



Department of Defense

# DIRECTIVE

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Incorporating Change 1, November 16, 1994

ASD(MRA&L)

SUBJECT: Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense

- References:
- (a) Section 504 of Public Law 93-112, "Rehabilitation Act of 1973," September 26, 1973 (29 U.S.C. 794)(1976)
  - (b) Section 111 of Public Law 93-516, "Rehabilitation Act Amendments of 1974," December 7, 1974 (29 U.S.C. 706, 780, 790)(1976)
  - (c) Section 119 of Public Law 95-602, "Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978," November 6, 1978 (29 U.S.C. 794)(Supp. III 1979)
  - (d) Department of Justice Regulation, "Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs," August 11, 1981 (28 CFR 41)
  - (e) Chapter 35 of title 44, United States Code

## 1. PURPOSE

This Directive implements references (a) through (d) to prohibit discrimination based on handicap in programs and activities receiving Federal financial assistance disbursed by the Department of Defense and in programs and activities conducted by the Department of Defense.

## 2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the National Guard Bureau, and the Defense Agencies (hereafter referred to as "DoD Components") insofar as they:

2.1.1. Disburse Federal financial assistance to programs and activities that affect handicapped persons in the United States and that are covered by this Directive (see paragraph E1.1.2., enclosure 1); or

2.1.2. Conduct programs and activities that affect handicapped persons in the United States and that are covered by this Directive (see paragraph E1.1.3., enclosure 1).

2.2. This Directive also applies to each recipient of Federal financial assistance disbursed by the Department of Defense and to each program and activity that receives or benefits from such assistance, insofar as such recipient, program, or activity affects a handicapped person in the United States.

### 3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

### 4. POLICY

It is DoD policy that no qualified handicapped person shall be subjected to discrimination on the basis of handicap under any program or activity that receives or benefits from Federal financial assistance disbursed by a DoD Component or under any Federal program or activity that is conducted by a DoD Component. Guidelines for determining actions that discriminate against handicapped persons are prescribed in enclosure 3.

### 5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)), or designee, shall monitor compliance with this Directive. In discharging this responsibility, the ASD(MRA&L), or designee, shall:

5.1.1. Coordinate efforts of DoD Components to enforce this Directive.

5.1.2. Assist in the development of standards and procedures promulgated pursuant to enclosures 3, 4, and 5 of this Directive.

5.1.3. Perform the responsibilities assigned to the ASD(MRA&L) in enclosures 3, 4, and 5 of this Directive.

5.1.4. Otherwise assist DoD Components in implementing this Directive.

5.2. The Heads of DoD Components shall comply with this Directive. In discharging this responsibility, they shall:

5.2.1. Designate a policy-level official to ensure compliance with this Directive, receive and investigate complaints filed under this Directive, and otherwise manage DoD Component responsibilities under this Directive.

5.2.2. Notify the ASD(MRA&L), or designee, of the name, position, location, and telephone number of persons selected by them to be policy-level officials within 15-calendar days of such a selection.

5.2.3. Issue guidelines pursuant to enclosure 4 of this Directive.

5.2.4. Cooperate fully with the ASD(MRA&L), or designee, in that official's performance of the responsibilities assigned herein, including furnishing to the ASD(MRA&L), or designee, in a timely fashion any requested reports and information.

5.2.5. Assign sufficient personnel to implement and to ensure effective enforcement of this Directive.

## 6. ASSURANCES REQUIRED AND PROCEDURES

See enclosures 3, 4, and 5.

## 7. INFORMATION REQUIREMENTS

7.1. Each DoD Component shall maintain a log of all complaints that are filed with it or its recipients under this Directive. The log shall contain the complainant's name (last name, first, and middle initial) and address (street address, city, State, and zip code), the recipient's name (if this refers to a person, last name, first, and middle initial) and address (street address, city, State, and zip code), the nature of the complaint, and the current status of the complaint investigation or resolution. Each DoD Component shall submit a narrative summary report on complaints by memorandum to the ASD(MRA&L), or designee, before July 15 and January 15 of each year. This reporting requirement has been assigned Report Control Symbol DDM(SA)1596.

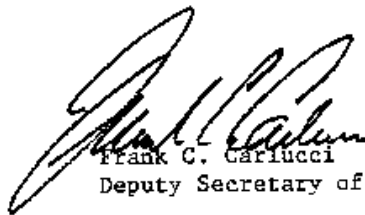
7.2. Each DoD Component shall submit a narrative report by memorandum to the ASD(MRA&L), or designee, whenever, pursuant to enclosure 4 of this Directive, the DoD Component notifies an applicant or recipient that noncompliance with this Directive is indicated. The report shall include the recipient's name (if this refers to a person, last name, first, and middle initial) and address (street address, city, State, and zip code), the date (YYMMDD) and nature of the finding, and the name of the applicable Federally assisted program or activity. This reporting requirement has been assigned Report Control Symbol DD-M(AR)1597.

7.3. The record keeping requirements contained in paragraph E4.3.2., enclosure 4, have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. Chapter 35 (reference (e)) and have been assigned OMB No. 0704-0102.

8. SUMMARY OF CHANGE 1. The changes to this issuance are administrative and update organizational titles and references for accuracy.

9. EFFECTIVE DATE

This Directive is effective June 1, 1982.



Frank C. Cariucci  
Deputy Secretary of Defense

Enclosures - 5

- E1. Programs and Activities Subject to This Directive
- E2. Definitions
- E3. Guidelines for Determining Discriminatory Practices
- E4. Ensuring Compliance with This Directive in Federal Financial Assistance Programs and Activities
- E5. Ensuring Compliance with This Directive in Programs and Activities Conducted by the Department of Defense

E1. ENCLOSURE 1

PROGRAMS AND ACTIVITIES SUBJECT TO THIS DIRECTIVE

E1.1.1. This Directive applies to all DoD Components and recipients of Federal financial assistance disbursed by a DoD Component insofar as the programs and activities of the DoD Components and recipients affect handicapped persons in the United States. Existing programs and activities that are assisted or conducted by a DoD Component and that are subject to this Directive, but do not appear in paragraphs E1.1.2. or E1.1.3., below, are covered even though not listed. DoD Components must report new programs and activities that are subject to this Directive to the ASD(MRA&L), or designee, within 15-calendar days of their creation or funding.

E1.1.2. Federal financial assistance programs subject to this Directive include:

E1.1.2.1. Title 32, United States Code, Sections 101-716 (1976 and Supp. III 1979): the Army and Air National Guard.

E1.1.2.2. Title 40, United States Code, Sections 483, 484, and 512 (1976); title 49, United States Code, Sections 1101 and 1107 (1976); and title 10, United States Code, Sections 2541, 2544, 2571, 2576, 2662, 7308, 7541, 7542, 7545, 7546, and 7547 (1976 and Supp. IV 1980): various programs involving the loan or other disposition of surplus, obsolete, or unclaimed property.

E1.1.2.3. Title 10, United States Code, Sections 4307-4311 (1976), and the annual Department of Defense Appropriations Act: National Program for the Promotion of Rifle Practice.

E1.1.2.4. Secretary of the Navy Instruction 5720.19E, "Navy Science Cruiser Program," February 24, 1977.

E1.1.2.5. Title 10, United States Code, Section 9441 (1976 and Supp. IV 1980): Civil Air Patrol.

E1.1.2.6. Title 41, United States Code, Sections 501-509 (Supp. III 1979): Federal grants and cooperative agreements.

E1.1.2.7. Title 33, United States Code, Section 426 (1976 and Supp. III 1979): Army Corps of Engineers participation in cooperative investigations and studies concerning the erosion of shores of coastal and lake waters.

E1.1.2.8. Title 33, United States Code, Sections 426e-426h (1976): Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores.

E1.1.2.9. Title 16, United States Code, Section 460d (1976): construction and operation of public park and recreational facilities in water resource development projects under the administrative jurisdiction of the Department of the Army.

