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**Guidance Paper  
Guidelines for Compliance with  
the Americans with Disabilities Act of 1990, as amended,  
Section 504 of the Rehabilitation Act of 1973, as amended,  
and  
Section 188 of the Workforce Investment Act of 1998**

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**OF INTEREST TO:**

Workforce Florida, Inc. (WFI), Regional Workforce Boards (RWBs), One-Stop Operators and Service Providers

**SUBJECT:**

Guidelines for Compliance with the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and Section 188 of the Workforce Investment Act of 1998

**PURPOSE:**

To provide guidance to the regional workforce boards (RWBs), one-stop operators and service providers regarding the requirements for nondiscrimination on the basis of disability.

**BACKGROUND AND UNDERLYING FEDERAL POLICY:**

The Office for Civil Rights (OCR) is responsible for ensuring that information regarding the requirements for compliance with the applicable disability laws and regulations is adequately communicated to certain recipients of federal financial assistance under the Workforce Investment Act of 1998 (WIA). The guidance provided herein is designed to assist the workforce boards, their one-stop operators and service providers in ensuring nondiscrimination in service delivery and employment for individuals with disabilities.

## **PROCEDURES:**

The following checklists related to compliance with these guidelines are to be completed where applicable, updated as appropriate, and kept on file locally until no longer applicable:

- [Facility-Accessibility Checklist](#)
- [Information-Technology \(IT\) Equipment-Accessibility Checklist](#)
- [Software-Accessibility Checklist](#)
- [Web-Page Accessibility Checklist](#)
- [WIA Disability Checklist](#)<sup>1</sup>

**For current programs and facilities (as of April 26, 2004):** The checklists were to be completed no later than June 30, 2004.<sup>2</sup>

**For new programs and providers:** The checklists are to be completed as part of the one-stop operator or service-provider selection process.

**For new facilities (leased or owned):** The facility-accessibility checklist is to be completed prior to final leasing agreement or facility acceptance by the regional workforce board.

The completed checklists are to be made available to federal, state and regional-board program-monitoring staff upon request.

## **AUTHORITY:**

1. U.S. Department of Labor regulations 29 CFR part 37: *Implementation of the Nondiscrimination and Equal Opportunity Provisions of the WIA of 1998*; 29 CFR part 32: *Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance*; and 29 CFR part 1630: *Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*.
2. The *Florida Americans with Disabilities Accessibility Implementation Act*, as amended. (F.S. 553.501-553.513; F.S. 316.1955)

**SUPERSESSON:** AWI FG 04-042, dated April 26, 2004: Guidelines for Compliance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

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<sup>1</sup> The WIA Disability Checklist is based on the *WIA Section 188 Disability Checklist*, produced by the Civil Rights Center, U.S. Department of Labor, in July 2003.

<sup>2</sup> Per the guidance issued on April 26, 2004 (AWI FG 04-042).

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and  
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Table of Contents

Section	Topic	Page
	Introduction .....	iii
I.	Designation of a responsible employee .....	1
	Agency for Workforce Innovation	
	Regional workforce boards	
	One-stop operators	
	Service providers	
II.	Collection and recording of demographic information: general information .....	2
III.	Asking about disabilities or medical conditions .....	3
	A. In the context of providing services in the One-Stop system	
	B. In the context of employment-related activities in the One-Stop system	
IV.	Using information about a customer’s disability .....	4
	A. In the context of providing services	
	B. In the context of employment-related activities	
V.	Disclosing information about a customer’s disability .....	5
VI.	Access to services, activities and facilities .....	5
	A. Programmatic accessibility	
	1. Integrated programs and services .....	5
	2. Auxiliary aids and services .....	6
	3. Communication with individuals with disabilities .....	7
	a) General	
	b) Telecommunications	
	Communication when TTY/TDD equipment is available	
	Communication when TTY/TDD equipment is not available	
	Providing telephone contact information, in a nutshell	
	c) The Florida Relay Service	
	4. Accommodation for meetings and training .....	8
	a) Designating a contact person	
	b) Providing information in alternate format	
	c) Accommodations for individuals with hearing impairments	
	B. Facility accessibility .....	9
	1. New construction	
	2. Alterations	
VII.	Participation by individuals with disabilities in planning and decision-making activities.	10
VIII.	Required notices .....	10
	A. Notice of protection against discrimination (on the basis of disability)	
	B. Use of “tag lines”	
	C. Recommended language	
IX.	Reasonable accommodation .....	12
X.	Pre-employment inquiries .....	14
XI.	Record keeping .....	14

Table of Contents (continued)

	Page
Appendices	
A Accessibility checklists and program-monitoring information .....	A-1
B Key terms: definitions and discussion .....	B-1
Disability .....	B-1
Exception to the definition	
Essential functions .....	B-2
Fundamental alteration .....	B-2
Has a record of such impairment .....	B-3
Is regarded as having such an impairment .....	B-3
Major life activities .....	B-4
Physical or mental impairment .....	B-4
Qualification standards .....	B-5
Qualified individual with a disability .....	B-5
With respect to employment	
With respect to services	
Exception to the definition	
Substantially limits .....	B-6
Undue hardship .....	B-6
C Reasonable accommodation and reasonable modification .....	C-1
Reasonable accommodation and undue hardship	
Reasonable modification and fundamental alteration	
D Discrimination on the basis of disability prohibited: excerpts from the federal regulations .....	D-1
With respect to employment	
With respect to programs or activities receiving federal financial assistance	

An equal opportunity employer/program.  
Auxiliary aids and services are available upon request to individuals with disabilities.  
All voice telephone numbers in this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.

