

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF EMPLOYMENT AND TRAINING
ADMINISTRATOR'S MEMO SERIES

ACTION 12-06
 NOTICE

ISSUE DATE: 09/18/2012
DISPOSAL DATE: Ongoing

*PROGRAM CATEGORIES:

AS FM LM TC
 CR IT ML TR
 FL JC TA WIA
 YA

TO: Workforce Development Board (WDB) Directors
Workforce Development Board Equal Opportunity Officers
Disability Resource Coordinators
Job Service District Offices
Vocational Rehabilitation Offices
Job Center Partner Agencies

FROM: Lisa Boyd
Division Administrator



RE: Workforce Investment Act Physical, Programmatic and Communication Accessibility Requirements

PURPOSE: To announce the Division of Employment and Training's (DET) implementation of its continuing commitment to ensure compliance with the physical, programmatic and communication accessibility requirements established in the non-discrimination regulation at Section 188 of the Workforce Investment Act (WIA) of 1998 regarding individuals with disabilities.

BACKGROUND: A public entity shall operate each service, program, or activity so that the service, program or activity, when viewed in its entirety is readily accessible to and useable by individuals with disabilities.

*PROGRAM CATEGORIES:

AS--Apprenticeship
Standards

CR--Civil Rights

FL--Foreign Labor Certification

FM--Financial Management

Requirements

IT--IT Systems

JC--Job Center

LM--Labor Market
Information

ML--Migrant Labor

TA--Trade Assistance

TC--Tax Credit Programs

TR--Transportation

WIA--Workforce

Investment Act

YA--Youth Apprenticeship

POLICY: Annually, each Workforce Development Board (WDB) administrative entity shall assess the physical, programmatic and communication accessibility of its comprehensive Job Centers to determine they are in compliance with the accessibility requirements for individuals with pursuant to WIA Section 188. A Webinar to familiarize WDBs with administering the 188 Disability Checklist took place on September 11, 2012 from 9:00 am – Noon.

ACTION SUMMARY STATEMENT: Workforce Investment Boards (WIB) funded by WIA Title I, utilizing the WIA Section 188 Disability Checklist will establish teams of their partner agencies to review, assess and upgrade the access of individuals with disabilities to the comprehensive One-Stop Career Center/Job Center system in their jurisdictions. Responses are due to Bill Franks by October 31, 2012. Should there be a necessity for corrective actions, these will be negotiated between the WDB and DET.

CONTACT: Bill Franks, DET Equal Opportunity Officer, (608) 266-6889; TTY (608) 275-1165 or William.Franks@dwd.wisconsin.gov

Attachment(s): WIA SECTION 188 DISABILITY CHECKLIST

<http://www.dol.gov/oasam/programs/crc/section188.htm>

WIA SECTION 188 DISABILITY CHECKLIST

IntroductionElement 1: Designation Of Equal Opportunity OfficerElement 2: Notice And CommunicationElement 3: AssurancesElement 4: Universal AccessElement 5: Obligation Not To Discriminate On The Basis Of DisabilityElement 6: Data And Information Collection And MaintenanceElement 7: Monitor For ComplianceElement 8: Complaint Processing ProceduresElement 9: Corrective Actions/SanctionsAppendix: Examples of PracticesEndnotes

(Formatting note: Links to citations open up in a different window. The citations files list only those citations specifically addressed in the checklist. Readers may notice, therefore, that parts of some citations may be missing. This is intentional.)

INTRODUCTION

The U.S. Department of Labor, Civil Rights Center (CRC), which is organizationally located within the Office of the Assistant Secretary for Administration and Management, has developed this "WIA Section 188 Disability Checklist" to ensure nondiscrimination and equal opportunity to persons with disabilities [1] participating in programs and activities operated by Local Workforce Investment Area (LWIA) grant recipients [2] that are part of the One-Stop delivery system. This compliance review Checklist will provide CRC with a uniform procedure for measuring compliance with those provisions of Section 188 of the Workforce Investment Act (WIA) [3] and the implementing regulations (29 CFR Part 37) [4] pertaining to persons with disabilities. [5] This Checklist does not create new legal requirements or change current legal requirements. It is intended to serve as a basic resource document on CRC-administered laws pertaining to persons with disabilities.

The Checklist will be used to address how an LWIA grant recipient is complying with, and implementing, the applicable Federal requirements for persons with disabilities. For example, the Checklist will be used by CRC to determine whether an LWIA grant recipient is providing effective communication for persons with disabilities. One means of providing effective communication for persons who are deaf is the effective use of a TDD/TTY. This Checklist will be used not only to determine whether the TDD/TTY has been purchased, but also to determine whether staff is trained in using the TDD/TTY, the TDD/TTY is in working order, and whether the staff answers the TDD/TTY to the same extent as voice calls.

The layout of this Checklist is modeled after the nine elements of the WIA Methods of Administration (MOA). [6] Consistent with the requirements of 29 CFR Part 37, each Governor is required to establish and adhere to an MOA. An MOA is a document that contains policies, procedures, and systems that are designed, when successfully implemented, to provide a reasonable guarantee of compliance with the nondiscrimination and equal opportunity requirements of WIA and its implementing regulations. [7] All Governors have submitted a WIA MOA that has been approved by the CRC Director.

In demonstrating compliance with Section 188, it is necessary for an LWIA grant recipient that has received WIA financial assistance from a State to show its adherence to policies, procedures, and systems contained in its State's WIA MOA. This WIA Section 188 Disability Checklist may be used by a State in conducting its own monitoring regarding compliance with those aspects of Section 188 pertaining to persons with disabilities. States, however, may wish to expand the review standards to include State laws and/or specific policies and procedures required by the State. CRC is available to provide technical assistance to States in this regard.