E1.1.2.10. Title 33, United States Code, Section 701c-3 (1976): payment to States of lease receipts from lands acquired by the United States for flood control, navigation, and allied purposes.

E1.1.2.11. Title 33, United States Code, Sections 558c and 702d-1 (1976); title 10, United States Code, Sections 2668 and 2669 (1976); title 43, United States Code, Section 961 (1976); and title 40, United States Code, Section 319 (1976): grants of easements without consideration, or at a nominal or reduced consideration, on land under the control of the Department of the Army at water resource development projects.

E1.1.2.12. Title 33, United States Code, Sections 540 and 577 (1976): Army Corps of Engineers assistance in the construction of small boat harbor projects.

E1.1.2.13. Title 33, United States Code, Section 701s (1976): emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works.

E1.1.2.14. Title 33, United States Code, Section 633 (1976): Army Corps of Engineers contracts for the protection, alteration, reconstruction, relocation, or replacement of structures and facilities.

E1.1.2.15. Title 50, United States Code, Section 453 (1976): Defense Logistics Agency loans of industrial equipment to educational institutions (Tools for Schools).

E1.1.2.16. Title 33, United States Code, Section 610 (1976): provision of specialized services or technical information by the Army Corps of Engineers to State and local governments for the control of aquatic plant growths in rivers, harbors, and allied waters.

E1.1.2.17. Title 42, United States Code, Section 1962d-16 (1976): provision of specialized services by the Army Corps of Engineers to any State for the preparation of comprehensive plans for drainage basins located within the boundaries of said State.

E1.1.2.18. Title 33, United States Code, Section 603a (1976): provision of specialized services by the Army Corps of Engineers to improve channels for navigation.

E1.1.2.19. Title 33, United States Code, Section 701g (1976): provision of specialized services by the Army Corps of Engineers to reduce flood damage.

E1.1.2.20. Title 24, United States Code, Sections 44c and 47 (1976): United States Soldiers' and Airmen's Home.

E1.1.2.21. Title 10, United States Code, Chapter 55, as implemented by DoD 6010.8 - R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," January 10, 1977.

E1.1.3. All programs and activities conducted by the Department of Defense that affect handicapped persons in the United States are subject to this Directive. They include:

E1.1.3.1. Promulgation of rules and regulations for public comment in a manner that grants handicapped persons a reasonable opportunity for such comment (such as by making cassette recordings of proposed rules).

E1.1.3.2. Public meetings, conferences, or seminars sponsored or conducted by a DoD Component but held in non-Government buildings.

E1.1.3.3. Public meetings, conferences, or seminars sponsored or conducted by a DoD Component or by a non-DoD organization but held in a DoD building.

E1.1.3.4. Open houses, memorial services, tours, or other ceremonies held on or in DoD property.

E1.1.3.5. Military museums.

E1.1.3.6. Historic vessels.

E1.1.3.7. Historic buildings and properties maintained by a DoD Component and properties designated as historic under a statute of the appropriate State or local governmental body.

E1.1.3.8. Schools operated by the Department of Defense within the United States pursuant to Section 6 of Pub. L. 81-874, title 20, United States Code, Section 241 (1976).

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Facility. All or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or any interest in such property.

E2.1.2. Federal Financial Assistance. Any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Federal Government provides or otherwise makes available assistance in the form of:

E2.1.2.1. Funds.

E2.1.2.2. Services performed by Federal personnel, including technical assistance, counseling, training, and provision of statistical or expert information.

E2.1.2.3. Real and personal property or any interest in or use of such property, including:

E2.1.2.3.1. Transfers or leases of such property for less than fair market value or for reduced consideration.

E2.1.2.3.2. Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

E2.1.3. Handicapped Person. 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. For purposes of this Directive as it relates to employment programs of recipients, such term does not include any individual who is an alcoholic or drug abuser and whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question, or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others. As used in this paragraph:

E2.1.3.1. Physical or Mental Impairment. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, and muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; drug abuse; and alcoholism.



E2.1.3.2. Major Life Activities. Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E2.1.3.3. Has a Record of Such an Impairment. Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

E2.1.3.4. Is Regarded as Having an Impairment. Has:

E2.1.3.4.1. A physical or mental impairment that does not substantially limit major life activities but is treated by a recipient or DoD Component as constituting such a limitation;

E2.1.3.4.2. A physical or a mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

E2.1.3.4.3. None of the impairments defined above, but is treated by a recipient or DoD Component as having such an impairment.

E2.1.4. Historic Properties. Those properties listed or eligible for listing in the National Register of Historic Places.

E2.1.5. Include; Such As. Not all the possible items are covered, whether like or unlike the ones named.

E2.1.6. Qualified Handicapped Person. A handicapped person who:

E2.1.6.1. With respect to employment, can perform the essential functions of the job in question with reasonable accommodation.

E2.1.6.2. With respect to services, meets the essential eligibility requirements for receiving the services in question.

E2.1.7. Recipient. Any State or political subdivision or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any person that receives Federal financial assistance directly or through another recipient, including any successor, assignee, or transferee of a recipient, but not the ultimate beneficiary of the assistance. The term includes persons and entities applying to be recipients.

E2.1.8. Substantial Impairment. A significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

E3. ENCLOSURE 3

GUIDELINES FOR DETERMINING DISCRIMINATORY PRACTICES

E3.1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

E3.1.1. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity that is conducted by the Department of Defense or that receives or benefits from Federal financial assistance disbursed by the Department of Defense.

E3.1.2. A recipient or DoD Component may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

E3.1.2.1. Provide different or separate aid, benefits, or services to handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are equal to those provided to others;

E3.1.2.2. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

E3.1.2.3. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

E3.1.2.4. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that afforded to others; or

E3.1.2.5. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity granted to others receiving the aid, benefit, or service.

E3.1.3. A recipient or DoD Component may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different from regular programs or activities, even if such separate or different programs and activities are permissible under subparagraph E3.1.2.1., above.

E3.1.4. A recipient or DoD Component may not provide assistance to an Agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity.

E3.1.5. A recipient or DoD Component may not deny, on the basis of handicap, a qualified handicapped person the opportunity to participate as a member of planning or advisory boards.

E3.1.6. A recipient or DoD Component may not use, directly or through contractual or other arrangements, criteria or methods of administration that:

E3.1.6.1. Subject qualified handicapped persons to discrimination on the basis of handicap;

E3.1.6.2. Defeat or substantially impair accomplishment of the objectives of the recipient's or DoD Component's program or activity with respect to handicapped persons; or

E3.1.6.3. Perpetuate discrimination by another recipient if both recipients are subject to common administrative control or are agencies of the same State.

E3.1.7. In determining the site or location of a facility, a recipient or DoD Component may not make selections that:

E3.1.7.1. Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

E3.1.7.2. Defeat or substantially impair, with respect to handicapped persons, the accomplishment of the objectives of the program or activity.

E3.1.8. Recipients and DoD Components shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

E3.1.9. Recipients and DoD Components shall take appropriate steps to make communications with their applicants, employees, and beneficiaries available to persons with impaired vision and hearing.

E3.1.10. This section may not be interpreted to prohibit the exclusion of:

E3.1.10.1. Persons who are not handicapped from benefits, programs, and activities limited by Federal statute or Executive order to handicapped persons; or

E3.1.10.2. One class of handicapped persons from a program or activity limited by Federal statute or Executive order to a different class of handicapped persons.

E3.1.11. Recipients and DoD Components shall take appropriate steps to ensure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity receiving or benefiting from Federal financial assistance disbursed by the Department of Defense or under any program or activity conducted by the Department of Defense because of the absence of auxiliary aids, such as certified sign-language interpreters, telecommunication devices (TDDs), or other telephonic devices for individuals with impaired sensory, manual, or speaking skills.

E3.2. PROHIBITIONS AGAINST EMPLOYMENT DISCRIMINATION BY RECIPIENTS

E3.2.1. No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance disbursed by the Department of Defense.