## Introduction

This guidance paper is intended to serve as a reference for state-, regional- and local-level staff regarding requirements for program and facility access for individuals with disabilities in programs and services provided under the Workforce Investment Act of 1998.<sup>3</sup> This guidance is designed to comply with the requirements of:

- U.S. Department of Labor regulations:
  - 29 CFR part 37\*: *Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998*;<sup>4</sup>
  - 29 CFR part 32: *Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance*;<sup>5</sup> and
  - 29 CFR part 1630: *Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*.
- The *Florida Americans with Disabilities Accessibility Implementation Act*, as amended. (F.S. 553.501-553.513; F.S. 316.1955)

\* *CFR* is the abbreviation for Code of Federal Regulations.

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<sup>3</sup> Section 188 of the Workforce Investment Act of 1998 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, status as a citizen or individual lawfully admitted into the U.S or participation in a WIA Title I - financially assisted program or activity. Section 188 protects individuals from being excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any Title I-funded program or activity.

<sup>4</sup> Compliance with 29 CFR part 37 will satisfy any obligation of the recipient to comply with 29 CFR part 31, the Department of Labor's regulations 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, the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504).

<sup>5</sup> 29 CFR part 32, Subparts B and C and Appendix A, the Department's regulations implementing the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, are incorporated into 29 CFR part 37 by reference. Recipients must also comply with the requirements set forth in those regulatory sections.

## I. Designation of a responsible employee

(29 CFR 32.7)

*A recipient<sup>6</sup>, other than a small recipient<sup>7</sup>, shall designate at least one person to coordinate its efforts to comply with this [regulation].*

*Application notes:*

- *Agency for Workforce Innovation:* The Agency's equal opportunity officer serves as the Agency's disabilities-services coordinator. The role of the coordinator includes, but is not limited to, planning and coordinating ADA/Section 504/WIA nondiscrimination compliance efforts for the Agency and the regional workforce boards and investigating or coordinating the investigation of any allegations of discrimination under the applicable regulations.
- *Regional workforce boards:* Responsibility for disability-program coordination within the region may be assigned to the individual who is designated as the equal opportunity officer for the region or to another staff member. The responsibility should be included in the individual's job description. Responsibilities include adaptation and dissemination of these guidelines for application within the region.
- *One-stop operators:* The State's *Strategic Five Year Workforce Investment Plan* for Title I of the WIA, approved March 3, 2000, by the U. S. Department of Labor, Employment Training Administration, provided that at least one person will be named in each office as the specialist to assist individuals with disabilities.<sup>8</sup> The "disability specialist" should maintain a working relationship with the RWB EO officer on ADA/Section 504/WIA nondiscrimination matters and issues to assure that communication, program and facility accessibility, and other disability-program requirements are met. The name of the disability specialist is to be made known to the public and posted conspicuously in each facility.<sup>9</sup>
- *Service providers:* The name of the designated disabilities-services coordinator is to be made known to the public, and posted conspicuously in each facility.

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<sup>6</sup> For purposes of this guidance, the Agency for Workforce Innovation, the regional workforce boards, one-stop operators and service providers are the "recipients." This is in reference to receiving federal financial assistance.

<sup>7</sup> Small recipient: A recipient (of federal financial assistance) who (a) serves a total of fewer than 15 beneficiaries during the entire grant year and (b) employs fewer than 15 employees on any given day during the grant year. (29 CFR 37.4)

<sup>8</sup> Section IV-B-8. The named individual should work in that office.

<sup>9</sup> Regions having a Disability Program Navigator may prefer to designate the Navigator as the region-level point of contact on ADA/Section 504/WIA nondiscrimination matters and issues.

## II. Collection and recording of demographic information: general information

*Federal regulations applicable to our programs require the collection, recording, and maintenance of demographic information about an individual's race/ethnicity, sex, age and, where known, disability status for:*

- 1) applicants for programs and services, registrants, eligible applicants/registrants, participants and terminees; and,*
- 2) employees and applicants for employment.<sup>10</sup>*

**Although we are required to collect and record this information, provision of this information by the individual is voluntary.**

**What you *must* tell the individual before asking for the information:**

- providing the information is voluntary, *and*
- the information will be kept confidential as provided by law, *and*
- refusal to provide the information will not subject the applicant, employee or participant to any adverse treatment, *and*
- the information will be used only in accordance with the law.

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<sup>10</sup> 29 CFR part 37, the U.S. Department of Labor's nondiscrimination regulations implementing section 188 of the Workforce Investment Act (WIA), states, in part:

Each recipient\* [of federal financial assistance] must collect such data and maintain such records. in accordance with procedures prescribed by the Director [of the Civil Rights Center (CRC)]. as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA or this part. The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIA and this part. [37.37(b)(1)]

Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment. Each recipient must record the race/ethnicity, sex, age and, where known, disability status of every applicant, registrant, eligible applicant/registrator, participant, terminee, applicant for employment, and employee. Such information must be stored in a manner that ensures confidentiality and must be used only for the purposes of: record keeping and reporting; determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law. [37.37(b)(2)]

Other regulations of the U. S. Department of Labor as well as regulations of the U.S. Departments of Education and Health and Human Services applicable to our programs, and regulations of the U.S. Equal Employment Opportunity Commission also require the collection and maintenance of demographic information.