The Checklist identifies the basic requirements under Section 188 of WIA, including portions of the regulations implementing Section 504 of the Rehabilitation Act. [8] The Checklist covers requirements applicable to LWIA grant recipients in regard to the operation of their programs and activities. The Section 188 Checklist also covers a recipient's employment practices.

It should be noted that some of the nondiscrimination provisions set out in the Section 188 regulations pertaining to persons with disabilities are based on the regulations implementing Title II of the ADA. Many recipients of WIA Title I financial assistance are also subject to the requirements of Title II of the ADA, which applies to public entities, including State and local governments and their departments, agencies, and instrumentalities. [9] Modeling some of the sections of the WIA regulations pertaining to individuals with disabilities on the ADA Title II regulations ensures that these recipients are subject to similar obligations and responsibilities under both laws. [10]

The Checklist includes lists of questions for each element of the MOA. In addition, for some of the elements, the questions are followed by bullet points describing examples of concrete actions that comply with some of the basic requirements imposed by Section 188 and the regulations.

Similarly, the Appendix to the Checklist includes examples of policies, procedures and other recommended steps that LWIA grant recipients can take to ensure that people with disabilities have equal access to WIA Title I programs and activities. The "examples of practices" in the Appendix are not mandatory requirements under Section 188 or the regulations. The examples do not create new legal requirements or change current legal requirements. Instead, they suggest ways in which LWIA grant recipients might meet their obligations to ensure that individuals with disabilities have equal access. Descriptions of possible approaches in this Checklist should not be construed to preclude States from devising alternative approaches to meeting their legal obligations.

With respect to programmatic and architectural accessibility, the Appendix to this Checklist refers readers to the Uniform Federal Accessibility Standards (UFAS) Checklist developed for the United States Access Board in 1990 and still in use today. For additional assistance with ensuring that technology is accessible, the Appendix also refers readers to additional Checklists developed by the Department of Justice regarding Web page and software accessibility, information transaction machines, and information technology equipment accessibility.

ELEMENT 1: DESIGNATION OF EQUAL OPPORTUNITY OFFICER

1.1 Has the recipient (except small recipients and service providers--see **Note** below) designated an Equal Opportunity Officer who meets the eligibility criteria and assumes prescribed responsibilities (such as monitoring, investigating, reviewing written policies, undergoing training) with regard to persons with disabilities? [29 CFR 37.23-.28; see also Section 188 Guidance, 65 FR at 51985]

1.2 Has the recipient satisfied the prescribed general obligations relating to the Equal Opportunity Officer in regard to persons with disabilities (such as making public EO Officer's TDD/TTY number, assigning sufficient staff and resources and ensuring training necessary and appropriate to maintain competency)? [29 CFR 37.26]

Examples of concrete actions that comply with some of these requirements:

- The recipient's EO Officer and his/her staff have the education, training, and experience (skill, ability and knowledge) to perform assigned duties regarding nondiscrimination and equality of opportunity for persons with disabilities.

- The EO Officer is also the Section 504 Coordinator. If not, the recipient appoints a Section 504 Coordinator, who has the education, training and experience to perform assigned duties. [11]

Note: Small recipients [as defined by 29 CFR 37.4 and 29 CFR 32.3] are not required to appoint an EO Officer [29 CFR 37.23 and 37.27] or a Section 504 Coordinator. [29 CFR 32.7] Service providers are not required to appoint an EO Officer. [29 CFR 37.23 and 37.28]

ELEMENT 2: NOTICE AND COMMUNICATION

2.1 Is the recipient providing for initial and continuing notice that the recipient does not discriminate on the basis of disability? [29 CFR 37.29-36. See also Section 188 Guidance, 65 FR at 51985-51986]

2.2 Is the Notice provided by the recipient to persons with disabilities who are: registrants, applicants, eligible applicants/registrants; participants; applicants for employment and employees; unions or professional organizations that hold collective bargaining or professional agreements with the recipient; WIA Title I subrecipients; and members of the public, including those with impaired vision and hearing? [29 CFR 37.29(a)]

2.3 Is the recipient taking appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others? [29 CFR 37.9 (a) and 37.29(b)] [12]

2.4 Does the recipient indicate in recruitment brochures and other materials 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"? [29 CFR 37.34(a)]

2.5 Does the recipient that publishes or broadcasts program information in the news media indicate that auxiliary aids and services are available upon request to individuals with disabilities? [29 CFR 37.34(b.)]

2.6 Does the Notice meet the general posting and dissemination requirements [29 CFR 37.31(a)] and is the Notice provided in appropriate formats to individuals with visual impairments? Where the Notice has been given in an alternate format to a participant with a visual impairment, is a record that such Notice has been given made a part of the participant's file? [29 CFR 37.31(b)]

2.7 Where marketing, recruitment, and other materials indicate that the recipient may be reached by telephone, do the materials state the telephone number of the TDD/TTY or relay service used by the recipient? [13] [29 CFR 37.34(a)]

Examples of concrete actions that comply with some of these requirements :

- Where a telephone number is included in official stationery, business cards, civic newsletters, web sites, and other materials, the materials indicate a TDD/TTY number or provide for an equally effective means of communication with individuals with hearing impairments (e.g., the number for the telephone relay service).