E3.2.2. The prohibition against discrimination in employment applies to the following:

E3.2.2.1. Recruitment, advertising, and processing of applications for employment.

E3.2.2.2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.

E3.2.2.3. Rates of pay or any other form of compensation and changes in compensation.

E3.2.2.4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

E3.2.2.5. Leaves of absence, sick leave, or any other leave.

E3.2.2.6. Fringe benefits available by virtue of employment, whether or not administered by the recipient.

E3.2.2.7. Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence for training.

E3.2.2.8. Programs and activities sponsored by the employer, including social and recreational programs.

E3.2.2.9. Any other term, condition, or privilege of employment.

E3.2.3. A recipient may not participate in a contractual or other relationship that subjects qualified handicapped applicants or employees to discrimination prohibited by this section, including relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

E3.2.4. A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation includes providing ramps, accessible restrooms, drinking fountains, interpreters for deaf employees, readers for blind employees, amplified telephones, TDDs such as Teletypewriters or Telephone Writers (TTYs), and tactile signs on elevators.

E3.2.5. A recipient may not use employment tests or criteria that discriminate against handicapped persons, and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

E3.2.6. A recipient may not conduct a pre-employment medical examination or make a pre-employment inquiry about whether an applicant is a handicapped person or about the nature or severity of a handicap. A recipient may make, however, a pre-employment inquiry into an applicant's ability to perform job-related functions.

E3.2.7. When a recipient is taking remedial action to correct the effects of past discrimination or is taking voluntary action to overcome the effects of conditions that have resulted in limited participation by handicapped persons in its Federally assisted program or activity, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped if:

E3.2.7.1. The recipient makes clear to the applicants that the information is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts.

E3.2.7.2. The recipient makes clear to the applicants that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph E3.2.9., below, that refusal to provide it will not subject the applicants to any adverse treatment, and that it will be used only in accordance with this Directive.

E3.2.8. Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty if:

E3.2.8.1. All entering employees are subjected to such an examination, regardless of handicap.

E3.2.8.2. The results of such an examination are used only in accordance with this Directive, which prohibits discrimination against a qualified handicapped person on the basis of handicap.

E3.2.9. Information obtained under this section concerning the medical condition or history of applicants shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

E3.2.9.1. Supervisors and managers may be informed about restrictions on the work or duties of handicapped persons and about necessary accommodations.

E3.2.9.2. First aid and safety personnel may be informed, when appropriate, if a handicapping condition might require emergency treatment.

E3.2.9.3. Government officials investigating compliance with Section 504 and this Directive shall be provided relevant information upon request.

### E3.3. PROGRAM ACCESSIBILITY

E3.3.1. General Requirements. No qualified handicapped person shall, because a recipient's or DoD Component's facilities are inaccessible to or not usable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance disbursed by the Department of Defense or under any program or activity conducted by the Department of Defense.

#### E3.3.2. Existing Facilities

E3.3.2.1. A recipient or DoD Component shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This does not necessarily require a recipient or DoD Component to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. For guidance in determining the accessibility of facilities, see Chapter 18 of DoD 4270.1-M, "Department of Defense Construction Criteria Manual," June 1, 1978, and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103, "Design for the Physically Handicapped," October 15, 1976. Inquiries on specific accessibility design problems may be addressed to the ASD(MRA&L), or designee.

E3.3.2.2. When structural changes are necessary to make programs or activities in existing facilities accessible to the extent required by paragraph E3.3.1., above:

E3.3.2.2.1. Such changes shall be made as soon as practicable, but not later than 3 years after the effective date of this Directive; however, if the program or activity is a particular mode of transportation (such as a subway station) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities and if other accessible modes of transportation are available, the DoD Component concerned may extend this period of time. This extension shall be for a reasonable and definite period, which shall be determined after consultation with the ASD(MRA&L), or designee.

E3.3.2.2.2. The recipient or DoD Component shall develop, with the assistance of interested persons or organizations and within a period to be established in each DoD Component's guidelines, a transition plan setting forth the steps necessary to complete such changes.

E3.3.2.2.3. The recipient or DoD Component shall make a copy of the transition plan available for public inspection. At a minimum, the plan shall:

E3.3.2.2.3.1. Identify physical obstacles in the recipient's or DoD Component's facilities that limit the accessibility of its program or activity to handicapped persons.

E3.3.2.2.3.2. Describe in detail the methods that will be used to make the facilities accessible.

E3.3.2.2.3.3. Specify the schedule for taking the steps necessary to achieve full program accessibility 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.

E3.3.2.2.3.4. Indicate the person (last name, first, and middle initial) responsible for implementation of the transition plan.

E3.3.2.3. A recipient or DoD Component may comply with subparagraphs E3.3.2.1. and E3.3.2.2., above, through such means as the acquisition or redesign of equipment, such as telecommunication or other telephonic devices; relocation of classes or other services to accessible buildings; assignment of aides to beneficiaries, such as readers or certified sign-language interpreters; home visits; delivery of health, welfare, or other services at accessible alternate sites; alteration of existing facilities and construction of new facilities in conformance with this subsection and paragraph E3.3.3., below; or any other method that results in making the program or activity of the recipient or DoD Component accessible to handicapped persons.

E3.3.2.4. A recipient or DoD Component is not required to make structural changes in existing facilities when other methods are effective in achieving compliance with this section.

E3.3.2.5. In choosing among available methods for meeting the requirements of this section, a recipient or DoD Component shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate with non-handicapped persons.

E3.3.3. New Construction. New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall be designed and constructed, to the maximum extent feasible, to be readily accessible to and usable by handicapped persons. For guidance in determining the accessibility of facilities, see Chapter 18 of DoD 4270.1-M and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103. Inquiries about specific accessibility design problems may be addressed to the ASD(MRA&L), or designee.

#### E3.3.4. Historic Properties

E3.3.4.1. In the case of historic properties, program accessibility shall mean that, when viewed in their entirety, programs are readily accessible to and usable by handicapped persons. Because the primary benefit of historic properties is the experience of the property itself, DoD Components and recipients shall give priority to those methods of achieving program

accessibility that make the historic property, or portions thereof, physically accessible to handicapped persons.

E3.3.4.2. Methods of achieving program accessibility include:

E3.3.4.2.1. Making physical alterations that give handicapped persons access to otherwise inaccessible areas or features of historic properties.

E3.3.4.2.2. Using audiovisual materials and devices to depict otherwise inaccessible areas or features of historic properties.

E3.3.4.2.3. Assigning individuals to guide handicapped persons into or through otherwise inaccessible portions of historic properties.

E3.3.4.2.4. Adopting other innovative methods.

E3.3.4.3. When program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the DoD Component or recipient may seek a modification or waiver of access standards from the ASD(MRA&L), or designee.

E3.3.4.3.1. A decision to grant a modification or waiver shall be based on consideration of the following:

E3.3.4.3.1.1. Scale of the property, reflecting its ability to absorb alterations.

E3.3.4.3.1.2. Use of the property, whether primarily for public or private purposes.

E3.3.4.3.1.3. Importance of the historic features of the property to the conduct of the program.

E3.3.4.3.1.4. Costs of alterations in comparison to the increase in accessibility.

E3.3.4.3.2. The ASD(MRA&L), or designee, shall review periodically any waiver granted under this paragraph and may withdraw it if technological advances or other changes warrant.

E3.3.4.4. The decision by the ASD(MRA&L), or designee, to grant a modification or waiver of access standards is subject to Section 106 of the National Historic Preservation Act, as amended, and shall be made in accordance with the Advisory Council on Historic Preservation regulation on "Protection of Historic and Cultural Properties" (36 CFR 800). When the property is Federally owned or when Federal funds may be used for alterations, the ASD(MRA&L), or designee, shall obtain the comments of the Advisory Council on Historic Preservation when required by Section 106 of the National Historic Preservation Act and the Advisory Council on



Historic Preservation regulation on "Protection of Historic and Cultural Properties" (36 CFR 800) prior to effectuation of structural alterations.