\* *Recipient* means any entity to which financial assistance under WIA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. (29 CFR 37.4)

### III. Asking about disabilities or medical conditions

#### A. In the context of providing services in the One-Stop system

Where *services-related* standards apply, you have broad latitude in asking questions related to disability or medical conditions. In the *services* context, disability-related inquiries are *legal -- and recommended --* when:

- *screening* customers who have particular types of employment problems for signs of hidden disabilities;
- determining eligibility for *targeted programs*; and,
- determining whether -- and which -- *reasonable accommodations* would help customers succeed in employment.

Examples of activities to which *service-related* standards apply:

- assessment of skills, prior work experience and employability;
- creation of a service strategy; and,
- provision of supportive programs such as child care, transportation, housing assistance, and benefits counseling.

It's a good practice to tell the customer *why* you are asking medical or disability-related questions; that way, the customer has the information s/he needs in order to decide whether to disclose her/his medical or disability-related information.

#### B. In the context of employment-related activities in the One-Stop system

Some practices that are permitted by regulation in the context of providing *services* are not permitted in the context of *employment-related activities*. Where *employment-related* standards apply, the questions you may ask are much more limited.

Employment-related standards apply to:

- employment-related training<sup>11</sup> and
- job referral, job placement, and related activities of One-Stop agencies/programs/activities that are acting as "employment agencies."<sup>12</sup>

In *employment-related* contexts, disability-related inquiries are *illegal*, except in certain circumstances (*for example*, placement in certain federal programs as veterans' representatives).

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<sup>11</sup> *Employment-related training* is training that allows or enables an individual to obtain employment. (29 CFR 37.4). Examples include occupational skills training, on-the-job training and job-readiness training.

<sup>12</sup> A One-Stop agency/program is acting as an "employment agency" when it regularly has as a principal function procuring employees for at least one employer or procuring work opportunities for customers.



Examples of when you *may not* ask disability-related questions:

- When you are a One-Stop staff person deciding whether to refer a customer to a particular job.
- When you are an employer or training instructor, and a customer is not performing well.

You *may* ask questions:

- about whether the customer can perform the specific job functions or has the necessary experience/education/licenses;
- about non-disability-related impairments (*for example*, "How did you break your leg?");
- about any current illegal use of drugs (alcohol-related questions are limited, however); and,
- if the person has disclosed a disability or has an obvious disability, about whether the person will need accommodations for the application process.

See Section X for additional guidance regarding pre-employment inquiries in the selection and hiring process.

#### **IV. Using information about a customer's disability**

##### **A. In the context of providing services**

You *may* use it to determine:

- reasonable accommodations or modifications;
- appropriate auxiliary aids and services; and,
- appropriate assistive technology.

##### **B. In the context of employment-related activities**

You *may* talk with a customer about:

- whether s/he will need accommodations for the application process or
- whether s/he is interested in special employment programs for persons with her/his disability.

You *may not* use information about a customer's disability as the *sole basis* for deciding whether:

- to refer the customer to a particular job or
- to suggest a particular career path to the customer.

Based *solely* on a person's disability, referring him or her to a particular job or employer, or directing him or her to a particular profession or career path is illegal. Deciding on an *individualized basis*, with input from the customer, is appropriate - and required by law.

## V. Disclosing information about a customer's disability

Confidentiality is paramount!

When and to whom disclosure may be made is extremely limited in either context: services or employment.

- *To supervisors, managers, and trainers* (who are part of internal operation, or at a service or training provider) – *but* only to explain limitations or reasonable accommodations for a particular individual.
- *To first aid and safety personnel* - *but* only if the condition may require emergency treatment (including evacuation).
- *To others* - only on a "need-to-know" (that is, limited) basis.

You *must not* disclose medical or disability-related information to an employer to whom you are referring a customer or who is considering hiring a customer *unless*:

- the job-seeker customer has made an *independent decision* to disclose to the employer; *and*
- the job-seeker has specifically *asked* the One-Stop Center or its staff to make the disclosure on his or her behalf; *and*
- the disclosure request *has been initiated by the job-seeker*, not by the One-Stop Center staff.

## VI. Access to services, activities and facilities

(29 CFR 32.27(a); 29 CFR 32.28; and 29 CFR 37.9(d) through 37.9(f))

### A. Programmatic accessibility

*A recipient shall operate each program or activity to which these regulations apply so that when each part is viewed in its entirety it is readily accessible to qualified individuals with a disability.*

1. Integrated programs and services  
(29 CFR 32.4(b)(2),(3); 29 CFR 37.7(a)(4), 37.7(c), 37.7(d))

Aid, benefits, services or training, to be equally effective, are not required to produce the identical result or level of achievement for individuals with a disability as for others, but must afford individuals with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

*Application note:*

Eliminate all blanket rules or screening criteria that require individuals with disabilities to participate in special programs. This does not mean that separate programs are not permitted, where necessary. However, an individual who wishes to participate in a

program not designed specifically for individuals with disabilities cannot be denied access based solely on his or her disability.