ELEMENT 3: ASSURANCES

3. Does the assurance provided by each grant applicant and subrecipient (such as each training provider) in applications for WIA Title I financial assistance and the assurances incorporated into each grant, cooperative agreement, contract, or other arrangement include the assurance not to discriminate on the basis of disability under Section 188 of WIA and Section 504 of the Rehabilitation Act of 1973? Does the grant applicant also assure that it will comply with 29 CFR Part 37 and 29 CFR Part 32? [29 CFR 37.20-22; see also Section 188 Guidance, 65 FR at 51986] [14]

ELEMENT 4: UNIVERSAL ACCESS

4. Is the recipient taking appropriate steps to ensure that it is providing universal access to its WIA Title I-financially assisted programs and activities? Do these steps involve reasonable efforts (including advertisement, recruitment, outreach, and targeting) to include participation of persons with disabilities in the recipient's programs and activities? [29 CFR 37.42; see also Section 188 Guidance, 65 FR at 51987].

ELEMENT 5: OBLIGATION NOT TO DISCRIMINATE ON THE BASIS OF DISABILITY

5.1 GENERAL PROHIBITIONS

Does the recipient prohibit discrimination in the registration for and the provision of aid, benefits, services or training, including core, intensive, training, and support services, on the basis of disability, including the types of discrimination listed in 29 CFR 37.7? [15] The types of discrimination listed in 29 CFR 37.7 are set out below.

5.1.1 In providing any aid, benefits, services, or training, a recipient must not deny the opportunity to participate in or benefit from the aid, benefits, services, or training; afford an opportunity that is not equally effective; provide different, segregated or separate aid, benefits, services, or training unless such actions are necessary to provide effective opportunity; deny the opportunity to participate as a member of planning or advisory boards; or otherwise limit enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

5.1.2 The recipient must not aid or perpetuate discrimination by providing significant assistance to a person or an entity that discriminates on the basis of disability.

5.1.3 The recipient must not deny the opportunity to participate in WIA Title I-financially assisted programs or activities despite the existence of permissibly separate programs or activities.

5.1.4 The recipient must administer its programs and activities in the most integrated setting appropriate. [16]

5.1.5 The recipient must not use standards, procedures, criteria or administrative methods that have the purpose or effect of discrimination; defeating or substantially impairing the accomplishment of the objectives of the WIA Title I-financially assisted programs or activities; or perpetuating discrimination of another entity if both entities are subject to common administrative control.

5.1.6 In determining the site or location of a facility, the recipient must not make selections that have a discriminatory effect.

5.1.7 The recipient, in the selection of contractors, may not use discriminatory criteria.

5.1.8 A recipient must not administer a licensing or certification program in a discriminatory manner.

5.1.9 The recipient must not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or class of individuals with disabilities unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program or activity being offered.

5.1.10 The recipient must not place a surcharge on an individual with a disability to cover the cost of measures such as provision of auxiliary aids.

5.1.11 The recipient must not discriminate against an individual or an entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or an association.

5.1.12 An individual with a disability is not required to accept an accommodation, aid, benefit, service, training, or opportunity that such individual chooses not to accept.

Examples of concrete actions that comply with some of these requirements :

- The recipient rejects all job orders from any employer that specifies that it will not accept applications from qualified persons with disabilities or from qualified applicants with certain disabilities.

5.2 PROVIDE REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES [17]

Does the recipient provide reasonable accommodations regarding registration for and the provision of aid, benefits, services or training, including core, intensive, training, and support services to qualified individuals with disabilities? [29 CFR 37.8; see also 29 CFR 32.13]

5.3 PROVIDE REASONABLE MODIFICATIONS OF POLICIES PRACTICES, AND PROCEDURES

Does the recipient provide reasonable modifications regarding its policies, practices, and procedures for the registration for and provision of core, intensive, training, and support services to individuals with disabilities? [29 CFR 37.8]

5.4 ADMINISTER PROGRAMS AND ACTIVITIES IN THE MOST INTEGRATED SETTING APPROPRIATE

5.4.1 Does the recipient administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities? [29 CFR 37.7(d)]

5.4.2 Does the recipient not provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities or any class of individuals with disabilities unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services, or training that are as effective as those provided to others? [29 CFR 37.7(a)(4)]

5.4.3 Does the recipient permit a qualified individual with a disability the opportunity to participate in WIA Title I-financially assisted programs and activities despite the existence of permissibly separate or different programs or activities? [29 CFR 37.7(c)]

5.5 ABLE TO COMMUNICATE WITH PERSONS WITH DISABILITIES AS EFFECTIVELY AS WITH OTHERS

5.5.1 Are steps being taken to ensure that communications with individuals with disabilities are as effective as communications with others? [29 CFR 37.9 and 29(b). See also Section 188 Guidance, 65 FR at 51986]

5.5.2 Does the recipient furnish appropriate auxiliary aids and 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? Does the recipient give primary consideration to the requests of the individual with a disability when determining what type of auxiliary aid or service is appropriate? [29 CFR 37.9(b)]

5.5.3 Where a recipient communicates by telephone with beneficiaries and others, does the recipient use telecommunication devices for individuals with hearing impairments (TDDs/TTYs) or equally effective communication systems, such as telephone relay services? [29 CFR 37.9(c)]

5.5.4 Does the recipient ensure that interested individuals, including individuals with visual and hearing impairments, can obtain information as to the existence or location of accessible services, activities, and facilities, including the provision of appropriate signage at the primary entrances to its inaccessible facilities? [29 CFR 37.9(d) and (e)]

5.6 PROVIDE PROGRAMMATIC ACCESSIBILITY FOR PERSONS WITH DISABILITIES

5.6.1 Is the recipient operating each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to qualified individuals with disabilities? [29 CFR 32.27(a) and 29 CFR 37.3(b). See Footnote 8]

5.6.2 Does the recipient comply with its obligation to operate its program or activity so that, when viewed in its entirety, it is readily accessible to qualified individuals with disabilities, through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternative accessible sites, alteration of existing facilities and construction of new facilities in conformance with standards for new construction, or any other method that results in making its program or activity accessible to individuals with disabilities? In choosing among available methods, does the recipient give priority to those methods that offer programs and activities to individuals with disabilities in the most integrated setting appropriate? [29 CFR 32.27(c)]