E3.3.4.5. DoD Component guidelines prepared in accordance with enclosure 4 of this Directive shall include a listing of all historic properties, including historic ships, subject to this Directive and a plan for compliance with this paragraph.

#### E3.3.5. Military Museums

E3.3.5.1. In the case of military museums, program accessibility shall mean that exhibits, displays, tours, lectures, circulating or traveling exhibits, and other programs of military museums are accessible to and usable by handicapped persons. Methods of meeting this requirement include the following:

E3.3.5.1.1. Museum programs may be made accessible to deaf and hearing-impaired persons by means such as training museum staff, such as docents, in sign language; providing qualified sign-language interpreters to accompany deaf or hearing-impaired visitors; ensuring that clear, concise language is used on all museum signs and display labels; providing amplification devices; or providing printed scripts for films, videotapes, lectures, or tours. DoD Components are encouraged to use "Museums and Handicapped Students: Guidelines for Educators," published by the National Air and Space Museum, Smithsonian Institution, Washington, DC 20560.

E3.3.5.1.2. Museum programs may be made accessible to blind and visually-impaired persons by means such as providing museum catalogues in a large-print edition printed over Braille; providing cassette tapes, records, or disks for museum tours or exhibits; providing readers to accompany blind or visually impaired visitors; using large-print and Braille display cards at exhibits; providing raised-line maps of the museum building; using raised-line drawings, reproductions, or models of large exhibits to facilitate tactile experiences when touching exhibits is prohibited; placing large-print and Braille signs to identify galleries, elevators, restrooms, and other service areas; and permitting guide dogs in all museum facilities.

E3.3.5.1.3. Museum programs may be made accessible to other physically impaired persons by means such as lowering display cases; spacing exhibits to facilitate movement; using ramps in galleries; increasing lighting in exhibit areas to facilitate viewing from a distance; providing places to sit in exhibit areas; making restrooms accessible; using large-print exhibit display cards to facilitate reading from a distance; and sensitizing museum staff to consider the needs of handicapped visitors when organizing exhibits.

E3.3.5.2. DoD Component guidelines developed in accordance with enclosure 4 of this Directive shall identify military museums subject to this paragraph and shall contain a plan for making museum programs accessible to handicapped persons. Technical assistance in the preparation and content of these plans may be obtained from the National Access Center, 1419 27th Street, NW, Washington, DC 20007 ((202) 333-1712 or TTY (202) 333-1339). In addition,

community organizations that serve handicapped persons and handicapped persons themselves shall be consulted in the preparation of these plans.

E3.4. REASONABLE ACCOMMODATION

E3.4.1. A recipient or DoD Component shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient or DoD Component demonstrates to the ASD(MRA&L), or designee, that the accommodation would impose an undue hardship on the operation of its program.

E3.4.2. Reasonable accommodation includes the following:

E3.4.2.1. Making facilities used by employees readily accessible to and usable by handicapped persons.

E3.4.2.2. Job restructuring; part-time or modified work schedules; acquisition or modification of equipment or devices, such as telecommunication or other telephonic instruments; the provision of readers or certified sign-language interpreters; and similar actions.

E3.4.3. In determining whether an accommodation would impose an undue hardship on the operation of a recipient's or DoD Component's program, the ASD(MRA&L), or designee, shall consider the following factors, at a minimum:

E3.4.3.1. The overall size of the recipient's or DoD Component's program or activity, such as the number of employees, number and type of facilities, and size of budget.

E3.4.3.2. The size of the recipient's or DoD Component's operations, including the composition and structure of the recipient's or DoD Component's workforce.

E3.4.3.3. The nature and cost of the accommodation needed.

E3.4.4. A recipient or DoD Component may not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

E4. ENCLOSURE 4

ENSURING COMPLIANCE WITH THIS DIRECTIVE IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS AND ACTIVITIES

E4.1. SUPPLEMENTARY GUIDELINES ISSUED BY THE DoD COMPONENTS

E4.1.1. Whenever necessary, DoD Components shall publish supplementary guidelines for each type of program or activity to which they disburse Federal financial assistance within 120 days of the effective date of this Directive or of the effective date of any subsequent statute authorizing Federal financial assistance to a new type of program or activity. DoD Components shall obtain approval of these supplementary guidelines from the ASD(MRA&L), or designee, before issuing them. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to this paragraph to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review and approval. To the extent that supplementary guidelines issued by DoD Components deal with the employment of civilians in programs and activities subject to this Directive, the ASD(MRA&L), or designee, shall also obtain the approval of the Equal Employment Opportunity Commission (EEOC) in accordance with Executive Order 12067.

E4.1.2. The ASD(MRA&L), or designee, and the DoD Components shall ensure that their supplementary guidelines conform to the requirements of this Directive and that they provide:

- E4.1.2.1. A description of the types of programs and activities covered.
- E4.1.2.2. Examples of prohibited practices likely to arise with respect to those types of programs and activities.
- E4.1.2.3. A list of the data collection and reporting requirements of the recipients.
- E4.1.2.4. Procedures for processing and investigating complaints.
- E4.1.2.5. Procedures for hearings to determine compliance by recipients with this Directive.
- E4.1.2.6. Requirements or suggestions for affirmative action on behalf of qualified handicapped persons.
- E4.1.2.7. Requirements for the dissemination of program and complaint information to the public.
- E4.1.2.8. A description of the form of the assurances that must be executed pursuant to section E4.2., below, and sample assurances.

E4.1.2.9. Requirements concerning the frequency and nature of post-approval reviews conducted pursuant to section E4.8., below.

E4.1.2.10. A period of time, provided for by subparagraph E3.3.2.2. of enclosure 3, for the development of a transition plan that sets out the steps necessary to complete structural changes that might be required by section E3.3. of enclosure 3.

E4.1.2.11. The maximum period of time that may be allowed for extensions that might be granted pursuant to subparagraph E3.3.2.2. of enclosure 3.

E4.1.2.12. An appendix that contains a list of identified programs and activities of the type covered by the supplementary guidelines, including the names of the programs and activities and the authorizing statute, regulation, or directive for each program and activity.

E4.1.2.13. Requirements for the recipient to designate a responsible official to coordinate the implementation of supplementary guidelines.

E4.1.2.14. Requirements for any other actions or procedures necessary to implement this Directive.

E4.1.3. When the Head of a DoD Component determines that it would not be appropriate to include one or more of the provisions described in paragraph E4.1.2., above, in the supplementary guidelines of that DoD Component or that it is not necessary to issue such guidelines at all, the reasons for such determination shall be stated in writing and submitted to the ASD(MRA&L), or designee, for review and approval. Once that determination is approved, the DoD Component shall make it available to the public upon request.

E4.1.4. The Heads of the DoD Components, or designees, shall be responsible for keeping the supplementary guidelines current and accurate. When a DoD Component determines that a program or activity should be added to or deleted from the guidelines, the DoD Component shall notify the ASD(MRA&L), or designee, in writing.

## E4.2. REQUIRED ASSURANCES

E4.2.1. The DoD Components shall require all recipients to file written assurances that their programs or activities will be conducted in accordance with this Directive and supplementary guidelines promulgated by the DoD Components. If a recipient fails to provide an assurance that conforms to the requirements of this section, the DoD Component shall attempt to effect compliance pursuant to sections E4.6. through E4.8., below, provided that if assistance is due and payable to the recipient based on an application approved prior to the effective date of this Directive, the DoD Component shall continue the assistance while any proceedings required by sections E4.14. through E4.22., below, are pending.

E4.2.2. The DoD Components shall advise each recipient of the required elements of the assurance and, with respect to each program or activity, of the extent to which those receiving assistance from recipients shall be required to execute similar assurances.

E4.2.3. The DoD Components shall ensure that each assurance:

E4.2.3.1. Obligates the recipient to advise the DoD Component of any complaints received that allege discrimination against handicapped persons.