2. Auxiliary aids and services  
(29 CFR 37.9)

*A recipient must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIA Title I—financially assisted program or activity. In determining what type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability.*

*Application notes:*

Any request for an aid or service must be honored *within a reasonable time, as determined by the recipient providing the service*. Not all aids and services may be available at every site but may be made available *within a reasonable time*. For example, if someone who is sight impaired wants to review complaint procedures, available in Braille but in limited copy and not at that location, arranging for the individual to return the following day, when the procedures could be made available, would be permissible.<sup>13</sup>

Auxiliary aids may include brailled and taped written materials, interpreters or other effective methods of making orally delivered information available to persons with hearing impairments, readers for persons with visual impairments, equipment adapted for use by persons with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

If not available or readily achievable, the recipient may offer an alternative form of accommodation. For example, reading information on a computer screen to an individual who is visually impaired when screen-reading software is not available.<sup>14</sup>

Recipients should identify local resources to assist in providing services to individuals with disabilities. State agencies, such as the Division of Vocational Rehabilitation and the Division of Blind Services, as well as community-based organizations can assist in this task. Recipients can find vendor information for interpretive services, to include sign-language interpretation, at the following web site:

[http://myflorida.com/owa\\_spurs/owa/spurs\\_www.commodities.display\\_vendors?commodity\\_class\\_str=991&commodity\\_group\\_str=500&start\\_str=51](http://myflorida.com/owa_spurs/owa/spurs_www.commodities.display_vendors?commodity_class_str=991&commodity_group_str=500&start_str=51).

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<sup>13</sup> Typically, vendor-provided interpretive services for individuals with hearing and/or speech impairments must be arranged one to three weeks in advance (because of the demand for vendor services). If the need for interpretive services is more immediate, local units within the Division of Vocational Rehabilitation or community-based organizations may be able to provide assistance or suggest other resources.

<sup>14</sup> Recipients are reminded that the accommodation because of disability, for individuals who, in addition, have limited English proficiency (LEP), should also be in keeping with LEP guidelines.

3. Communication with individuals with disabilities  
(29 CFR 37.9)

a) General

*A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.*

*Recipients must take appropriate steps to ensure that communication with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees and members of the public who are individuals with disabilities, is as effective as communication with others.*

b) Telecommunications

Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and/or employees, the recipient must use telecommunications devices for individuals with hearing impairments (TTYs), or equally effective communications systems, such as telephone relay services.

- ▶ Communication when TTY equipment is available: When TTY equipment is available, all employees who will handle incoming calls must be trained in its use.
- ▶ Communication when TTY equipment is not available: All employees should become familiar with the services provided by the Florida Relay Service. This is discussed in more detail below.

Purchase and installation of TTY equipment, in the one-stop centers at a minimum, is encouraged. This enhances ongoing communication between customers with hearing or speech impairments and one-stop center staff. It also enhances communication between the customer and the potential employer or service provider on those occasions when employer/service-provider contact is established during the customer's visit to the one-stop center.

c) The Florida Relay Service<sup>15</sup>

When TTY equipment is not available at your location and the person to be contacted (or contacting you) is hearing or speech impaired, a call may be placed through the Florida Relay Service.

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<sup>15</sup> Under the Americans with Disabilities Act, each state is required to have a relay service.

To place a call, using a commercial telephone:

- 1) Dial 711 or dial 1-800-955-8770 (voice) or 1-800-955-8771 (TTY/VCO).<sup>16</sup>
- 2) Give the relay service operator the number you wish to call.
- 3) Inform the operator if the person you are contacting does not speak English. Currently, 711 service through the Florida Relay Service is also available in Spanish, French, and Haitian Creole.

*Information regarding communications in Spanish, French or Haitian Creole can be obtained from the Florida Relay Service operators. The Florida Relay web site also has information. (See below.)*

The Relay operator will use TTY equipment to relay your spoken communication and will verbally communicate the TTY response from your contact. If your call is interstate, the operator will contact the relay service in the other state.

*For more information about the Florida Relay Service and its operation, go to [www.ftri.org](http://www.ftri.org). Information about TTY equipment and service is also available through this web site.*

**Providing telephone contact information, in a nutshell:** *If a commercial telephone number is included on a poster or flyer or in a publication or announcement to the public at large (for example: "For more information or to register, call 555-1212."), the TTY number or the number for the Florida Relay Service must be included also.*

#### 4. Accommodation for meetings and training

##### a) Designating a contact person

A local contact person and contact information should be included on all announcements and notices about meetings, training, hearings, etc. Suggested language:

*Individuals needing special accommodation to participate in (the meeting/hearing/training, etc.) should contact (name of the designated employee) no later than (specify the date, which should be not less than five working days prior to the meeting, training, etc.) at the following address and telephone number: (Once again, include the TTY/TDD or Florida Relay number as well as the commercial telephone number.)*

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<sup>16</sup> Some areas of the state may not recognize "711" as an operational number; therefore, including the "800" numbers is recommended.

"VCO" stands for Voice Carry-Over. It is a feature that benefits the individual who has good verbal skills but poor hearing. This unique phone allows the hearing-impaired individual to speak on the phone and read what the other party is saying (on the phone) as text. The relay operator listens to the other party and types text messages, but does not interfere with what the hearing-impaired individual is saying.

b) Providing information in alternate format

Recipients should be prepared to provide information in alternate formats upon request, especially written information such as agendas, documents and publications. Alternate formats include: use of large-print documents, audio tape, Braille, ASCII (text) on computer diskette, Internet sites and e-mail. Video presentations should include on-screen captioning.

c) Accommodations for individuals with hearing impairments

A qualified sign-language interpreter may be required for oral presentations when an individual who is attending the meeting or training is hearing impaired. Technology now allows for oral presentations to be transcribed and projected onto a monitor or screen with minimal time delay.<sup>17</sup>

*Application note:*

When an auxiliary aid or service is required, the training provider must provide an opportunity for the individual to request the auxiliary aids and services of his or her choice and must honor the choice expressed by the individual, unless it can be demonstrated that the requested accommodation is not readily available while another equally effective means of accommodation or communication is available, or that use of the requested means would result in a fundamental alteration in the service, program, or activity or in undue financial and administrative burdens.