5.7 PROVIDE ARCHITECTURAL ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

5.7.1 Is each facility or part of a facility constructed by, on behalf of, or for the use of a recipient designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by qualified individuals with disabilities? [29 CFR 32.28(a)]

5.7.2 Is each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient in a manner that affects or could affect the usability of the facility or part of the facility altered in such a manner that the altered portion of the facility is readily accessible to and usable by qualified individuals with disabilities? [29 CFR 32.28(b)]

5.7.3 Does the design, construction, or alteration of facilities meet the most current standards for physical accessibility prescribed by the General Services Administration under the Architectural Barriers Act or does the recipient adopt alternative standards when it is clearly evident that equivalent or greater access to the facility or part of the facility is thereby provided? [29 CFR 32.28(c)]

5.8 EMPLOYMENT PRACTICES [18]

Nondiscrimination In General

5.8.1 Does the recipient prohibit discrimination on the basis of disability in employment practices engaged in by recipients? [29 CFR 37.10]

Provide Reasonable Accommodation for Individuals with Disabilities

5.8.2 Does the recipient require the provision of reasonable accommodation, when appropriate? [29 CFR 37.8, 37.10; 29 CFR 32.13]

Provide for and Adhere to a Schedule to Evaluate Job Qualifications to Ensure That the Qualifications Do Not Discriminate on the Basis of Disability

5.8.3 For employment, does the recipient review job qualifications to ensure that it does not use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability on the basis of that disability, unless the standard, test or other selection criteria, as used, is job-related for the position in question and consistent with business necessity? [29 CFR 37.10(d) and 29 CFR 32.14]

For employment-related training, does the recipient review selection criteria to ensure that they do not screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying the training unless the criteria can be shown to be necessary for the training being offered? [29 CFR 37.10(d) and 29 CFR 32.14]

For employment and employment-related training, does the recipient select and administer employment and training tests that, when administered to an individual with a disability that impairs sensory, manual, or speaking skills, accurately reflect the skills, aptitude, or other factors that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the individual? [29 CFR 37.10(d) and 29 CFR 32.14]

Limit Preemployment/Employment Medical Inquiries/Confidentiality

5.8.4 Does the recipient prohibit preemployment inquiries and pre-selection inquiries regarding disability? [29 CFR 37.10(d) and 29 CFR 32.15]

Note: Preemployment and pre-selection inquiries are permissible if they are required or necessitated by another Federal law or regulation. See, for example, Job Corps regulations at 20 CFR 670.400(a)(1), which contain an exception to an age limitation on program participation if the person is an otherwise eligible individual with a disability. In addition, an employer may ask applicants to voluntarily self-identify as individuals with disabilities for purposes of the employer's affirmative action program that is being undertaken pursuant to Federal, State, or local law, if the individual is clearly informed that (a) the information requested is for purposes of the affirmative action effort and (b) the information will be used in accordance with the provisions of Federal law governing the confidentiality of medical information. Furthermore, an employer may ask applicants to self-identify if it is voluntarily using the information to benefit individuals with disabilities. [29 CFR 37.10(d) and 29 CFR 32.15]

ELEMENT 6: DATA AND INFORMATION COLLECTION AND MAINTENANCE

6. Does the recipient comply with the requirements of 29 CFR 37.37 through 37.41 related to data and information collection and maintenance? Does each grant applicant and recipient promptly notify the Director of the Civil Rights Center when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of disability? [29 CFR 37.38]

Note: 29 CFR 37.38 also requires grant applicants and recipients to notify the Director of the Civil Rights Center when administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries only, citizenship (on the basis of an individual's status as a citizen or national of the U.S., or as an individual lawfully authorized to work in the U.S.), or participation in a WIA Title I-financially assisted program or activity.

ELEMENT 7: MONITOR FOR COMPLIANCE

7.1 Does the EO Officer monitor and investigate the recipient's activities, and the activities of the entities that receive WIA Title I financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations? [29 CFR 37.25(b); *see also 37.7(e)*]

7.2 Has the recipient conducted a self-evaluation in accordance with 29 CFR 32.6(c) (i.e., evaluate current policies and practices and their effects on persons with disabilities and take remedial steps to eliminate the effects of any discrimination, and consult with interested parties such as individuals with disabilities and organizations representing persons with disabilities)?

ELEMENT 8: COMPLAINT PROCESSING PROCEDURES

8. Does the EO Officer develop and publish the recipient's procedures for processing discrimination complaints and make sure that those procedures are followed? [29 CFR 37.25(d); and 37.70-37.80. *See also 37.7(e)*]

ELEMENT 9: CORRECTIVE ACTIONS/SANCTIONS

9. Does the EO Officer, after monitoring and investigating the recipient's activities and the activities of the entities that receive WIA Title I financial assistance from the recipient, take corrective action to ensure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations? [29 CFR 37.25(b); *see also 37.7(e)*]

APPENDIX EXAMPLES OF PRACTICES

This Appendix to the Section 188 Disability Checklist includes examples of policies, procedures and other recommended steps that LWIA grant recipients can take to ensure that people with disabilities have equal access to WIA Title I programs and activities. These "examples of practices" are not mandatory requirements. They do not create new legal requirements or change current legal requirements. Instead, they suggest ways in which LWIA grant recipients might meet their obligations to ensure that individuals with disabilities have equal access to those programs and activities. Descriptions of possible approaches in this Checklist should not be construed to preclude States from devising alternative approaches to meeting their legal obligations.

