting services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive technology, including assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including TTYs, videophones and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally-delivered information available to individuals who are hearing impaired or hard of hearing. Also includes qualified readers; taped texts; audio recordings; braille materials and displays; assistive technology; magnification software; optical readers; secondary auditory programs; large-print materials; accessible electronic and information technology; or other effective methods of making visually-delivered materials available to individuals who are blind or have low vision.

Award official

The DA component official with the authority to approve and execute assistance agreements and to take other assistance-related actions authorized by this regulation or by related DOD regulations.

Companion

A Family member, friend, or associate of an individual seeking access to a service, program, or activity of a recipient or a DA component, who, along with such individual, is an appropriate person with whom the recipient or DA component should communicate.

Direct threat

A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat will be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment will be based on a reasonable medical judgment that relies on the most current medical knowledge or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm.

Disability

With respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. The following key phrases pertaining to the definition of the term disability are defined in accordance with the ADA and 28 CFR 41: "major life activities," "mental impairment," "physical impairment," "record of such an impairment," "regarded as having such an impairment," and "substantially limited."

Disability placard (card)

A valid disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the state of issuance's requirements for disability placards or cards.

Drug

Defined in 21 USC 321.

Electronic and information technology

Also referred to as information and communications technology. Any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. Electronic and information technology also includes any equipment or interconnected system or subsystem of equipment which is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, reception, or broadcast of data or information. The term includes, but is not limited to: electronic content, including email, electronic documents and internet and intranet websites; telecommunications products, including video communication terminals; computers and ancillary equipment, including external hard drives; software, including operating systems and applications; information kiosks and transaction machines; videos; information technology services; and multifunction office machines that copy, scan, and fax documents.

Facility

All or any portion of a building, structure, site, complex, equipment, rolling stock or other conveyance, road, walk, passageway, parking lot, or other real or personal property, or interest in such property, including the site where the building, property, structure, or equipment is located.

Federal financial assistance

Includes grants and loans of federal funds; the grant or donation of federal property and interests in property; the detail of federal personnel; the sale or lease of, and the permission to use (on other than a casual or transient basis), federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and a federal agreement, arrangement, or other contract which contains as one of its purposes the provision of assistance.

Fundamental alteration

A change to a recipient's or DA component's service, program, or activity that alters the essential purpose of the service, program, or activity or any of its components.

Historic properties

Properties listed or eligible for listing in the National Register of Historic Places (<https://www.nps.gov/subjects/nationalregister/index.htm>).

Illegal use of drugs

The use of one or more drugs, the possession or distribution of which is unlawful in accordance with 21 USC Chapter 13. The phrase "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, other uses authorized by 21 USC Chapter 13, or other provisions of federal law.

Low-vision devices

Devices that magnify, enhance, or otherwise augment a visual image; does not include ordinary eyeglasses or contact lenses.

Other power-driven mobility device

Any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion. Such devices include golf carts, electronic personal assistance mobility devices, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair. This definition does not apply to federal wilderness areas; wheelchairs in such areas are defined in Section 508(c)(2) of the ADA (see 42 USC 12207).

Program or activity

All of the operations of a department, agency, special purpose district, or other instrumentality of a state or of a local government or the entity of the state or local government that distributes assistance and each department or agency (and each other state or local government entity) to which the assistance is extended in the case of assistance to a state or local government; a college, university, or other postsecondary institution, or a public system of higher education or a local educational agency, system of vocational education, or other school system; an entire corporation, partnership, or other private organization, or an entire sole proprietorship as a whole or which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation, or the entire plant or other comparable, geographically separate facility to which FFA is extended in the case of any other corporation, partnership, private organization, or sole proprietorship; an entity that is established by two or more of the entities described in this definition, any of which is extended FFA; or an agency of the federal government. Examples of operations of programs or activities include: development and distribution of rules and regulations for public comment; public meetings, conferences, or seminars sponsored or conducted by a recipient or DA component but held in a recipient or DA or non-government building; public meetings, conferences, or seminars sponsored or conducted by non-recipient or non-DOD organizations but held in a recipient or DOD building; open houses, memorial services, tours, or other ceremonies held on or in recipient or DOD property; and operation of facilities used by members of the public, such as hospitals, on-post housing, and campgrounds.

Qualified individual with a disability

An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a recipient or DA component. With respect to employment, qualified individual means an individual who satisfies

the requisite skill, experience, education, and other job-related requirements of the employment position the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Qualified interpreter

An interpreter who, via a video remote interpreting service or an on-site appearance, is able to interpret effectively, accurately and impartially, receptively, and expressively, using any necessary specialized vocabulary. Qualified interpreters include sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified reader

A person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Reasonable accommodation

Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for any position the applicant desires; modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly-situated employees without disabilities. Reasonable accommodation may include, but is not limited to: making existing facilities used by employees readily accessible to and usable by PWD; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for PWD.

Recipient

Any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which FFA is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

Rehabilitation Act, Section 504

The first disability civil rights law to be enacted in the United States, codified at 29 USC 794. It prohibits discrimination against people with disabilities in programs that receive FFA and set the stage for enactment of the ADA.

Rehabilitation Act, Section 508

An amendment to the Rehabilitation Act, codified at 29 USC 794d; a federal law mandating that all electronic and information technology developed, procured, maintained, or used by the federal government be accessible to people with disabilities.

Service animal

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to: assisting individuals who are blind or have low vision with navigation and other tasks; alerting individuals who are hearing impaired or hard of hearing to the presence of people or sounds; providing non-violent protection or rescue work; pulling a wheelchair; assisting an individual during a seizure; alerting individuals to the presence of allergens; retrieving items such as medicine or the telephone; providing physical support and assistance with balance and stability to individuals with mobility disabilities; and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

Subrecipient

Any of the entities in the definition of recipient in this glossary to which a recipient extends or passes on FFA. A subrecipient is generally regarded as a recipient and has all of the duties of a recipient. See recipient.

Teletypewriter

Machinery or equipment that employs interactive, text-based communications through the transmission of coded signals across the telephone network. TTYs may include telecommunication display devices or telecommunications devices for hearing impaired persons or computers with special modems. TTYs are also called text telephones.

U.S. Access Board

An independent federal entity established by Section 502 of the Rehabilitation Act that develops and enforces accessibility standards (building design, transportation, telecommunications, and information technology criteria) as well as provides public and private sector training and technical assistance. It consists of 25 voting members; 13 are public members appointed by the President and 12 are from specified federal agencies.

Undue financial and administrative burden or hardship

Significant difficulty or expense. In determining whether an action would result in undue financial or administrative burden or hardship, factors to be considered include: the nature and cost of the action needed; the overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; the impact otherwise of the action on the operation of the site; the geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity; if applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees and the number, type, and location of its facilities; and if applicable, the type of operation(s) of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Video remote interpreting service

An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images.

Web Content Accessibility Guidelines

Recognized voluntary international guidelines for web accessibility created by the Web Accessibility Initiative of the World Wide Web Consortium. These guidelines detail how to make web content and web applications accessible to PWD.

Wheelchair

A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the purpose of indoor and outdoor locomotion. This definition does not apply to federal wilderness areas; wheelchairs in such areas are defined in Section 508(c)(2) of the ADA (42 USC 12207).

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PIN 054474-000