*For assistance in determining the availability of or resources for auxiliary aids or services, call the OCR at (850) 921-3201 (or SunCom 291-3201), via the Florida Relay System [dial 711 or 1-800-955-8770 (voice) or 1-800-955-8771 (TTY/VCO)] or contact the OCR via e-mail, at [Civil.Rights@flaawi.com](mailto:Civil.Rights@flaawi.com).*

B. Facility accessibility

1. New construction (29 CFR 32.28(a))

Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by qualified handicapped individuals.

2. Alterations (29 CFR 32.28(b))

Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by qualified handicapped individuals.

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<sup>17</sup> Typically, vendor-provided interpretive services for individuals with hearing and/or speech impairments must be arranged one to three weeks in advance.

*Application notes*

A recipient must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities.

The international symbol for accessibility must be used at each primary entrance of an accessible facility.

*Completion of the program- and facility-accessibility checklists that are part of these guidelines is discussed in Appendix A.*

## **VII. Participation by individuals with disabilities in planning and decision-making activities**

Individuals with disabilities should be encouraged to participate as members of any oversight, planning and advisory boards or committees.

*Application note:*

When appointments are to be made to boards, commissions, councils, or other planning or advisory groups, local community organizations serving individuals with disabilities should be included among the contacts for suggested membership. Individuals from the private and public sectors, from business, education, government and services, who are also individuals with disabilities, may offer additional insight to ensure program success.

## **VIII. Required notices**

A. Notice of protection against discrimination (on the basis of disability)  
(29 CFR 37.5, 37.29)

*Recipients are required to provide initial and continuing notice of nondiscrimination on the basis of disability under applicable federal and state law.*

*Application note:*

The two posters required by applicable federal regulations are available through the Agency for Workforce Innovation's web site. These are:

- *Equal Employment Opportunity is the Law* (EEOC; in English and Spanish)
- *Equal Opportunity is the Law* (AWI; in English, Spanish, French and Haitian Creole)

To obtain copies of these posters, go to [www.floridajobs.org/PDG/posters.html](http://www.floridajobs.org/PDG/posters.html) or contact the agencies that produce these posters:

- EEOC: 1-800-669-3362; TTY: 1-800-669-6820
- AWI: (850) 921-3201; TTY: 711 (via the Florida Relay Service)

*The AWI-produced poster is applicable to both employment and services. An audio version of Equal Opportunity is the Law, in the four languages shown above, is also available on the Internet, at: [www.floridajobs.org/PDG/posters.html](http://www.floridajobs.org/PDG/posters.html).*

Recipients are also required to post the following State of Florida poster: "Florida Law Prohibits Discrimination," which is applicable to employment only. Contact the Florida Commission on Human Relations at 850-488-7082 (voice or TTY/TDD) or, to leave a voice message only, 1-800-342-8170. This poster is not available on line.

These posters are to be prominently displayed and in appropriate locations. For example, posters applicable to customers should be displayed in waiting areas and resource rooms; posters applicable to employees and applicants for employment should be displayed in reception areas and employee break areas.<sup>18</sup>

*Contact information for filing discrimination complaints is included on the posters; it is also available from the OCR at [www.floridajobs.org/civilrights/index.html](http://www.floridajobs.org/civilrights/index.html) or by calling (850) 921-3201.*

**B. Use of "tag lines"**  
(29 CFR 37.34(a))

Recipients must indicate that the WIA Title I-financially assisted program or activity is "an equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities."

*Application notes:*

This information must be included in recruitment brochures and other materials that are ordinarily distributed or communicated in written or oral form, electronically, and/or on paper to staff, customers and the public at large that describe:

- the programs under the WIA or
- the requirements for program participation.

This notice must be available in written and oral format, to include electronic communication.<sup>19</sup> The notice should be included on the web-site home page as well as on any web page that can be accessed directly via the Internet.

*This notice can be seen on the Agency's web site, at [www.floridajobs.org](http://www.floridajobs.org) and is included on the poster Equal Opportunity is the Law.*

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<sup>18</sup> In addition to the notices and posters discussed in this guidance, recipients of federal financial assistance from the U.S. Department of Health and Human Services must also post that department's nondiscrimination policy and notice of right to file a complaint. This policy and notice, applicable to Welfare Transition Program operation, is also available on the AWI web site, at: [www.floridajobs.org/PDG/posters.html](http://www.floridajobs.org/PDG/posters.html).

<sup>19</sup> This includes materials that are published or broadcast through the news media describing:

- (1) any programs or activities that are financially assisted under WIA Title I, or
- (2) the requirements for participation in such programs and activities by recipients and participants.



*The notice is also available for printing on small labels--for pasting on pamphlets, brochures, etc. that are presently in stock and that do not include this required notice. The label templates, in English, Spanish, French and Haitian Creole, are at [www.floridajobs.org/civilrights/ocr\\_labels.html](http://www.floridajobs.org/civilrights/ocr_labels.html).*

### C. Recommended language

The following is the recommended language for all materials distributed to staff, clients, or the public at large that describe positions or activities financially assisted under Title I of WIA or the requirements for participation in such programs:

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers in this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.

Similar language is recommended for use on a website:

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this web site may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.

*For additional guidance regarding the use of tag lines, refer to the memorandum dated November 17, 2006, from Wyatt Pope, Deputy Director for Workforce Services, to the Regional Workforce Board Directors, subject: Non-discrimination Disability Requirements. A copy is available on line at:*

[www.floridajobs.org/onestop/2006MemorandumsbyDate.html](http://www.floridajobs.org/onestop/2006MemorandumsbyDate.html).