ELEMENT 1: DESIGNATION OF EQUAL OPPORTUNITY OFFICER

- The recipient has a description of the EO-related training that EO staff and others received regarding persons with disabilities.

ELEMENT 2: NOTICE AND COMMUNICATION

- The recipient's general marketing and recruitment materials (including photos and ad copy) mention people with disabilities as one of the groups served by the recipient, contain positive images of persons with disabilities, and indicate the recipient's commitment to hire persons with disabilities.
- Marketing and recruitment materials mention people across the full range of physical, mental, cognitive, and sensory disabilities as eligible for services, and images show diversity in their portrayal of persons with disabilities.
- The Notice is made available in Braille or large print, recorded on audiocassette, or placed on ASCII diskette.
- The nondiscrimination policy is read or explained to individuals with cognitive impairments as a matter of routine or on request.

ELEMENT 3: ASSURANCES

- In addition to the general assurances listed in the regulation, a specific assurance is included that specifies that the recipient, subrecipients, and others are able to provide programmatic and architectural accessibility for individuals with disabilities.

ELEMENT 4: UNIVERSAL ACCESS

- State and Local Workforce Investment Boards consider the needs of the local population, including individuals with disabilities and other special needs populations, in the design and delivery of services that respond to those needs, such as appropriate intake procedures, screening devices and comprehensive assessments, the nature and mix of services and supports, performance outcome measures, and training program needs for personnel to accomplish the objectives of the program.
- The recipient affirmatively seeks to serve qualified individuals with disabilities across the full spectrum of physical, mental and cognitive, and sensory disabilities.
- The recipient contracts/consults with specific community or advocacy organizations or agencies that provide services to persons with disabilities to educate them about the recipient's programs.
- Recipients review their records to determine whether individuals with disabilities participate in the recipient's programs and activities, in order to assess their compliance with the requirement that they provide universal access to WIA Title-I-financially assisted programs and activities.
- When a recipient undertakes outreach to individuals with disabilities (including organizations serving people with disabilities), it describes in the general information given to the organization the types of reasonable accommodations, reasonable modifications to its program, and programmatic, architectural and communication accessibility it provides.
- The recipient adopts a process to elicit input from and involve persons with disabilities and disability organizations in establishing policy governing the operation of its programs and activities.

- The recipient has a copy of a written plan developed by the State and Local Workforce Investment Board describing how it will address the employment needs of individuals with disabilities. The policies, practices, and procedures adopted by the recipient are consistent with and facilitate achieving the outcomes contained in the written plan.
- The recipient takes steps to improve operational collaboration (e.g., establish partnerships and linkages through memoranda of understanding or other mechanisms) with entities that have experience working with persons with disabilities in order to enhance the recipient's capacity to effectively serve persons with disabilities and to ensure equal opportunity and nondiscrimination in such areas as:
 - Registration
 - Common data intake and sharing
 - Customer outreach
 - Service delivery and coordination
 - Cost sharing
 - Performance measures and outcome data collection.

ELEMENT 5: OBLIGATION NOT TO DISCRIMINATE ON THE BASIS OF DISABILITY

5.1 GENERAL PROHIBITIONS

- The staff do not stereotype persons with disabilities when evaluating their skills, abilities, interests and needs, taking into consideration the availability of reasonable accommodations, reasonable modifications, and auxiliary aids and services.
- When considering a site for a comprehensive One-Stop Center, State and Local Workforce Investment Boards have coordinated with the broader community, including transportation agencies and existing public and private sector service providers, to ensure that the centers and services are accessible to their customers, including individuals with disabilities.
- Qualified individuals with disabilities are referred to employers and placed in the same range of positions as any other qualified customers.
- The recipient provides training to all of its line and supervisory staff to ensure compliance with the nondiscrimination/equal opportunity requirements, including the full range of issues raised in this Checklist.
- The recipient selects and administers tests and other processes that measure the ability of the individual to successfully participate in the program and not the person's physical, mental/cognitive, or sensory impairment. The policy includes the provisions of reasonable accommodations and reasonable modifications to the test or other protocols.

5.2 PROVIDE REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES [19]

- The recipient has a written policy explaining that a recipient must make reasonable accommodation to the known physical or mental impairments of an otherwise qualified individual with a disability who is an applicant, registrant, eligible applicant/registrant, or participant.
- The policy explains that a recipient is not required to provide a reasonable accommodation if it would cause undue hardship.
- The policy describes the appropriate process for determining whether an accommodation would cause an undue hardship and the consequences of such a determination.
- The policy includes processes for handling requests for reasonable accommodations: e.g., the procedure provides for designation of a specific supervisory staff member to coordinate reasonable accommodation, including determining whether an accommodation is or is not reasonable.
- The policy explains the circumstances under which reasonable accommodation must be provided: e.g., application, core, intensive, training, and support services.
- The policy provides for maintenance of records of the types of accommodations provided.
- The policy includes examples of reasonable accommodations. [20]

5.3 PROVIDE REASONABLE MODIFICATIONS OF POLICIES, PRACTICES, AND PROCEDURES [21]

In General

- The recipient has a written policy that explains that the recipient must make reasonable modifications to its policies, practices, and procedures to avoid discrimination unless it can demonstrate that making modifications would fundamentally alter the nature of the service, program or activity.
- The policy describes the appropriate process for handling requests and determining whether a modification would alter the nature of the program and the consequences of such a determination.
- The policy addresses the following aspects of the recipient's program:
 - Registration and orientation;
 - Initial screening, assessment, and testing;
 - Service delivery; and
 - Continuous improvement.

