

Nebraska Department of Labor

Accessibility Policy

Date: August 2017

The basis for the State of Nebraska Accessibility Policy is 29 CFR Part 38, Implementation of the Nondiscrimination and Equal Opportunity (EO) Provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA); Final Rule, as recorded in the [Federal Register](#).

Purpose

To establish Equal Opportunity provisions of Title I, Section 188 of the Workforce Innovation and Opportunity Act (WIOA).

Applicability

Recipients of financial assistance (for the purposes of this policy, the State of Nebraska is the “recipient”) are prohibited from discriminating against members of the public, applicants for services, registrants, participants, claimants, applicants for employment within the WIOA job system, and WIOA financed-employees on the basis of *race, color, religion, sex (including pregnancy, childbirth, and related medical conditions), National origin (including limited English proficiency), age, disability, political affiliation or belief*, and for beneficiaries applicants, or participants only, on the basis of *citizenship status*, or participation in a program or activity that receives financial assistance under Title 1 of WIOA.

Policy

No individual may on the basis of *race, color, religion, sex (including pregnancy, childbirth and related medical conditions), national origin (including limited English proficiency), age, disability, political affiliation or belief or (for beneficiaries, applicants and participants only) on the basis of citizenship* be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any WIOA Title I-financially assisted program or activity.

Universal Access

As defined in 29 CFR Section 38 of the Federal Register, recipients must take appropriate steps to ensure universal access to WIOA Title I financially assisted programs and activities by doing the following:

- (1) Implementing an outreach and recruitment plan to solicit participation of all potentially WIOA Title I eligible reportable individuals in the entire locale;
- (2) Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community service groups;
- (3) Considering a pool of individuals for participation that includes members of both sexes, various racial and ethnic age groups, and individuals with disabilities;
- (4) Establishing a hiring and eligibility process that is accessible to qualified individuals with disabilities;
- (5) Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations.

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National Origin and/or Limited English Proficiency

In providing any aid, benefit or training under WIOA Title I-financially assisted program or activity, an individual must not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination based on national origin, including treating individuals adversely because they (or their families or ancestors) are from a particular country or part of the world, because of ethnicity or accent (including physical, linguistic and cultural characteristics closely associated with a national origin group) or because the individual is perceived to be of a certain national origin.

A recipient must take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity. Reasonable steps generally may include, but are not limited to:

- (1) An assessment of an LEP individual to determine language assistance needs;
- (2) Providing oral interpretation or written translation of both hard copy and electronic materials in the appropriate non-English languages;
- (3) Ensuring that every program delivery avenue (e.g., electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides;
- (4) Ensuring language assistance services providing oral interpretation or written translation are accurate, provided in a timely manner (e.g., provided at a place and time that ensures equal access and avoids delay or denial) and free of charge;
- (5) Providing notice of the existence of interpretation and translation services.

A recipient shall not require an LEP individual to provide their own interpreter and shall not rely on an LEP individual's minor child or adult family or friend(s) to interpret or facilitate communication, except:

- (1) An LEP individual's minor child or adult family or friend(s) may interpret or facilitate communication in emergency situations while awaiting a qualified interpreter; or
- (2) The accompanying adult (but not minor child) may interpret or facilitate communication when the information conveyed is of minimal importance to the services to be provided or when the LEP individual specifically requests that the accompanying adult provide language assistance, the accompanying adult agrees to provide assistance, and reliance on that adult for such assistance is appropriate under the circumstances. A record of the LEP individual's decision to use their own interpreter must be made and retained;
- (3) Where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, or where the competency of the interpreter requested by the LEP individual is not established, a recipient may decide to provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well.

With regard to vital information:

- (1) For languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site. Written training materials offered or used within employment-related training programs as defined in 29 CFR § 38.4 are excluded from

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these translation requirements. However, recipients must take reasonable steps to ensure meaningful access;

- (2) For languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service, or training that the recipient provides. Vital information may be conveyed orally if not translated;
- (3) Recipients must include a “Babel Notice,” indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy of letters or decisions or those communications posted on Web sites;
- (4) Once the recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant or applicant for aid, benefit, service or training, the recipient must convey vital information in that language;
- (5) Recipients are required to take reasonable steps to provide language assistance and should develop a written language access plan to ensure that LEP individuals have meaningful access.

Disability

“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.

In compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and WIOA Section 188, 29 CFR Part 38, recipients must provide programmatic and physical accessibility to individuals with disabilities.

Recipients must not require an individual with a disability to bring another individual to interpret for him or her. Recipients must not rely on an adult accompanying an individual with a disability or facilitate communication except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available, or where the individual with a disability specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. Recipients must not rely on a minor child to interpret or facilitate communication except in an emergency involving an imminent threat to the safety or welfare of an individual or the public, where there is no interpreter available.

A recipient, when providing aid, benefits, or services under WIOA Title I-financially assisted program or activity, must not directly or through contractual, licensing, or other arrangements, on the grounds of disability:

- (1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
- (2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded of others;
- (3) Provide a qualified individual with a disability with any aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (4) Provide different, segregated or separate aid, benefit, service, or training to 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;

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- (5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
- (6) Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

Programmatic Accessibility

All WIOA Title I-financially assisted programs and activities must be programmatic accessible, which includes:

- (1) Ensuring accessibility to their training programs, activities and services in the most integrated setting appropriate to the needs of qualified individuals with disabilities, including employment tests or other selection criteria used by recipient that do not screen out individuals with disabilities, and training programs accessible to individuals with visual, hearing, or speech impairments;
- (2) Providing means for individuals with disabilities to receive information about availability of facilities accessible to them;
- (3) Making 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 WIOA Title I-financially assisted service, program, or activity;
- (4) Providing auxiliary aids, services and reasonable accommodations to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs).

Physical Accessibility

All WIOA Title I-financially assisted programs and activities must be physically accessible:

- (1) No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because the recipient's facilities are inaccessible or unusable by individuals with disabilities.
- (2) Facilities must meet ADA [Standards](#) for Accessible Design, including, but not limited to:
 - (a) Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, bucked or uneven concrete walkways, loose gravel);
 - (b) Signage at the primary entrance to each of their inaccessible facilities, directing individuals to a location at which they can obtain information about accessible facilities;
 - (c) The international symbol for accessibility at each primary entrance of an accessible facility;
 - (d) Building entrance doors that can be opened with one hand;
 - (e) Accessible information at public counter or reception areas;
 - (f) Facility elevators that are accessible from the primary entrance, meeting the above criteria;
 - (g) Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
 - (h) At least one accessible public telephone per floor;
 - (i) Accessible meeting rooms with Braille symbols at an accessible height;

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- (j) Facility restrooms that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet seat should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, seat cover dispensers, etc.);
- (k) Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

All ADA technical requirements must be applied during the design, construction, and alteration of buildings and facilities.

Reasonable Accommodations and Reasonable Modifications

With regard to any aid, benefit, service, training, and employment, 29 CFR § 38.8 states that a recipient must do the following:

- (1) Provide reasonable accommodations 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 on business operations;
- (2) 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 WIOA Title I-financially assisted service, program, or activity.

29 CFR § 38.4 defines “undue hardship” as significant difficulty or expense incurred by a recipient when considered in light of certain factors. These factors include, but are not limited to:

- (1) The nature and net cost of the accommodations needed;
- (2) Overall financial resources of recipient;
- (3) Type of operation(s) of recipient;
- (4) The number of persons aided, benefited, served, trained, or employed;
- (5) The impact on the ability of other participants to receive aids, benefits, services, or training or of other employees to perform their duties;
- (6) The impact on the facility’s ability to carry out its business or mission.

The definition of “fundamental alteration” incorporates the concept of “undue financial and administrative burdens” in 29 CFR Part 38 and means:

- (1) A change in the essential nature of a program or activity, as defined in 29 CFR § 38.4, including but not limited to an aid, service, benefit, or training; or
- (2) A cost that the recipient can demonstrate would result in an undue burden.

If a recipient believes that the proposed modification would cause undue hardship or would fundamentally alter the program, the recipient has the burden of proving that compliance would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause hardship or result in such alteration only after considering all factors listed in the definitions of “undue hardship” and “fundamental alteration.” 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(s) who requested the accommodation.

If a requested accommodation would result in “undue hardship” or a modification would result in a “fundamental alteration”, the recipient must take any other action that would not result in such

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burden or alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

Communications with Individuals with Disabilities and Auxiliary Aids or Services

Appropriate steps must be taken to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are *as effective as communications with others*.

“Companion” means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training program, or activity of a recipient, who along with such individual, is an appropriate person with whom the recipient should communicate.

To afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIOA Title I program or activity a recipient must furnish appropriate auxiliary aids or services where necessary to ensure *effective communication*:

- (1) A recipient must give primary consideration to the requests of individuals with disabilities;
- (2) Appropriate auxiliary aids and services must be provided in accessible formats and in a timely manner;
- (3) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual and the context in which the communication is taking place.
- (4) A list of auxiliary aids and services is available in 29 CFR § 38.4.

With respect to information and communication technology, the final rule specifies that “when developing, procuring, maintaining, or using electronic and information technology, a recipient must utilize electronic and information technologies, applications, or adaptations which:

- (1) Incorporate accessibility features for individuals with disabilities;
- (2) Are consistent with modern accessibility standards such as Section 508 standards and W3C’s Web Content Accessibility Guidelines (WCAG) 2.0AA; and
- (3) Provide individuals with disabilities access to, and use of, information, resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits provided by the electronic and information technologies are provided to individuals with disabilities in an equally effective and equally integrated manner.

Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and/or members of the public, text telephones (TTYs) or equally effective telecommunications systems must be used to communicate with individuals who are deaf or hard of hearing or have speech impairments. When a recipient uses an automated-attendant system, including but not limited to voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems. A recipient must respond to telephone calls from a telecommunications relay service established under Title IV of the ADA in the same manner that it responds to other telephone calls.

Recipients must not require an individual with a disability to bring another individual to interpret or facilitate communication except in specified circumstances or rely on an adult accompanying an individual with a disability to interpret or facilitate communication except in specified circumstances or rely on a minor child to interpret or facilitate except in specified circumstances.

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Service Animals

Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of a recipient's facilities where members of the public, participants in services, programs or activities, beneficiaries, registrants, applicants, eligible applicants/registrants, applicants for employment and employees, or invitees, as relevant, are allowed to go. Exceptions to this policy include:

- (1) Recipients may ask an individual to remove the service animal from the premise if
 - (a) The animal is out of control. The service animal must be on a harness, leash, or other tether, unless
 - (i) The handler is unable because of a disability to use a harness, leash, or other tether, or
 - (ii) The use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).
 - (b) The animal is not housebroken.
- (2) If a recipient properly excludes a service animal because of the above-listed reasons, the recipient must be given the individual with a disability the opportunity to participate in the WIOA Title I-financially assisted service, program, or activity without having the service animal on the premises.
- (3) Where an employer recipient, after an individualized assessment, can demonstrate, that the presence of the service animal in a food preparation area being used by an employee, applicant or beneficiary, presents a direct threat to health or safety that cannot be eliminated or reduced by a reasonable accommodation to the employee, applicant or beneficiary;

The recipient is not responsible for the care of supervision of the service animal.

The recipient must not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal:

- (1) A recipient may ask if the animal is required because of a disability and what work or task the animal has been trained to perform.
- (2) A recipient must not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.
- (3) A recipient may not make these inquiries when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

In accordance with 29 CFR § 38.54, the State EO Officer monitors local areas for nondiscrimination and equal opportunity compliance as required by WIOA provisions and related regulations.

Any person, or any specific class of individuals, that has been or is being discriminated against on the basis of *race, color, religion, sex (including pregnancy, childbirth, and related medical conditions), National origin (including, limited English proficiency), age, disability, political affiliation or belief, citizenship status*, or participation in a WIOA Title I-financially assisted program or activity as prohibited by WIOA, Section 188, CFR 29 Part 38 of the regulations, may file a written complaint, either by him/herself or through a representative.

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The complainant may file with either the State of Nebraska EO Officer or the Civil Rights Center (CRC) in Washington DC. Written complaints may be mailed or emailed to the State EO Officer or mailed to the CRC at the addresses listed below.

State of Nebraska
Department of Labor
Equal Opportunity Officer
PO Box 94600
Lincoln, NE 68509-4600
NDOL.EOComplaints@nebraska.gov

The Director, Civil Rights Center
US Department of Labor
200 Constitution Ave., NW, Room N-4123
Washington, DC 20210
CRCEXternalComplaints@dol.gov

Complainants may request a meeting with the State EO Officer by calling 402-471-9000. Individuals with speech and/or hearing impairments may call 1-402-471-2786 or 1-800-833-7352.

Complaints must be filed within 180 days of the alleged violation. More information is available at [NDOL Internet](#) or [US Department of Labor-EO Complaints](#).