## **IX. Reasonable accommodation**

(29 CFR 37.4, 37.8, except as noted)

*Reasonable accommodation means the changes and modifications which can be made in the structure of a job or employment and training, or in the manner in which a job is performed or employment and training program is conducted, unless it would impose an undue hardship on the operation of the recipient's program or activity. (29 CFR 32.3)*

- A recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship.<sup>20</sup>
- A recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.<sup>21</sup>

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<sup>20</sup> See Appendix B for discussion of “undue hardship.”

<sup>21</sup> See Appendix B for discussion of “fundamental alteration.”

Reasonable accommodation may include:

- modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires;
- modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities;<sup>22</sup> and,
- modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

Examples of reasonable accommodation include:

- making existing facilities accessible to and usable by individuals with disabilities;
- restructuring of a job or a service, or of the way in which aid, benefits, or training is/are provided;
- part-time or modified work or training schedules;
- acquisition or modification of equipment or devices;
- appropriate adjustment or modifications of examinations, training materials, or policies; and,
- the provision of readers or interpreters.

Determining the appropriate, reasonable accommodation

It may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

The Job Accommodation Network (“JAN”) is a valuable resource for information about employment-related accommodations. The information is free. Go to the website: [www.jan.wvu.edu/](http://www.jan.wvu.edu/) or call 1-800-526-7234 (voice or TTY). The OCR website has additional Information and suggested resources about serving individuals with disabilities. Go to: [www.floridajobs.org/civilrights/ocr\\_disabilities.html](http://www.floridajobs.org/civilrights/ocr_disabilities.html).

*See Appendix C for discussion about documentation of reasonable accommodation.*

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<sup>22</sup> These modifications or adjustments may be made to:

- (1) the environment where work is performed or aid, benefits, services, or training are given; and
- (2) the customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given.

## X. Pre-employment inquiries

(29 CFR 1630.13, 1630.14; 29 CFR 32.15(a) through (c))

*It is unlawful for a recipient to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability. A recipient may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.*

*Application notes:*

This prohibition is not limited to direct questions, but includes questions that may reveal the existence of a disability. "What are your current sick leave balances?" is an example of an inquiry that is not permitted. However, the recipient may provide information on the attendance policy and ask if the applicant will be able to meet the requirements.

A pre-employment inquiry regarding a disability is permissible when required by another federal law or regulation, such as those applicable to disabled veterans and veterans of the Vietnam era.<sup>23 and 24</sup>

Pre-offer employment physicals are prohibited.

**Note:** These guidelines on pre-employment inquiries also apply to the job-applicant ("job seeker") screening and referral services provided by the one-stop operators and service providers. Remember: Disclosure of a disability is voluntary.

## XI. Recordkeeping

(29 CFR 1630.13, 1630.14; 29 CFR 32.15(d))

*Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.*

*Application notes:*

Recipients should remove all forms from personnel or participant files that inquire about medical information, such as a state Disabled Employee Information Form and State of Florida Workers' Compensation Trust Fund information, or other information that is required among the forms to be included in the file. Information that is required by state policy, procedures or statutes that include medical information must be kept in a separate file with limited access.

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<sup>23</sup> Pre-employment inquiries about disabilities may be necessary under such laws to identify applicants or clients with disabilities in order to provide them with required special services.

<sup>24</sup> As a federal contractor (under the Job Corps Program), the Agency for Workforce Innovation is also required to comply with section 503 of the Rehabilitation Act of 1973, as amended. Section 503 requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

Information obtained during pre-employment inquiries and the course of employment must also be kept separate. Examples include: requests for reasonable accommodation, requests for medical leaves of absence, sick-leave pool usage, return-to-work certification, and records of workers' compensation injuries.

Participant medical records are confidential and must be maintained separately. In addition, medical records received from a health insurance portability and accountability (HIPAA) covered entity may require additional confidentiality or security provisions.

## Appendix A: Accessibility checklists and program-monitoring information

The following checklists related to compliance with these guidelines are to be completed where applicable, updated as appropriate, and kept on file locally until no longer applicable:

- [Facility-Accessibility Checklist](#)
- [Information-Technology \(IT\) Equipment-Accessibility Checklist](#)
- [Software-Accessibility Checklist](#)
- [Web-Page Accessibility Checklist](#)
- [WIA Disability Checklist](#)<sup>25</sup>

**For current programs and existing facilities (as of April 26, 2004):** The checklists were to be completed no later than June 30, 2004.<sup>26</sup>

**For new programs and providers:** The checklists are to be completed as part of the one-stop operator or service-provider selection process.

**For new facilities (leased or owned):** The facility-accessibility checklist is to be completed prior to final facility acceptance.

The completed checklists are to be made available to federal, state and regional-board program-monitoring staff upon request.

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<sup>25</sup> The WIA Disability Checklist is based on the *WIA Section 188 Disability Checklist*, produced by the Civil Rights Center, U.S. Department of Labor, in July 2003.

<sup>26</sup> Per the guidance issued on April 26, 2004 (AWI FG 04-042).

## **Appendix B: Key terms: definitions and discussion (29 CFR 32.3; 29 CFR 37.4; 29 CFR 1630.2)**

**Disability** means, with respect to an individual —

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

### **Exception to the definition** of “disability

- individuals currently engaging in the illegal use of drugs, when the recipient acts on the basis of such use.

