employees, this may include placing amplifiers on telephone receivers, making telephone equipment compatible with hearing aids, providing flashing lights to supplement telephones or installing telecommunications devices (TDD’s or TTY’s). For blind participants or employees, this may include providing tape recorders or dictating machines for those who cannot type. For wheelchair-users, this may include raising on blocks a desk that is otherwise too low for the employee, rather than purchasing a specially-made desk. A recipient is not obligated to acquire or modify equipment that enables a participant or employee to perform a particular job or participate in a particular program until after an employee with a need for these modifications is hired for a particular office or admitted to a program.

(c) Provide readers, interpreters, and similar assistance as needed for deaf, blind and other handicapped participants or employees. In most instances, this would not require a full-time assistant.

(g) Decrease reliance solely on one form of communication. For example, for deaf participants or employees this may include supplementing program or job orientation sessions with written manuals and other visual materials. If appropriate, a visual warning system should be installed. It may also include providing flashing lights to supplement auditory signals such as sirens and alarm bells. For blind employees, this may include making some communications available in braille, enlarged print, or on cassette recordings. A recipient should tailor the accommodations listed above to the needs of the individual participants or employees who have been admitted to a particular program or hired for a particular office.

(h) Provide human relations-sensitivity training on issues pertaining to handicapped discrimination to all recipient employees.

(i) Conduct ongoing training and planning sessions with recipient supervisors, managers, personnel, technical experts and disability rights advocates to implement and evaluate methods of reasonable accommodation.

Accommodations for Applicants

(a) Announce program and job vacancies in a form readily understandable by mentally handicapped persons and by persons with impaired vision or hearing, for example, by making the announcements available in braille or on cassette tapes. §32.4(e) of DOL’s proposed section 504 regulations requires recipients to insure that communications with applicants are available to persons with impaired vision or hearing. Recipients shall undertake to explain, as appropriate, program and job announcements to mentally handicapped participants or employees or applicants. For example, this might entail notifying known mentally handicapped participants or employees of openings for positions that they might be able to perform and taking specific steps to clearly explain the nature of the program or job and its benefits to that individual.

Handicapped Persons

(b) Provide readers, interpreters, and other similar assistance during the application, testing, and interview process.

(c) Appropriately adjust or modify examinations so that the test results accurately reflect the applicant’s skills, aptitude or whatever other factor the test purports to measure, rather than reflecting the applicant’s impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). This may require the extension of traditional time deadlines or allowing, for example, a blind person to answer an examination orally.

(d) If necessary waive traditional tests and permit the applicant to demonstrate his or her skills through alternate techniques and utilization of adapted tools, aids, and devices.
§ 33.2 Application.

This part applies to all programs or activities conducted by the Department of Labor.

§ 33.3 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary for Administration and Management (ASAM) means the Assistant Secretary for Administration and Management in the Department of Labor.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department of Labor. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD’s), interpreters, notetakers, written materials, and other similar services and devices. Persons with manual impairments may need other specially adapted equipment.

Complete complaint means a written statement that contains the complainant’s name and address and describes the actions in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Department means the Department of Labor.

Director means the Director, Directorate of Civil Rights (DCR), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or his or her designee.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) Physical or mental impairment includes—

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

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(b) Major life activities includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

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

(d) Is regarded as having an impairment means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;
§ 33.6 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit,
§ 33.7 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.8 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§33.9 and 33.10 of this part, no qualified individual with handicaps shall, because the Department's facilities are...
inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 33.9 Program accessibility: Existing facilities.

(a) General. The Department shall operate such program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(b)(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available for use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (b)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(c) If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that qualified individuals with handicaps receive the benefits and services of the program or activity.

(d) Methods. The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Alterations to existing buildings shall be made in accordance with the provisions of § 33.10 of this part. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities readily accessible to and usable by individuals with handicaps in the most integrated setting appropriate.

(e) Time period for compliance. The Department shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date.
§ 33.10 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered after the effective date of this part, shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps in accordance with the requirements of the Uniform Federal Accessibility Standards adopted by the General Services Administration at 41 CFR §§101–19.600 to 101–19.607 (1984).

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.11 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the individual with handicaps.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs), or equally effective telecommunications systems shall be used.

(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signage at a primary entrance to each of its accessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The Department shall take appropriate steps to provide individuals with handicaps with information regarding their section 504 rights under the Department's programs or activities. If the Department uses recruitment materials, informational publications, or other materials which it distributes or makes available to participants, beneficiaries, referral sources, applicants, employees, or the public, it shall include in those materials or publications a statement of the policy described in §33.6 of this part and information as to complaint procedures. The requirements of this paragraph
may be met either by including applicable inserts in existing materials and publications or by revising and reprinting such materials, as appropriate.

(e) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available for use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (e)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or such burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraphs (a) through (d) of this section, as applicable, would result in such alteration or undue burdens.

(f) If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

[52 FR 11606, Apr. 9, 1987; 52 FR 24367, June 30, 1987]

§ 33.12 Complaint handling procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by DOL.

(b)(1) Complaints alleging violations of section 504 with respect to employment shall be processed according to the procedures established in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) Complaints based upon program inaccessibility in violation of section 504 will be governed by the procedures at §§33.9(b) and 33.11(e) of this part, as applicable.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Directorate of Civil Rights (DCR). Complaints may be delivered or mailed to the Director, Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4123, Washington, DC 20210.

(d) All complaints must be filed within 180 days of the alleged act of discrimination. The Director may extend this time period for good cause.

(e) Where a complaint contains insufficient information, the Director shall seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been utilized to locate him or her, or the information is not furnished within 30 days of the date of such request, the complaint may be dismissed upon notice sent to the complainant’s last known address.