Registration and Orientation

- The recipient's staff asks all registrants (including individuals with disabilities) whether they need assistance during the application/registration process.
- The recipient's staff offers assistance in filling out forms and application materials during intake to all persons, including persons with disabilities.
- Intake workers inform individuals that if they have a disability they can disclose their disability and seek reasonable accommodation, reasonable modification, and auxiliary aids and services. In addition, it is made clear that disclosure is voluntary and information regarding disability will be kept confidential and maintained in a separate file.
- Staff working with persons with disabilities obtain permission from the individual before discussing information about his or her disability with other staff and other agencies.

- All discussions between staff and customers are conducted in a manner that ensures the preservation of confidentiality.

Initial Screening and Assessment

- Initial intake procedures used by the recipient direct staff to notify registrants if there is an initial indication that an individual has a disability that may impact his or her ability to benefit from services provided to nondisabled persons. The procedures instruct the intake worker to provide the individual with an opportunity for a more comprehensive assessment conducted by qualified personnel to make such a determination.

Service Delivery

- To the extent a recipient provides services (e.g., education and training opportunities, labor market information, job listing and job search assistance, resume and cover letter preparation) on a self-service basis, the recipient's staff provides appropriate assistance to individuals with disabilities so that they can effectively benefit from such services (including assistance in using computers and other forms of technology).
- Core services include providing or making arrangements (including referral to other entities) for the provision of benefits counseling for persons with disabilities, particularly those individuals currently receiving/eligible for SSI or SSDI benefits and Medicaid or Medicare.
- To the extent the recipient provides or makes available through contract or other arrangement intensive and training services with eligible training providers:
 - The recipient collaborates with other agencies that have knowledge of promising practices for addressing the unique needs of persons with disabilities (e.g., physical, mental/cognitive, and sensory impairments).
 - There are an adequate supply of qualified providers (including specialized service providers) that have the requisite knowledge, expertise, and experience to address the needs of individuals with disabilities.
 - The procedures for reimbursing providers take into consideration the additional costs of providing reasonable accommodations and auxiliary aids and services to individuals with disabilities.
- Reasonable modifications are made to eligibility criteria for intensive and training services in order to ensure that individuals with disabilities have an opportunity to benefit from such services that is as effective as that provided to nondisabled customers.
- Manuals, guidelines, or other materials used by the recipient's staff (and used to train recipient's staff) include examples of reasonable modifications to ensure that individuals with disabilities are provided effective opportunity to benefit from core, intensive, and training services.
- Factors such as the place, time, and lighting are altered for persons with disabilities to enable them to read and comprehend materials. For example, access to a quiet environment is made available for individuals with disabilities that require such a quiet environment in order to read and comprehend materials.

Continuous Improvement

- The recipient has in place a process for continuously reviewing the progress of individuals with disabilities, as a class.
- The recipient uses data and information submitted to the State to prepare annual performance reports of persons served and outcomes, as well as demographic data required by Element 6, to continuously improve the effectiveness of its program of services and supports for persons with disabilities.
- To the extent customer satisfaction surveys are used by the recipient, the recipient considers disaggregating the data to determine the satisfaction of customers with disabilities who voluntarily disclose their disability.
- To the extent customer satisfaction surveys are conducted by phone, the interviewers address the needs of customers who are deaf or who have trouble speaking.
- To the extent the recipient collects data on the number of persons using each tier of service available through the One-Stop system, it considers disaggregating the data to determine whether individuals with disabilities participate in each tier of the recipient's programs and activities, thereby assessing its compliance with the requirement that it provide universal access to WIA Title I-financially assisted programs and activities.
- The recipient has in place a process for continuously reviewing the progress of particular customers with disabilities to ascertain whether the individual's disability or lack of appropriate accommodations and auxiliary aids and services is affecting his/her progress.

5.4 ADMINISTER PROGRAMS AND ACTIVITIES IN THE MOST INTEGRATED SETTING APPROPRIATE

- The recipient offers individuals with disabilities the same opportunities to participate in programs, projects, and activities offered to nondisabled persons and such individuals are served through the same channels as individuals without disabilities, receiving reasonable accommodation, modifications, and auxiliary aids and services, as appropriate.
- The recipient does not rely solely on agencies providing vocational rehabilitation to provide services to all persons with disabilities.
- If persons with disabilities receive separate or different services from nondisabled customers, staff can demonstrate why separate or different services are necessary to ensure that the qualified individual with a disability receives an aid, benefit, service or training that is as effective as that provided for others.
- Staff communicate to persons with disabilities that they are not required to take advantage of all of the separate or different services that they may be eligible for.
- The recipient makes every effort to provide job assistance that leads to employment for persons with disabilities in competitive, integrated work environments. If a particular individual with a disability is not placed in such an environment, the recipient explains why such a placement is not appropriate in that instance. The recipient does not automatically place persons with disabilities in sheltered workshops (extended employment).

5.5 ABLE TO COMMUNICATE WITH PERSONS WITH DISABILITIES AS EFFECTIVELY AS WITH OTHERS

- The recipient's staff informs customers of its obligation to ensure effective communication and its obligation to provide appropriate auxiliary aids and services.
- The recipient has a list, in an accessible format, of all currently available assistive technology devices and services. For example, a recipient might include in its list that VCRs and TV monitors have closed caption capability; that Ovac is available; that ZoomText has been installed in computers available in resource areas; and that Pocket Talkers are provided for hard of hearing customers.
- For customers that are deaf and hard of hearing, the recipient adopts the following strategies to ensure effective communication:
 - The staff members secure a qualified sign language interpreter, where necessary, on a timely basis.
 - All appropriate employees know how to use a TDD/TTY and the telephone relay service to make and receive calls. TDDs/TTYs are maintained in good working order. Test calls are made on a periodic basis to ensure that TDD/TTY calls are answered to the same extent as voice calls.
 - If the recipient has courtesy telephones that the public may use for outgoing calls, it considers making available a portable TDD/TTY for public use (as currently required by the Americans with Disabilities Act Accessibility Guidelines, which are applicable to entities subject to Title III of the Americans with Disabilities Act (public accommodations and commercial facilities) and some entities subject to Title II of the ADA (the Department of Justice currently permits state and local government's

subject to Title II of the ADA to follow either UFAS or AD AAG standard(s)). If the recipient does make a portable TDD/TTY available, it posts a notice at the location of each courtesy telephone advising the public on how the portable TDD/TTY may be obtained, and instructs staff on the location of the portable TDD/TTY and its use.