**However**, the term “disability” may not exclude an individual who:

- (1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or
- (2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- (3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

It shall not be a violation of these regulations for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subparagraph (1) or (2) (above) is no longer engaging in the illegal use of drugs. (See §1630.16(c) Drug testing).

### **Disability does not include:**

- Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- Compulsive gambling, kleptomania, or pyromania; or
- Psychoactive substance use disorders resulting from current illegal use of drugs.

**Homosexuality and bisexuality** are not impairments and so are not disabilities as defined in these regulations.

### **Essential functions**

- In general. The term means the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position.

- A job function may be considered essential for any of several reasons, including but not limited to the following:
  - the reason the position exists is to perform that function;
  - because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
  - the function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
- Evidence of whether a particular function is essential includes, but is not limited to:
  - the employer's judgment as to which functions are essential;
  - written job descriptions prepared before advertising or interviewing applicants for the job;
  - the amount of time spent on the job performing the function;
  - the consequences of not requiring the incumbent to perform the function;
  - the terms of a collective bargaining agreement;
  - the work experience of past incumbents in the job; and/or
  - the current work experience of incumbents in similar jobs.

**Fundamental alteration** means

- a change in the essential nature of a program or activity (as defined in 29 CFR part 37), including but not limited to an aid, service, benefit, or training; or
- a cost that a recipient can demonstrate would result in an undue burden.

**Factors to be considered** in making the determination whether the cost of a modification would result in such a burden include:

- the nature and net cost of the modification needed, taking into consideration the availability of tax credits and deductions, and/or outside financial assistance, for the modification;
- the overall financial resources of the facility or facilities involved in the provision of the modification, including:
  - the number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and
  - the effect the modification would have on the expenses and resources of the facility or facilities;
- the overall financial resources of the recipient, including:
  - the overall size of the recipient;
  - the number of persons aided, benefited, served, trained, or employed by the recipient; and
  - the number, type and location of the recipient's facilities;

- the type of operation or operations of the recipient, including:
  - the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and
  - where the modification sought is employment-related, the composition, structure and functions of the recipient's workforce; and
- the impact of the modification upon the operation of the facility or facilities, including:
  - the impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and
  - the impact on the facility's ability to carry out its mission.

**Has a record of such impairment** means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

**Is regarded as having such an impairment** means the individual:

- has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such limitation;<sup>27</sup>
- has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment,<sup>28</sup> or
- has none of the impairments defined in this section but is treated by a recipient as having a substantially limiting impairment.<sup>29</sup>

**Major life activities** means functions such as:

- |            |                      |                           |
|------------|----------------------|---------------------------|
| • walking  | • seeing             | • hearing                 |
| • speaking | • breathing          | • learning                |
| • working  | • caring for oneself | • performing manual tasks |

*It should be noted that there is not clear agreement among the courts as to what functions constitute "major life activities." However, the Supreme Court of the United States has ruled that "major life activities" refers only to activities of central importance to daily life. In order*

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<sup>27</sup> For example, suppose an employee has controlled high blood pressure that is not substantially limiting. If an employer reassigns the individual to less strenuous work because of unsubstantiated fears that the individual will suffer a heart attack if he or she continues to perform strenuous work, the employer would be regarding the individual as disabled.

<sup>28</sup> For example, an individual may have a prominent facial scar or disfigurement, or may have a condition that periodically causes an involuntary jerk of the head but does not limit the individual's major life activities. If an employer discriminates against such an individual because of the negative reactions of customers, the employer would be regarding the individual as disabled and acting on the basis of that perceived disability.

<sup>29</sup> For example, if an employer discharged an employee in response to a rumor that the employee is infected with Human Immunodeficiency Virus (HIV). Even though the rumor is totally unfounded and the individual has no impairment at all, the individual is considered an individual with a disability because the employer perceived of this individual as being disabled.

*Source: Appendix to 29 CFR Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act*



*to be substantially limited in the major life activity of performing manual tasks, an individual must have a permanent or long-term impairment that prevents or severely restricts performance of activities that are centrally important to most people's daily lives.*

**Physical or mental impairment** means:

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

or

- 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
- epilepsy
- cancer
- drug addiction and alcoholism
- cerebral palsy
- muscular dystrophy
- heart disease
- multiple sclerosis
- diabetes
- HIV infection/AIDS

**Qualification standards** means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a recipient as requirements which an individual must meet in order to be eligible for the position held or desired.

**Qualified individual with a disability** means

**with respect to employment:**

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

**with respect to services:**

- an individual with a disability who meets eligibility requirements relevant to the receipt of services provided in the program or activity.

**Exception to the definition** of “qualified individual with a disability.”

- Individuals currently engaging in the illegal use of drugs, when the recipient acts on the basis of such use.

**However**, the term “qualified individual with a disability” may not exclude an individual who:

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or
- (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- (3) is erroneously regarded as engaging in such use, but is not engaging in such use.

It shall not be a violation of these regulations for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subparagraph (1) or (2) (above) is no longer engaging in the illegal use of drugs. (See 29 CFR 1630.16(c) Drug testing).

**Substantially limits** means:

- unable to perform a major life activity that the average person in the general population can perform; or
- significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

**Factors** to consider **in determining** whether an individual is **substantially limited** in a major life activity:

- The nature and severity of the impairment;
  - The duration or expected duration of the impairment; and
  - The permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.
- **With respect to** the major life activity of **working**<sup>30</sup>—**substantially limits** means significantly restricted in the ability to perform either:
    - a class of jobs or
    - a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities.