E4.2.3.2. Obligates the recipient to collect and provide the items of information that the DoD Component lists in its supplementary guidelines pursuant to subparagraph E4.1.2.3., above.

E4.2.3.3. Is made applicable to any Federal financial assistance that might be disbursed by a DoD Component without the submission of a new application.

E4.2.3.4. 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 is possessed by the recipient.

E4.2.3.5. Includes a provision recognizing that the U.S. Government has the right to seek judicial enforcement of Section 504 and this Directive.

### E4.3. SELF-EVALUATION AND CONSULTATION WITH INTERESTED PERSONS AND ORGANIZATIONS

E4.3.1. The DoD Components shall require recipients to conduct, within 6 months of the effective date of this Directive or of first receiving Federal financial assistance disbursed by the Department of Defense, a self-evaluation with the assistance of interested persons, including handicapped persons or organizations that represent them. When appropriate, the DoD Components also shall require recipients to consult at least annually with such persons. The "Department of Health, Education and Welfare Section 504 Technical Assistance Reserve Directory," April 1980, shall be consulted to identify likely sources for consultation. In conducting its self-evaluation, each recipient shall:

E4.3.1.1. Evaluate the effects of its policies and practices with respect to its compliance with this Directive and the applicable DoD Component's supplementary guidelines.

E4.3.1.2. Modify any policies that do not meet such requirements.

E4.3.1.3. Take appropriate remedial steps to eliminate the discriminatory effects of any such policies or practices.

E4.3.2. For at least 3 years following the completion of a self-evaluation required under paragraph E4.3.1., above, a recipient shall maintain on file, make available for public inspection, and provide to the ASD(MRA&L), or designee, upon request:

E4.3.2.1. A list of the interested persons (last names, first names, and middle initials) consulted.

E4.3.2.2. A description of areas examined and problems identified, if any, with respect to those areas.

E4.3.2.3. A description of any modification made and remedial steps taken.

#### E4.4. DISSEMINATION OF INFORMATION

E4.4.1. Within 90 days of the effective date of this Directive or of first receiving assistance from the Department of Defense and on a continuing basis thereafter, each recipient shall notify beneficiaries and employees of their rights under this Directive and shall take appropriate steps to notify participants, beneficiaries, applicants for employment and employees, including those with impaired vision or hearing, and unions or professional organizations involved in collective bargaining or professional agreements with the recipient that the recipient does not discriminate on the basis of handicap in violation of this Directive. The notification shall state, when appropriate, that the recipient does not discriminate in admitting or providing access to or treating or employing persons in its programs and activities. Such notification may be accomplished by posting notices, publishing announcements in newspapers and magazines, placing notices in its publications, or distributing memoranda or other written communications.

E4.4.2. 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 programs and activities, it shall include in those materials or publications a statement of the policy described in paragraph E4.4.1., above. This may be accomplished by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

E4.4.3. Understandable materials developed in accordance with this section shall be provided to ensure that all beneficiaries and employees of the recipient understand the information. In addition, recipients shall disseminate appropriate and comprehensive information about formal and informal complaint and appeal procedures, including directions on how and where to file complaints and to appeal DoD Component decisions.

#### E4.5. INTIMIDATION AND INTERFERENCE

Recipients and the DoD Components shall take reasonable steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of

retaliating against, interfering with, or discouraging the filing of a complaint, furnishing of information, or assisting or participating in an investigation, compliance review, hearing, or other activity related to the administration of this Directive.

#### E4.6. STAFF RESPONSIBILITIES

All DoD Component determinations of recipient compliance with this Directive shall be subject to reviews by the ASD(MRA&L), or designee. When responsibility for approving applications for Federal financial assistance disbursed by a DoD Component is assigned to regional or area offices of the DoD Component, personnel in such offices shall be designated to perform the functions described in sections E4.8. and E4.14. through E4.22., below.

#### E4.7. ACCESS TO RECORDS AND FACILITIES

Each recipient shall permit access to its premises by DoD officials during normal business hours when such access is necessary for conducting onsite compliance reviews or complaint investigations, and shall allow such officials to photograph facilities and to inspect and copy any books, records, accounts, and other material relevant to determining the recipient's compliance with this Directive. Information so obtained shall be used only in connection with the administration of this Directive. If the recipient does not have the information requested, it shall submit to the DoD Component a written report that contains a certification that the information is not available and describes the good-faith efforts made to obtain the information.

#### E4.8. COMPLIANCE REVIEW

The DoD Components shall determine the compliance of each recipient with this Directive as follows:

E4.8.1. General. Whenever possible, the DoD Components shall perform compliance reviews in conjunction with their review and audit efforts implementing Title VI of the Civil Rights Act of 1964.

E4.8.2. Desk Audit Application Review. Before approving an application for Federal financial assistance, the DoD Component concerned shall make a written determination as to whether the recipient is in compliance with this Directive, based on a review of the assurance of compliance executed by a recipient pursuant to section E4.2., above, and other data submitted by the recipient. When a determination cannot be made from the assurance and other data submitted by the recipient, the DoD Component concerned shall require the recipient to submit additional information and shall take other steps as necessary to determine the recipient's compliance with this Directive. If this additional information demonstrates that the recipient is in compliance with this Directive, the DoD Component shall notify the recipient promptly that it is in compliance.

E4.8.3. Pre-approval Onsite Review

E4.8.3.1. When a desk audit application review conducted pursuant to paragraph E4.8.2., above, indicates that the recipient might not be in compliance with this Directive, the DoD Component concerned may conduct a pre-approval onsite review at the recipient's facilities before approving the disbursement of Federal financial assistance to the recipient. The DoD Component shall conduct such a review:

E4.8.3.1.1. When appropriate, if a desk audit application review reveals that the recipient's compliance posture is questionable because of a history of discrimination complaints, current discrimination complaints, a noncompliance determination by another Government Agency or DoD Component, or other indications of possible non-compliance; or

E4.8.3.1.2. If Federal financial assistance is requested for construction, except under extraordinary circumstances, to determine whether the location and design of the project would provide service on a nondiscriminatory basis, in conformity with section E3.3. of enclosure 3.

E4.8.3.2. Pre-approval onsite reviews shall be conducted under DoD Component supplementary guidelines and in accordance with the provisions of paragraph E4.8.4., below, concerning post-approval reviews.

E4.8.4. Post-approval Reviews. The DoD Components shall:

E4.8.4.1. Establish and maintain effective programs of post-approval reviews.

E4.8.4.2. Conduct such reviews of each recipient, the frequency and the nature of which shall be prescribed in the DoD Component supplementary guidelines implementing this Directive.

E4.8.4.3. Require recipients periodically to submit compliance reports to them.

E4.8.4.4. Record the results of the reviews, including findings of fact and recommendations.

E4.8.5. A DoD Component shall complete a review within 180 calendar days of initiating it unless an extension of time is granted by the ASD(MRA&L), or designee, for good cause shown, and shall either:

E4.8.5.1. Find the recipient to be in compliance and notify the recipient of that finding; or

E4.8.5.2. Notify the recipient and the ASD(MRA&L), or designee, of a finding of probable noncompliance, pursuant to section E4.15., below.



#### E4.9. FILING OF COMPLAINTS AGAINST RECIPIENTS

E4.9.1. The DoD Components shall establish and publish in their supplementary guidelines procedures for the prompt processing and disposition of complaints against recipients, consistent with this section.

E4.9.2. A DoD Component shall consider all complaints that:

E4.9.2.1. Are filed with it within 180 days of the alleged discrimination or within a longer period of time if an extension is granted for good cause by the DoD Component with the approval of the ASD(MRA&L), or designee.

E4.9.2.2. Include the name, address, and telephone number, if any, of the complainant; the name and address of the recipient committing the alleged discrimination; a description of the acts or omissions considered to be discriminatory; and other pertinent information.

E4.9.2.3. Are signed by the complainant or the complainant's authorized representative (legal counsel or a person with power of attorney granted by the complainant).