- For customers who are blind and visually-impaired, the recipient adopts the following strategies to ensure effective communication:
 - Staff members have materials transcribed into Braille or large print, recorded on audiocassette, or placed on ASCII diskette, on a timely basis.
 - If the recipient has a video library for public use, the videos purchased are available with audio descriptions.
- For customers with cognitive disabilities (e.g., persons with brain injury, mental retardation, and learning disabilities), the recipient adopts the following strategies to ensure effective communication:
 - Staff members offer assistance with and/or extra time for the completion of forms and written instructions.
 - Staff members repeat instructions, provide information in a slower voice, and use simple sentences and words and use graphics, e.g., symbols, pictures.
 - Staff members provide a quiet environment for people to read materials if the public area has distractions.
- For customers with mobility impairments, the recipient adopts the following strategies to ensure effective communication:
 - Staff members put themselves at the wheelchair user's eye level (if possible sit next to the customer when having a conversation).
 - Staff members provide a clipboard as a writing surface if counters or reception desks are too high, and come around to the customer side of the desk/counter during interaction.
- For customers with speech impairments, the recipient adopts the following strategies to ensure effective communication:
 - If a staff member does not understand something, he or she does not pretend to understand. The staff member asks the customer to repeat what he or she said and then repeats it back.
 - Staff members ask questions that require only short answers, or a nod of the head.
 - If a staff member has difficulty understanding the customer, he or she considers having the customer write or sit at a computer screen as an alternative, but first asks whether this is acceptable.
 - If no solution to the communication problem can be worked out, the staff member asks if there is someone who could interpret on the customer's behalf.

5.6 PROVIDE PROGRAMMATIC ACCESSIBILITY FOR PERSONS WITH DISABILITIES

For Additional Guidance on Programmatic Accessibility
See CHECKLISTS
developed by the United States Access Board and the U.S. Department of Justice
described below under Element 5.7

5.7 PROVIDE ARCHITECTURAL ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

For Additional Guidance on Architectural Accessibility,
See "UFAS Checklist" listed on the Access Board website under "Publications."
As additional aids, see also Checklists developed by the Department of Justice pertaining to
general technological issues,
software accessibility,
web accessibility,
ITM accessibility, and
IT equipment accessibility

5.8 EMPLOYMENT PRACTICES

Provide Reasonable Accommodation for Individuals with Disabilities

- The recipient has a written policy that explains that a recipient must make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability.
- The policy explains that a recipient is not required to provide a reasonable accommodation if it would cause undue hardship.
- The policy describes the appropriate process for determining whether an accommodation would cause an undue hardship and the consequences of such a determination.
- The policy includes processes for handling requests for reasonable accommodations, e.g., the procedure provides for designation of a specific supervisory staff member to coordinate reasonable accommodation, including determining when an accommodation is or is not reasonable.
- The policy explains the circumstances under which reasonable accommodations must be provided, e.g., interviews, staff meetings, off-site meetings, trainings, and social events.
- There is a process in place to ensure ongoing tracking of whether an individual's needs for reasonable accommodations are met.
- The policy includes examples of reasonable accommodations. [See 29 CFR Part 32, Appendix A]

Limit Preemployment/Employment Medical Inquiries/Confidentiality

- Staff are aware of what constitutes legal and illegal inquiries.
- Job descriptions have been analyzed to determine which functions of a job are essential and which are marginal.
- Job descriptions are in writing.
- None of the following questions are asked during the application (pre-offer) process (unless an exception applies):
 - Health or physical condition

- Medical history
- Previous workers' compensation claims
- Prior health insurance claims

- The recipient does not require that applicants for employment take any of the following tests as part of the application process:
 - Alcohol test
 - HIV test
 - Psychological tests that are designed to identify a mental impairment

- The recipient has in place a written policy regarding who has access to medical information. For example, all non-medical records are kept in a separate place from records that contain medical information. (Medical records might include insurance application forms as well as health certificates, results from physical exams, etc.) [29 CFR 32.15; 29 CFR 37.10(d); 29 CFR 1630.14]

ELEMENT 6: DATA AND INFORMATION COLLECTION AND MAINTENANCE

- The recipient has a written policy outlining the requirements for notification of discrimination allegations to the Civil Rights Center, and trains relevant staff on the policy.
- The written policy states that such notification must be accomplished in a timely manner, and outlines the specific information that must be sent to the Civil Rights Center, including names of the parties and the location where the action was filed.

ELEMENT 7: MONITOR FOR COMPLIANCE

- The recipient's policies, instruments, checklists, and other processes used for monitoring compliance with the nondiscrimination/equal opportunity provisions include a review of policies, practices, and procedures to determine equal opportunity for persons with disabilities. The monitoring processes cover all of the Elements included in this Section 188 Disability Checklist.

ELEMENT 8: COMPLAINT PROCESSING PROCEDURES

- A written policy is in place setting forth the complaint resolution procedures prescribed by the regulations, including the means by which the complaint processing procedures are made available to individuals with disabilities (including individuals with visual and cognitive impairments).