(f) If the Director receives a complaint over which the Department does not have jurisdiction, he or she shall
§ 33.13 Intimidation and retaliation prohibited.

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of, or exercise of authority

promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(g) The Director shall accept and investigate all complete complaints which are timely filed, are within the Department’s jurisdiction, and state an allegation(s) which, if true, would violate section 504 or its implementing regulations.

(1) Where the Director determines that the complaint will be investigated, he or she will notify the complainant(s) and the appropriate Department official(s).

(2) Such notification will advise the parties that a determination on the merits of the complaint will be issued within 180 days of the date of notification unless the matter is resolved informally prior to that time.

(3) If, during the course of the investigation, the Department official states that he or she believes that resolution of the complaint would require a fundamental alteration of the program or undue financial and administrative burdens, the complaint will proceed in accordance with §§ 33.9(b) and 33.11(e) of this part, as applicable.

(h) At any time prior to the issuance of the determination the parties to the complaint may resolve the complaint on an informal basis. For this purpose, the Director shall furnish, to the extent permitted by law, a copy of the investigative file to the complainant and the appropriate Department official. If the complaint is resolved, the terms of the agreement shall be reduced to writing and entered as part of the official file by the Deputy Assistant Secretary for Administration and Management (Deputy ASAM).

(i) If informal resolution is not achieved, the Deputy ASAM shall issue a determination on the merits which notifies the parties to the complaint of the results of the investigation and includes—

(1) The findings of fact and conclusions of law;

(2) A remedy and/or corrective action, as appropriate, for each violation found; and

(3) A notice of the right to appeal to the Assistant Secretary for Administration and Management (ASAM).

(j)(1) An appeal of the Deputy ASAM’s determination may be filed with the ASAM by any party to the complaint. Such appeal must be filed within 30 days of receipt of the determination. The ASAM may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the ASAM. The ASAM’s determination shall be based upon the written record which may include, but is not limited to, the determination made by the Deputy ASAM, the investigative file, and any other materials submitted by the parties pursuant to a request from the ASAM.

(k) The ASAM shall notify all parties of his or her determination on the appeal within 90 days of the receipt of the appeal. The ASAM’s determination represents the final administrative decision by the Department.

(l) The time limits cited in paragraphs (g)(2) and (k) of this section may be extended with the permission of the Assistant Attorney General.

(m) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

(n) The Director shall respond to requests by the Architectural and Transportation Barriers Compliance Board for information on the status of any complaint alleging that buildings that are subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), are not readily accessible and usable to individuals with handicaps.

§ 33.13 Intimidation and retaliation prohibited.

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of, or exercise of authority.
Office of the Secretary of Labor

under, or privilege secured by section 504 and the regulations in this part.

PART 34—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS OF THE JOB TRAINING PARTNERSHIP ACT OF 1982, AS AMENDED (JTPA)

Subpart A—General Provisions

§ 34.1 Purpose; application.

(a) Purpose. The purpose of this part is to implement the nondiscrimination and equal opportunity provisions of the Job Training Partnership Act of 1982, as amended (JTPA), which are contained in section 167 of JTPA. Section 167 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, political affiliation or belief, citizenship, or participation in JTPA.

(b) Application of this part.

(1) A recipient's compliance with this part shall satisfy any obligation of the recipient to comply with 29 CFR part 31, implementing title VI of the Civil Rights Act of 1964, as amended (title VI), and with subparts A, D and E of 29 CFR part 32, implementing section 504 of the Rehabilitation Act of 1973, as amended (section 504).

(2) However, compliance with this part shall not affect any obligation of

§ 34.2 Definitions.

§ 34.3 Discrimination prohibited.

§ 34.4 Specific discriminatory actions prohibited on the ground of race, color, religion, sex, national origin, age, political affiliation or belief, citizenship, or participation in JTPA.

§ 34.5 Specific discriminatory actions prohibited on the ground of disability.

§ 34.6 Communications with individuals with disabilities.

§ 34.7 Employment practices.

§ 34.8 Intimidation and retaliation prohibited.

§ 34.9 Designation of responsible office; rulings and interpretations.

§ 34.10 [Reserved]

§ 34.11 Effect of other obligations or limitations.

§ 34.12 Delegation and coordination.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

§ 34.20 Assurance required; duration of obligation; covenants.

§ 34.21 Equitable services.

§ 34.22 Designation of Equal Opportunity Officer.

§ 34.23 Dissemination of policy.

§ 34.24 Data and information collection; confidentiality.

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of JTPA

§ 34.30 Application.

§ 34.31 Recordkeeping.

§ 34.32 Oversight and liability.

§ 34.33 Methods of Administration.

§ 34.34 Monitoring.

Subpart D—Compliance Procedures

§ 34.40 Compliance reviews.

§ 34.41 Notice to Show Cause.

§ 34.42 Adoption of discrimination complaint processing procedures.

§ 34.43 Complaints and investigations.

§ 34.44 Corrective and remedial action.

§ 34.45 Notice of violation; written assurances; Conciliation Agreement.

§ 34.46 Final Determination.

§ 34.47 Notice of finding of noncompliance.

§ 34.48 Notification of Breach of Conciliation Agreement.

Subpart E—Federal Procedures for Effecting Compliance

§ 34.50 General.

§ 34.51 Hearings.

§ 34.52 Decision and post-termination proceedings.

§ 34.53 Suspension, termination, denial or discontinuance of Federal financial assistance under JTPA; alternate funds disbursal procedure.


SOURCE: 58 FR 4750, Jan. 15, 1993, unless otherwise noted.