E4.9.3. The DoD Components shall transmit a copy of each complaint filed with them to the ASD(MRA&L), or designee, within 10-calendar days after its receipt.

E4.9.4. If the information in a complaint is incomplete, the DoD Component shall request the complainant to provide the additional information required. If the DoD Component does not receive this requested information within 30-calendar days of the date of the request, the case may be closed and the complainant so notified in writing.

E4.9.5. If a complaint concerning a program or activity is filed with a DoD Component that does not have jurisdiction over it, the DoD Component shall refer the complaint to the ASD(MRA&L), or designee, and advise the complainant in writing of such referral. The ASD(MRA&L), or designee, then shall refer the complaint to the appropriate DoD Component and so notify the complainant in writing.

#### E4.10. INVESTIGATION BY THE DoD COMPONENTS

E4.10.1. The DoD Components shall investigate complaints that involve recipients and that meet the standards described in section E4.9., above, unless good cause for not investigating is stated in a written notification of the disposition of the complaint provided to the complainant.

E4.10.2. If an investigation of a complaint is conducted, the DoD Component concerned shall maintain a case record that contains:

E4.10.2.1. The name (last name, first, and middle initial), address (street address, city, State, and zip code), and telephone number of each person interviewed.

E4.10.2.2. Copies, transcripts, or summaries of pertinent documents.

E4.10.2.3. A reference to at least one program or activity conducted by the recipient and receiving Federal financial assistance disbursed by a DoD Component, and a description of the amount and nature of the assistance.

E4.10.2.4. A narrative report of the results of the investigation that contains references to relevant exhibits and other evidence that relates to the alleged violations.

#### E4.11. INVESTIGATIONS BY RECIPIENTS

E4.11.1. A DoD Component may require or permit recipients to investigate complaints alleging violation of this Directive. In such cases, the DoD Component shall:

E4.11.1.1. Ensure that the recipient investigates the complaints in accordance with the standards, procedures, and requirements prescribed in section E4.10., above.

E4.11.1.2. Require the recipient to submit a written report of each complaint and investigation to the DoD Component.

E4.11.1.3. Retain a review responsibility over the investigation and disposition of each complaint.

E4.11.1.4. Ensure that each complaint investigation is completed within 180-calendar days of the receipt of the complaint by the proper DoD Component, unless an extension of time is granted for good cause by the ASD(MRA&L), or designee.

E4.11.1.5. Require the recipient to maintain a log of all complaints filed against it, as described in paragraph 7.1. of this Directive.

E4.11.2. DoD Components that require or permit complaint investigations to be conducted by recipients shall review recipient complaint investigations pursuant to this section and section E4.12., below.

#### E4.12. RESULTS OF INVESTIGATIONS

E4.12.1. Within 180 days of the receipt of a complaint, the DoD Component, recipient, or the ASD(MRA&L), or designee, shall give written notification:

E4.12.1.1. Of the disposition of the complaint to the complainant and, as the case may be, to the recipient or the DoD Component.

E4.12.1.2. To the complainant that within 30-calendar days of receipt of the written notification, the complainant may request that the ASD(MRA&L), or designee, review the findings in the notification pursuant to section E4.13., below.

E4.12.2. If the complaint investigation results in a determination by the DoD Component that a recipient is not complying with this Directive, the DoD Component shall proceed as prescribed in sections E4.14. through E4.22., below. If the DoD Component determines that the recipient is in compliance, the DoD Component shall submit the complete case file to the ASD(MRA&L), or designee, within 15-calendar days after the notification of the disposition of the investigation to the complainant.

#### E4.13. REVIEWING COMPLETED INVESTIGATIONS

E4.13.1. The ASD(MRA&L), or designee, may review all completed investigations.

E4.13.2. The ASD(MRA&L), or designee, shall review the results of any investigation of a complaint if the complainant requests such a review pursuant to subparagraph E4.12.1.2., above.

E4.13.3. After reviewing the results of an investigation, the ASD(MRA&L), or designee, may:

E4.13.3.1. Find that no further investigation is necessary and approve the results of the investigation;

E4.13.3.2. Request further investigation by the DoD Component; or

E4.13.3.3. Require the DoD Component to take appropriate corrective action.

#### E4.14. EFFECTING COMPLIANCE

E4.14.1. When a compliance review or complaint investigation indicates that a recipient has violated this Directive, the applicable DoD Component's supplementary guidelines, or the assurances executed pursuant to section E4.2., above, the responsible DoD Component or the ASD(MRA&L), or designee, shall attempt to effect compliance in accordance with sections E4.15. and E4.16., below. The inability of a DoD Component to comply with any time frame prescribed by this Directive does not relieve a recipient of the responsibility for compliance with this Directive.

E4.14.2. The DoD Component may require, when necessary to overcome the effects of discrimination in violation of this Directive, a recipient to take remedial action:

E4.14.2.1. With respect to handicapped persons who are no longer participants in the recipient's program or activity, but who were participants in the program or activity when such discrimination occurred.

E4.14.2.2. With respect to handicapped persons who would have been participants in the recipient's program or activity had the discrimination not occurred.

E4.14.2.3. With respect to handicapped persons presently in the recipient's program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

#### E4.15. WRITTEN NOTICE

After evaluating the investigative report, the DoD Component shall issue to the recipient and, pursuant to paragraph E4.14.2., above, to the ASD(MRA&L), or designee, a written notice that:

E4.15.1. Describes the apparent violation and the corrective actions necessary to achieve compliance.

E4.15.2. Extends an offer to meet informally with the recipient.

E4.15.3. Informs the recipient that failure to respond to the notice within 15-calendar days of its receipt shall result in the initiation of enforcement procedures described in sections E4.18. through E4.22., below.

#### E4.16. ATTEMPTING TO ACHIEVE VOLUNTARY COMPLIANCE BY RECIPIENTS

E4.16.1. If a DoD Component issues a notice pursuant to section E4.15., above, the DoD Component shall attempt to meet with the recipient and shall attempt to persuade it to take the steps necessary to achieve compliance with this Directive.

E4.16.2. If a recipient agrees to take remedial steps to achieve compliance, the DoD Component shall require that the agreement be in writing and:

E4.16.2.1. Be signed by the Head of the DoD Component concerned, or designee, and by the principal official of the recipient.

E4.16.2.2. Specify the action necessary to achieve compliance.

E4.16.2.3. Be made available to the public upon request.

E4.16.2.4. Be subject to the approval of the ASD(MRA&L), or designee.

E4.16.3. If satisfactory adjustment or a written agreement has not been achieved within 60-calendar days of the recipient's receipt of the notice issued pursuant to section E4.15., above, the DoD Component shall notify the ASD(MRA&L), or designee, and state the reasons therefore.

E4.16.4. The DoD Component shall initiate the enforcement actions prescribed in sections E4.18. through E4.22., below, if:

E4.16.4.1. The recipient does not respond to a notice pursuant to section E4.15., above, within 15-calendar days of its receipt and satisfactory adjustments are not made within 45-calendar days of the date of the recipient's response; or

E4.16.4.2. The DoD Component or the ASD(MRA&L) determines at any time within 90 days after the recipient receives a notice pursuant to section E4.15., above, that, despite reasonable efforts, it is not likely that the recipient will comply promptly and voluntarily.

E4.16.5. If, pursuant to paragraph E4.16.4., above, the DoD Component initiates enforcement action, it also shall continue its attempts to persuade the recipient to comply voluntarily.

E4.17. IMPOSING SANCTIONS

E4.17.1. Sanctions Available. If a DoD Component has taken action pursuant to sections E4.15. and E4.16., above, the DoD Component may, by order, subject to paragraphs E4.17.2. and E4.17.3., below:

E4.17.1.1. Terminate, suspend, or refuse to grant or continue assistance to such recipient.

E4.17.1.2. Refer the case to the Department of Justice for the initiation of enforcement proceedings at a Federal, State, or local level.