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<sup>30</sup> As discussed above, under *Major Life Activities*, the courts are not in agreement about what constitutes a “major life activity.” *Working* is one activity about which there is disagreement.

*The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.*

- **With respect to services—substantially limits** means the degree that the impairment affects an individual becoming a beneficiary of a program or activity receiving federal financial assistance or affects an individual's employability.

**Undue hardship.** In general, “undue hardship” (sometimes referred to as “undue burden”) means significant difficulty or expense incurred by a recipient, when considered in light of several factors, including:

- the nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including:
  - the number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and
  - the effect the accommodation would have on the expenses and resources of the facility or facilities;
- the overall financial resources of the recipient, including:
  - the overall size of the recipient,
  - the number of persons aided, benefited, served, trained, or employed by the recipient, and
  - the number, type and location of the recipient's facilities;
- the type of operation or operations of the recipient, including:
  - the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient, and
  - where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and
- the impact of the accommodation upon the operation of the facility or facilities, including:
  - the impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and
  - the impact on the facility's ability to carry out its mission.

## **Appendix C: Reasonable accommodation and reasonable modification (29 CFR 37.8)**

*The following outlines the burden of proof and the need for documentation when the recipient believes reasonable accommodation/reasonable modification would cause undue hardship or require fundamental alteration.*

### **Reasonable accommodation and undue hardship**

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of “undue hardship” in 29 CFR 37.4 (included in this document, in Appendix B, page B-6).

- The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion.
- The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

If a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

### **Reasonable modification and fundamental alteration**

In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.

The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of “fundamental alteration” in 29 CFR 37.4 (included in this document, in Appendix B, page B-2).

- The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion.
- The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.

If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

## **Appendix D: Discrimination on the basis of disability prohibited: excerpts from the federal regulations**

### **With respect to employment (29 CFR 1630.4)**

It is unlawful for a recipient to discriminate on the basis of disability against a qualified individual with a disability with regard to:

- (a) recruitment, advertising, and job application procedures;
- (b) hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (c) rates of pay or any other form of compensation and changes in compensation;
- (d) job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (e) leaves of absence, sick leave, or any other leave;
- (f) fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (g) selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;
- (h) activities sponsored by a recipient including social and recreational programs; and
- (i) any other term, condition, or privilege of employment.

### **With respect to programs or activities receiving federal financial assistance (29 CFR 32.4)**

- (a) General. No qualified handicapped individual 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 that receives federal financial assistance.
- (b) Discriminatory actions prohibited.
  - (1) A recipient, in providing any aid, benefit, service or training, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
    - (i) deny a qualified handicapped individual the opportunity to participate in or benefit from the aid, benefit, service or training;
    - (ii) afford a qualified handicapped individual an opportunity to participate in or benefit from the aid, benefit, service or training that is not equal to that afforded others;
    - (iii) provide a qualified handicapped individual with any aid, benefit, service or training that is not as effective as that provided to others;
    - (iv) provide different or separate aid, benefits, or services to handicapped individuals or to any class of handicapped individuals unless such action is necessary to provide qualified handicapped individuals with aid, benefits, services or training that are as effective as those provided to others;
    - (v) aid or perpetuate discrimination against a qualified handicapped individual by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, service or training to beneficiaries of the recipient's program or activity;

- (vi) deny a qualified handicapped individual the opportunity to participate as a member of planning or advisory boards; or
  - (vii) otherwise limit a qualified handicapped individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.
- (2) For purposes of these regulations, aid, benefits, services or training, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals, but must afford handicapped individuals equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
- (3) A recipient may not deny a qualified handicapped individual the opportunity to participate in its regular programs or activities, despite the existence of separate or different aid, benefits, services, or training for the handicapped which are established in accordance with these regulations.
- (4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:
- (i) that have the effect of subjecting qualified handicapped individuals to discrimination on the basis of handicap;
  - (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped individuals; or
  - (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.
- (5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections.
- (i) that have the effect of excluding handicapped individuals from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives federal financial assistance; or
  - (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped individuals.
- (6) As used in this section, the aid, benefit, service or training provided under a program or activity receiving federal financial assistance includes any aid, benefit, service or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise acquired, in whole or in part, with federal financial assistance.
- (7) (i) In providing services receiving federal financial assistance, except for employment-related training, a recipient to which this subpart applies, except small recipients, shall ensure that no handicapped participant is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by the recipient because of the absence of auxiliary aids for participants with impaired sensory, manual or speaking skills. In programs and employment-related training, this paragraph shall apply only to the intake, assessment and referral services. A recipient

shall operate each program or activity to which this subpart applies so that, when viewed in its entirety, auxiliary aids are readily available.

- (ii) Auxiliary aids may include brailled and taped written materials, interpreters or other effective methods of making orally delivered information available to persons with hearing impairments, readers for persons with visual impairments, equipment adapted for use by persons with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.
- (c) Aid, benefits, services, or training limited by federal law. The exclusion of nonhandicapped persons from aid, benefits, program services, or training limited by federal statute or executive order to handicapped individuals or the exclusion of a specific class of handicapped individuals from aid, benefits, services, or training limited by federal statute or executive order to a different class of handicapped individuals is not prohibited by these regulations.
- (d) Integrated setting. Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped individuals.
- (e) Communications with individuals with impaired vision and hearing. Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

***Also, see 29 CFR 37.7 with respect to disability discrimination prohibitions in providing any aid, benefits, services or training under a WIA Title I-financially assisted program or activity.***