



Illinois Department of Commerce and Economic Opportunity

Rod R. Blagojevich
Governor

Jack Lavin
Director

PY'00 EO/WIA POLICY LETTER NO. 00-05

TO: Chief Elected Officials
Local Workforce Investment Board Chairs
WIA Fiscal Agents and Subrecipients
WIA State Agency Partners
WIA Title I-B Administrators
One-Stop Operators
Other Interested Persons

SUBJECT: Methods of Administration - Element 5 - Compliance with Section 504 of the Rehabilitation Act of 1973, as amended

DATE: June 20, 2001

I. PURPOSE:

In this element, the local-level should address how it and its subrecipients are complying and will continue to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations, including but not limited to 37.7, 37.8 and 37.9 and Subparts Band C of Part 32. This information is incorporated into the Illinois Department of Employment Security's MOA plan and is submitted to the U.S. Department of Labor, Civil Rights Center in Washington, D.C., thereby ensuring compliance with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act.

II. ISSUANCES AFFECTED:

- a) References:
- 1) U.S. Department of Labor Regulations at 29 CFR Part 37 - Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998;
 - 2) Workforce Investment Act of 1998 Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187, and 188;
 - 3) Title VI and VII of the Civil Rights Act of 1964, as amended;

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- 4) Section 504 of the Rehabilitation Act of 1973, as amended; Part B, C, Appendix A;
- 5) Age Discrimination Act of 1975, as amended;
- 6) Title IX of the Education Amendments of 1972, as amended;
- 7) U.S. Department of Labor Regulations at 20 CFR 652;
- 8) U.S. Department of Labor Regulations at 29 CFR Part 31 and Part 32;
- 9) The Illinois Human Rights Act, as amended and its Rules and Regulations;
- 10) Nontraditional Employment for Women Act of 1991;
- 11) The Americans with Disabilities Act of 1990;
- 12) The Civil Rights Restoration Act of 1987;
- 13) Executive Order 12250;
- 14) Executive Order 11246, as amended;
- 15) U.S. Department of Labor Regulations at 29 CFR Part 1604, Guidelines on Discrimination because of Sex, Sexual Harassment;
- 16) Age Discrimination in Employment Act of 1967; as amended;
- 17) Equal Pay Act of 1963; as amended;
- 18) U.S. Department of Justice Regulations at 28 CFR Part 42, Subparts F & H.
- 19) Section 503 of the Rehabilitation Act of 1973, as amended; and,
- 20) Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

b) Rescissions:

None.

III. SUBJECT INDEX:

Equal Opportunity/Nondiscrimination

IV. BACKGROUND:

On August 7, 1998, the Workforce Act of 1998 (WIA) was signed into law which supercedes JTPA. Section 188, of WIA contains the statute's equal opportunity and nondiscrimination provisions.

29 CFR Part 37, the federal regulations, dated November 12, 1999, implements the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 and require that each state establish and adhere to a Methods of Administration (MOA) for their state programs.

An MOA is a document, developed by the Department of Employment Security, that describes the actions an individual state will take to ensure that its WIA Title I-Financially assisted programs, activities, and recipients are complying, and will continue to comply, with the nondiscrimination and equal opportunity of WIA and its implementing regulations.

The MOA is to be organized in the nine element requirements, with both a narrative and a documentation section for each element.

V. POLICY:

Element 5 of the MOA addresses Compliance with section 504 of the Rehabilitation Act of 1973, as amended. The narrative portion of this element should address the following information:

- a) Describe how the local level ensures that reasonable accommodation is provided. (See 29 CFR 32.13 and 29 CFR 37.8).
- b) Describe how the local level ensures that reasonable modification is provided. (See 29 CFR 37.8).
- c) Describe how the local level ensures that architectural accessibility is provided. (See 29 CFR 32.28).
- d) Describe how the local level ensures that programmatic accessibility is provided. (See 29 CFR 32.27).
- e) Describe how the local level provides for and adheres to a schedule to evaluate job qualifications to ensure that they do not discriminate on the basis of disability. (See 29 CFR 32.14).
- f) Describe how the local level; limits pre-employment/employment inquiries to those permitted by and in accordance with section 504 and the Americans with Disabilities Act of 1990. (See 29 CFR 32.15).
- g) Describe how the local level ensures the confidentiality of medical information provided by registrants, applicants, eligible applicants/registrants, participants, employees, and applicants for employment. (See 29 CFR 32.15).
- h) Describe how the local level administers their WIA Title I-funded programs and activities so that each individual with a disability participates in the most integrated setting appropriate to that individual. (See 29 CFR 37.7(d)).
- i) Describe how the local level is able to communicate with persons with disabilities as effective as others.