E4.17.1.3. Pursue any remedies under State or local law.

E4.17.1.4. Impose other sanctions upon consultation with the ASD(MRA&L), or designee.

E4.17.2. Terminating, Suspending, or Refusing to Grant or Continue Assistance. A DoD Component may not terminate or refuse to grant or continue Federal financial assistance unless:

E4.17.2.1. Such action has been approved by the Secretary of Defense.

E4.17.2.2. The DoD Component has given the recipient an opportunity for a hearing pursuant to the procedures set out in section E4.18., below, and a finding of non-compliance has resulted.

E4.17.2.3. Thirty-calendar days have elapsed since the Secretary of Defense has filed a written report describing the violation and action to be taken with the committees of the House of Representatives and Senate that have jurisdiction over the program or activity in which the violation of this Directive exists.

E4.17.2.4. Such action is limited to affect only the particular activity or program, or portion thereof, of the recipient where the violation exists.

E4.17.3. Other Sanctions. A DoD Component may not impose the sanctions set out in subparagraphs E4.17.1.3. and E4.17.1.4., above, unless:

E4.17.3.1. The DoD Component has given the recipient an opportunity for a hearing pursuant to section E4.18., below, and a finding of noncompliance has resulted.

E4.17.3.2. The action has been approved by the Secretary of Defense.

E4.17.3.3. Ten-calendar days have elapsed since the mailing of a notice informing the recipient of its continuing failure to comply with this Directive, the action necessary to achieve compliance, and the sanction to be imposed.

E4.17.3.4. During those 10-calendar days the DoD Component has made additional efforts to persuade the recipient to comply.

#### E4.18. HEARINGS FOR RECIPIENTS

E4.18.1. General. When, pursuant to subparagraph E4.17.2.2., above, an opportunity for a hearing is given to a recipient, the DoD Component involved shall follow the procedures prescribed in paragraphs E4.18.2. through E4.18.6., below.

E4.18.2. Notice. The DoD Component concerned shall notify the recipient of the opportunity for a hearing by registered or certified mail, return receipt requested, when the recipient denies a tentative finding of noncompliance with this Directive.

E4.18.2.1. The DoD Component shall ensure that the notice:

E4.18.2.1.1. Describes the proposed sanctions to be imposed.

E4.18.2.1.2. Cites the section of this Directive under which the proposed action is to be taken.

E4.18.2.1.3. States the name and office of the DoD Component official who is responsible for conducting the hearing (hereafter referred to as the "responsible DoD official").

E4.18.2.1.4. Outlines the issues to be decided at the hearing.

E4.18.2.1.5. Advises the recipient either of a date, not less than 20-calendar days after the date that the notice is received, by which the recipient may request that the matter be scheduled for a hearing, or of a reasonable time and place of a hearing that is subject to change for good cause shown.

E4.18.2.2. When a time and place for a hearing are set, the DoD Component shall give the recipient and the complainant, if any, reasonable notice of such time and place.

E4.18.3. Waiver of a Hearing. A recipient may waive a hearing and submit to the responsible DoD official, in writing, information or arguments on or before the date stated pursuant to subparagraph E4.18.2.1.5., above.

E4.18.3.1. A recipient waives its right to a hearing if it fails to request a hearing on or before a date stated pursuant to subparagraph E4.18.2.1.5., above, or fails to appear at a hearing that has been scheduled pursuant to that subparagraph.

E4.18.3.2. If a recipient waives its right to a hearing under this section, the responsible DoD official shall decide the issues and render a final decision that is based on the information available and that conforms to the requirements of paragraph E4.19.4., below.

E4.18.4. Hearing Examiner. Hearings shall be conducted by the responsible DoD official or by a hearing examiner designated by the official, provided that the hearing examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who is admitted to practice law before a Federal court or the highest court of a State, territory, commonwealth, or the District of Columbia.

E4.18.5. Right to Counsel. In all proceedings under this section, the recipient and the DoD Component may be represented by counsel. The representation of the recipient will not be at U.S. Government expense.

E4.18.6. Procedures. Hearings authorized under this section shall be subject to the following:

E4.18.6.1. Hearings shall be open to the public.

E4.18.6.2. Formal rules of evidence will not apply. The DoD Component concerned and the recipient shall be entitled to introduce all relevant evidence on the issues stated in the notice of hearing issued pursuant to paragraph E4.18.2., above, and those designated by the responsible DoD official or the hearing examiner at the outset of or during the hearing. The responsible DoD official or hearing examiner, however, may exclude irrelevant, immaterial, or repetitious evidence.

E4.18.6.3. All witnesses may be examined or cross-examined, as the case may be, by each party.

E4.18.6.4. All parties shall have the opportunity to examine all evidence differed or admitted for the record.

E4.18.6.5. A transcript of the proceedings shall be maintained in either electronic or typewritten form and made available to all parties.



E4.19. DECISIONS

E4.19.1. Initial or Proposed Decisions by a Hearing Examiner. If a hearing is conducted by a hearing examiner who is designated by the responsible DoD official pursuant to paragraph E4.18.4., above, the hearing examiner shall either:

E4.19.1.1. Make an initial decision, if so authorized, that conforms to the requirements of paragraph E4.19.4., below; or

E4.19.1.2. Certify the entire record and submit to the responsible DoD official recommended findings and a proposed decision.

E4.19.2. Review of Initial Decisions. Initial decisions made by a hearing examiner pursuant to subparagraph E4.19.1.1., above, shall be reviewed as follows:

E4.19.2.1. A recipient may file exceptions to an initial decision within 30-calendar days of receiving notice of such initial decision. Reasons shall be stated for each exception.

E4.19.2.2. If the recipient does not file exceptions pursuant to subparagraph E4.19.2.1., above, the responsible DoD official may notify the recipient within 45-calendar days of the initial decision that the responsible DoD official will review the decision.

E4.19.2.3. If exceptions are filed pursuant to subparagraph E4.19.2.1., above, or a notice of review is issued pursuant to subparagraph E4.19.2.2., above, the responsible DoD official shall review the initial decision and, after giving the recipient reasonable opportunity to file a brief or other written statement of its contentions, issue a final decision that addresses each finding and conclusion in the initial decision and each exception, if any.

E4.19.2.4. If the exceptions described in subparagraph E4.19.2.1., above, are not filed and the responsible DoD official does not issue the notice of review described in subparagraph E4.19.2.2., above, the initial decision of the hearing examiner shall constitute the final decision of the responsible DoD official.

E4.19.3. Decisions by the Responsible DoD Official Who Conducts a Hearing or Receives a Certified Record. If a hearing examiner who is designated by the responsible DoD official certifies the entire record and submits recommended findings and a proposed decision to the responsible DoD official pursuant to subparagraph E4.19.1.2., above, or if the responsible DoD official conducts the hearing, after giving the recipient a reasonable opportunity to file a brief or other written statement of its contentions, the responsible DoD official shall render a final decision that conforms to paragraph E4.19.4., below.

E4.19.4. Contents of Decisions. Each decision of a hearing examiner or responsible DoD official shall state all findings and conclusions and identify each violation of this Directive. The final decision may contain an order pursuant to section E4.17., above, providing for the

suspension or termination of or refusal to grant or continue all or some of the Federal financial assistance under the program or activity involved and contain terms, conditions, and other provisions that are consistent with and intended to achieve compliance with this Directive.

E4.19.5. Notice of Decisions and Certifications. The responsible DoD official shall provide a copy of any certified record of a hearing and any initial or final decision to the recipient and the complainant, if any.

E4.19.6. Review by the Secretary of Defense. The responsible DoD official shall transmit promptly any final decision that orders a suspension, termination, or denial of Federal financial assistance through the ASD(MRA&L) to the Secretary of Defense. The Secretary may:

E4.19.6.1. Approve the decision;

E4.19.6.2. Vacate the decision; or

E4.19.6.3. Remit or mitigate any sanction imposed.

