

(3) The action has been approved by the Secretary; and

(4) The expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity 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 Federal financial assistance shall 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 shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5318) has failed to comply with a requirement of this part with respect to a program or activity funded in whole or in part with such assistance, the Secretary shall notify the Governor of the State or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. The notice shall be given at least sixty days before:

(1) An order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective under paragraph (c) of this section; or

(2) Any action to effect compliance by any other means authorized by law is taken under paragraph (a) of this section.

(e) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) The responsible civil rights official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) At least 10 days have elapsed since the mailing of such notice to the applicant or recipient. During this period, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate.

However, this paragraph shall not be construed to prevent an award official from utilizing appropriate procedures and sanctions established under the program to assure or secure compliance with a specific requirement of the program designed to effectuate the objectives of this part.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988]

§ 8.58 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.57(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall 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. The notice shall:

(1) Fix a date not less than 20 days after the date of the notice for the applicant or recipient to request the administrative law judge to schedule a hearing; or

(2) Advise the applicant or recipient that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under § 8.57(c) and consent to the making of a decision on the basis of available information.

(b) *Hearing procedures.* Hearings shall be conducted in accordance with 24 CFR part 180.

[53 FR 20233, June 2, 1988, as amended at 61 FR 52218, Oct. 4, 1996]

PART 9—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

- 9.101 Purpose.
- 9.102 Applicability.
- 9.103 Definitions.
- 9.110 Self-evaluation.
- 9.111 Notice.
- 9.112-9.129 [Reserved]
- 9.130 General prohibitions against discrimination.
- 9.131 Direct threat.
- 9.132-9.139 [Reserved]
- 9.140 Employment.
- 9.141-9.148 [Reserved]
- 9.149 Program accessibility: discrimination prohibited.
- 9.150 Program accessibility: existing facilities.
- 9.151 Program accessibility: new construction and alterations.
- 9.152 Program accessibility: alterations of Property Disposition Program multifamily housing facilities.
- 9.153 Distribution of accessible dwelling units.
- 9.154 Occupancy of accessible dwelling units.
- 9.155 Housing adjustments.
- 9.160 Communications.
- 9.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 3535(d).

SOURCE: 59 FR 31047, June 16, 1994, unless otherwise noted.

§ 9.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 9.102 Applicability.

This part applies to all programs or activities conducted by the agency, ex-

cept for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 9.103 Definitions.

For purposes of this part:

Accessible: (1) When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, complies with applicable accessibility standards and can be approached, entered, and used by individuals with physical disabilities. The phrase "accessible to and usable by" is synonymous with accessible.

(2) When used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and, when designed, constructed, altered or adapted, complies with applicable accessibility standards, and can be approached, entered, and used by individuals with physical disabilities. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.151 is "accessible" within the meaning of this definition. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with disabilities (e.g., a current occupant of such unit or of another unit under the control of the same agency, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213)