ELEMENT 9: CORRECTIVE ACTIONS /SANCTIONS

- If in the past the recipient automatically referred all/most persons with disabilities to other agencies such as vocational rehabilitation, it has ceased this practice. If the recipient generally did not serve persons with disabilities, it is taking additional steps (such as the adoption of specific policies, practices, and procedures and training) to address former inadequacies.
- The recipient uses prospective relief (e.g., training, policy development, and communication) to ensure that discrimination does not reoccur.

Endnotes

[1] The terms "disability" and "qualified individual with a disability" are defined in [29 CFR 37.4](#). For purposes of this guidance, the term "persons with disabilities" includes, but is not limited to, persons with visible as well as non-visible physical and mental disabilities. Impairments that may be disabilities include: contagious and noncontagious diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, polio, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional or mental illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, and alcoholism.

[2] [29 CFR 37.4](#).

[3] [29 USC 2938](#).

[4] The interim final rule implementing Section 188 was published in the *Federal Register* on November 12, 1999 ([64 FR 61692-61738](#)).

[5] This Checklist does not address nondiscrimination and equal opportunity provisions of WIA prohibiting discrimination on the grounds of race, color, religion, sex, national origin, age, political affiliation or belief, and for WIA beneficiaries only, of his or her citizenship on the basis of an individual's status as a citizen or national of the U.S., or as an individual lawfully authorized to work in the U.S., or of his or her participation in any WIA Title I-financially assisted program or activity. See [29 CFR 37.1](#); [37.6](#).

[6] See "State Guidance for Developing Methods of Administration Required by Regulations Implementing Section 188 of the Workforce Investment Act" ([65 FR 51984-51990, August 25, 2000](#)) [hereinafter referred to as "Section 188 Guidance"].

[7] See [29 CFR 37.54](#).

[8] See [29 CFR Part 32](#). A recipient's compliance with [29 CFR Part 37](#) will satisfy any obligation of the recipient to comply with [Subparts A \(general provisions\), D \(procedures\) and E \(auxiliary matters\)](#) of DOL's Section 504 regulations. [29 CFR Part 32, Subparts B \(employment practices and employment-related training program participation\), C \(program accessibility\) and Appendix A \(examples of reasonable accommodations\)](#) are incorporated by reference into Part 37. Therefore, WIA recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in the Section 188 regulations. [[29 CFR 37.3\(a\) and \(b\)](#)]

[9] Recipients that are also public entities or public accommodations, as defined by Titles II and III of the Americans with Disabilities Act of 1990 (ADA), should be aware of obligations imposed by those Titles. [[29 CFR 37.3\(b\) and \(c\)](#)] Similarly, recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that Title. [[29 CFR 37.3\(d\) and 37.10\(e\)](#)] The term "employment agency" is defined as "any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person." [[42 USC 2000\(e\)](#); [42 USC 12111](#)]

[10] See [64 FR at 61699](#).

[11] See [29 CFR 32.7](#).

[12] The questions pertaining to a recipient's responsibility to ensure effective communications pursuant to [29 CFR 37.9](#) are set out under Section 5.5.

[13] Marketing, recruitment, and other materials include those that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large.

[14] Note that in addition to including an assurance pertaining to Section 188 (prohibiting discrimination on the basis of disability) and Section 504 of the Rehabilitation Act, a recipient must include an assurance pertaining to Section 188 (nondiscrimination on the basis of race, color, religion, sex, national origin, age, political affiliation or belief, and, for beneficiaries only, of citizenship on the basis of an individual's status as a citizen or national of the U.S., or as an individual lawfully authorized to work in the U.S., or of participation in a WIA Title I-financially assisted program or activity), Title VI of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, as amended, and Title IX of the Education Amendments of 1972, as amended. [29 CFR 37.20(a)(1)] Note also that this assurance to comply with these nondiscrimination and equal opportunity laws is judicially enforceable [29 CFR 37.20(a)(1)] and is incorporated into any arrangement where Federal financial assistance is made available under Title I of WIA, whether there is a physical agreement or not. [29 CFR 37.20(a)(2)].

[15] See also 29 CFR 32.12(a) and 29 CFR 32.26.

[16] It should be noted that the provisions related to "most integrated setting" are restated and specifically addressed in Section 5.4 of the Checklist.

[17] A discussion of the applicability of the reasonable accommodation provision pertaining to employment practices is set out in Section 5.8 of the Checklist.

[18] 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodations, have been incorporated into 29 CFR part 37 by reference. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as with the requirements specifically listed in 29 CFR 37.10. [See 29 CFR 37.3(b) and 10(d)] In addition, recipients that are also employers, employment agencies, or other entities covered by Titles I and II of the ADA should be aware of obligations imposed by those Titles. [29 CFR 37.10(e); see also 29 CFR part 1630 and 28 CFR part 35] Some programs housed within the One-Stop system often act as employment agencies, or conduct employment-related training. Some Temporary Assistance for Needy Families (TANF) and Welfare-to-Work (WtW) programs, for example, regularly conduct activities similar to those provided by employment agencies--for example, referring customers to jobs, or contacting employers to inquire about openings. Where those activities constitute a principal part of a program's activities, the program falls under the definition of "employment agency," and the services that it provides to customers are covered by these legal principles as well.

[19] A discussion of the applicability of the reasonable accommodation provision pertaining to employment practices is set out in Section 5.8 of the Checklist.

[20] See 29 CFR Part 32, Appendix A for examples of reasonable accommodations.

[21] Note that several examples of practices included under the "reasonable modification" Element are in fact examples of reasonable accommodations. These examples of reasonable accommodations are included under this Element to simplify the presentation, by including in one place examples of both modifications and accommodations pertaining to service delivery.