#### E4.20. RESTORING ELIGIBILITY FOR FINANCIAL ASSISTANCE

E4.20.1. A recipient that is affected adversely by a final decision issued under section E4.19., above, may at any time request the responsible DoD official to restore fully its eligibility to receive Federal financial assistance.

E4.20.2. If the responsible DoD official determines that the information supplied by the recipient demonstrates that it has satisfied the terms and conditions of the order entered pursuant to section E4.19., above, and that is complying with and has provided reasonable assurance that it will continue to comply with this Directive, the responsible DoD official shall restore such eligibility immediately.

E4.20.3. If the responsible DoD official denies a request for restoration of eligibility, the recipient may submit a written request for a hearing that states why it believes the responsible DoD official erred in denying the request. Following such a written request, the recipient shall be given an expeditious hearing under rules of procedure issued by the responsible DoD official to determine whether the requirements described in paragraph E4.20.2., above, have been met. While any such proceedings are pending, the sanctions imposed by the order issued under section E4.19., above, shall remain in effect.

#### E4.21. INTERAGENCY COOPERATION AND DELEGATION

E4.21.1. When several recipients are receiving assistance for the same or similar purposes from a DoD Component and another Federal Agency, the DoD Component shall notify the ASD(MRA&L), or designee. Such notification shall be in writing and shall contain:

E4.21.1.1. A description of the programs and activities involved.

E4.21.1.2. A statement of the amount of money expended on the programs and activities in the previous and current fiscal year by the DoD Component and the Agency.

E4.21.1.3. A list of the known primary recipients.

E4.21.2. The ASD(MRA&L), or designee, shall attempt to negotiate with the Federal Agency a written delegation agreement that designates the Agency or the DoD Component as the primary Agency for purposes of ensuring compliance with Section 504 of P.L. 93-112, as amended, and this Directive, depending upon which of them administers a larger financial assistance program with the common recipients and other relevant factors. If necessary, the agreement shall establish procedures to ensure the enforcement of Section 504 of P.L. 93-112, as amended, and this Directive. The ASD(MRA&L), or designee, shall provide written notification to recipients of an agreement reached under this paragraph.

E4.21.3. When several recipients are receiving assistance for the same or similar purposes from two or more DoD Components, the DoD Components may negotiate a proposed written delegation agreement that:

E4.21.3.1. Assigns responsibility for ensuring that the recipient complies with this Directive to one of the DoD Components.

E4.21.3.2. Provides for the notification to recipients and the responsible program officials of the DoD Components involved of the assignment of enforcement responsibility.

E4.21.4. No delegation agreement reached in accordance with paragraph E4.21.3., above, shall be effective until it is approved by the ASD(MRA&L), or designee.

E4.21.5. When possible, existing delegation agreements relating to Title VI of the Civil Rights Act of 1964 shall be amended to provide for the enforcement of this Directive.

E4.21.6. Any DoD Component conducting a compliance review or investigating a complaint of an alleged violation by a recipient shall notify any other affected Agency or DoD Component through the ASD(MRA&L), or designee, upon discovery that the Agency or DoD Component has jurisdiction over the program or activity in question and shall subsequently inform it of the finding made. Such reviews or investigations may be conducted on a joint basis.

E4.21.7. When a compliance review or complaint investigation under this Directive reveals a possible violation of Executive Order 11246, Titles VI or VII of the Civil Rights Act of 1964, or any other Federal law, the DoD Component shall notify the appropriate Agency, through the ASD(MRA&L), or designee.

E4.22. COORDINATION WITH SECTIONS 502 AND 503

E4.22.1. DoD Components shall use DoD 4270.1-M and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103, in developing requirements for the accessibility of facilities. If DoD Components encounter issues with respect to Section 502 of the Rehabilitation Act of 1973, as amended, that are not covered by these publications, the ASD(MRA&L), or designee, may be consulted. If necessary, the ASD(MRA&L), or designee, shall consult with the Architectural and Transportation Barriers Compliance Board in resolving such problems.

E4.22.2. The DoD Components may advise recipients to consult directly with the Architectural and Transportation Barriers Compliance Board in developing accessibility criteria.

E4.22.3. The DoD Components shall coordinate enforcement actions relating to the accessibility of facilities with the Architectural and Transportation Barriers Compliance Board and shall notify the ASD(MRA&L), or designee, of such coordination.

E4.22.4. If a recipient is also a Federal contractor subject to Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations thereunder (41 CFR 60-741) and if a DoD Component has reason to believe that the recipient is in violation thereof, the DoD Component shall coordinate enforcement actions with the Department of Labor, Office of Federal Contract Compliance Programs. The DoD Component shall notify the ASD(MRA&L), or designee, of such coordination.

E5. ENCLOSURE 5

ENSURING COMPLIANCE WITH THIS DIRECTIVE IN PROGRAMS AND ACTIVITIES  
CONDUCTED BY THE DEPARTMENT OF DEFENSE

E5.1. SUPPLEMENTARY GUIDELINES

E5.1.1. Whenever necessary, the ASD(MRA&L), or designee, shall publish supplementary guidelines for programs and activities that are conducted by the DoD Components and that are subject to this Directive. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to this paragraph to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review.

E5.1.2. The Heads of the DoD Components, or designees, shall be responsible for keeping the supplementary guidelines described in this section current and accurate. When a DoD Component head determines that a program or activity should be added to or deleted from the guidelines, that official shall notify the ASD(MRA&L), or designee, in writing.

E5.2. STAFF RESPONSIBILITIES

The ASD(MRA&L), or designee, shall determine DoD Component compliance with this Directive as it pertains to programs and activities that are conducted by the DoD Components and are subject to this Directive.

E5.3. FILING OF COMPLAINTS

E5.3.1. Complaints of discrimination in a program or activity conducted by a DoD Component may be filed directly with the ASD(MRA&L), or designee.

E5.3.2. The DoD Components shall develop procedures, such as posters or other devices, to notify participants in the programs and activities listed in paragraph E1.1.3. of enclosure 1 of their right to be free of discrimination because of handicap in those programs and activities and of their right to file complaints of discrimination with the ASD(MRA&L), or designee.

#### E5.4. INVESTIGATIONS OF COMPLAINTS

E5.4.1. The ASD(MRA&L), or designee, shall investigate complaints of discrimination in programs and activities that are conducted by the DoD Components and are subject to this Directive.

E5.4.2. A case record of each investigation shall be compiled in accordance with paragraph E4.10.2. of enclosure 4.

#### E5.5. RESULTS OF INVESTIGATIONS

If the complaint investigation results in a determination by the ASD(MRA&L), or designee, that a DoD Component's program or activity is not complying with enclosure 4 of this Directive, the ASD(MRA&L), or designee, shall proceed as prescribed in sections E4.14. through E4.22. of enclosure 4. Hearings prescribed under section E4.18. of enclosure 4 of this Directive, however, need not be conducted. If the ASD(MRA&L), or designee, determines that the DoD Component is in compliance, the ASD(MRA&L), or designee, shall notify the complainant within 15-calendar days of such determination.

#### E5.6. WRITTEN NOTICE

If an investigative report concludes that there has been a violation of this Directive in a program or activity conducted by a DoD Component and the ASD(MRA&L), or designee, accepts that conclusion, that official shall issue to the Head of the DoD Component a written notice describing the apparent violation, the corrective actions necessary to achieve compliance, and a suspense date for completion of the corrective actions.

#### E5.7. EFFECTING COMPLIANCE

When necessary to overcome the effects of discrimination in violation of this Directive, the ASD(MRA&L), or designee, may require a DoD Component to take remedial action similar to that in paragraph E4.14.2. of enclosure 4.

#### E5.8. EMPLOYMENT

DoD Components that conduct Federal programs or activities covered by this Directive that involve employment of civilian persons to conduct such a program or activity must comply with Section 501 of the Rehabilitation Act of 1973, as amended, and the implementing rules and regulations of the EEOC.