The documentation of element 5 should include the following information:

- a) Copies of procedures issued by which persons with disabilities are assured of participation in programs and activities in as integrated setting as possible.
- b) The procedures by which the availability of reasonable accessibility and reasonable modification are made known and how such requests are made and resolved.
- c) The procedures by which the local level ensures that communications with persons with disabilities is as effective as communication with others.
- d) The procedures by which the local level ensures that its WIA Title I subrecipients are architecturally and programmatically accessible.
- e) Any self-evaluation conducted and the status of corrective action taken by the entity involved.
- f) Copies of publications and agendas for any training intended to raise awareness of disability status.

VI. ACTION REQUIRED:

This policy letter should be distributed to appropriate EO staff to prepare the narrative and documentation required under policy. This information is to be submitted, paper copy only-please no faxes, by close of business on Friday, July 13, 2001 to the following address:

Tim Golemo (*Revised 1-12-04*)
State EO Officer for WIA
IL Department of Commerce & Economic Opportunity
Bureau of Workforce Development
620 East Adams Street, 5th Floor
Springfield, IL 62701

VII. INQUIRIES:

Tim Golemo (217) 558-2418, (217) 557-5506 (fax) or
timothy_golemo@commerce.state.il.us (*Revised 1-12-04*)

VIII. EFFECTIVE DATE:

Upon issuance

IX. EXPIRATION DATE:

Continuing

Attachment: 29 CFR Part 32/Subparts B and C.

Attachment: 29 CFR Part 32/Subparts B and C.
Office of the Secretary of Labor

Subpart B-Employment Practices and Employment Related Training Program Participation

32.12 Discrimination prohibited.

- (a) General. (1) No qualified handicapped individual shall, on the" basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies. This subpart is applicable to employees and applicants for employment with all recipients and to participants in employment and training programs financed in whole or in part by Federal financial assistance.
- (2) A recipient shall make all decisions concerning employment or training under any program or activity to which this subpart applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not, limit, segregate, or classify applicants or employees or participants in any way that adversely affects their opportunities or status because of handicap.
- (3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants, employees or participants to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.
- (b) Specific activities. The provisions of this subpart apply to:
- (1) Recruitment advertising, and the processing of applicants for employment;
 - (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - (3) Rates of payor any other form of compensation and changes in compensation;
 - (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (5) Leaves of absence, sick leave, or any other leave;
 - (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
 - (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) Collective bargaining agreements. Whenever a recipient's obligation to comply with this subpart and to correct discriminatory practices impacts on and/or necessitates changes in a term of a collective bargaining agreement(s) to which the recipient is a party, the recipient shall attempt to achieve compliance consistent with the provisions of §32.17(a). However a recipient's obligation to comply with this subpart is not relieved by a term of any such collective bargaining agreement(s).

(d) Compensation. In offering employment or promotions to handicapped individuals, the recipient shall not reduce the amount of compensation offered because of any disability income pension or other benefit the applicant or employee receives from other source.

§32.13 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant, employee or participant unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include;

- (I) The overall size of the recipient's program with respect to number of employees, number of participants number and type of facilities and size of budget;
- (II) The type of the recipient's operation, including the composition and structure of the recipient's workforce, and duration and type of training program; and
- (III) The nature and cost of the accommodation needed.
- (IV) A recipient may not deny any employment or training opportunity to a qualified handicapped employee, applicant or participant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee, applicant or participant.
- (V) Nothing in this paragraph shall relieve a recipient of its obligation to make its program accessible as required in subpart C of this part, or to provide auxiliary aids, as required' by § 32.4(b)(7).

§ 32.14 Job qualifications.

(a) The recipient shall provide for, and shall adhere to, a schedule for the review of the appropriateness of all job qualifications to ensure that to the extent job qualifications tend to exclude handicapped individuals because of their handicap, they are related to the performance of the job and are consistent with business necessity and safe performance.

- (b) Whenever a recipient applies job qualifications in the selection of applicants, employees or participants for employment or training or other change in employment status such as promotion, demotion or training, which would tend to exclude handicapped individuals because of their handicap, the qualifications shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and safe performance. The recipient shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

§ 32.15 Pre-employment inquiries.

- (a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct pre-employment medical examinations or make pre-employment inquiry of an applicant for employment or training as to whether the applicant is a handicapped person or as to the nature or the severity of a handicap. A recipient may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.
- (b) When a recipient is taking remedial action to correct the effects of past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment or training to indicate whether and to what extent they are handicapped if:
 - (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.
 - (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant, employee or participant to any adverse treatment, and that it will be used only in accordance with this part.
- (c) An employer who routinely requires medical examinations as part of the employment selection process must demonstrate that each of the requirements of this subsection are met:
 - (1) The medical examination shall be performed by a physician qualified to make functional assessments of individuals in a form which will express residual capacity for work or training. Such an assessment does not require clinical determinations of disease or disability, but shall provide selecting or referring officials sufficient information regarding any functional limitations relevant to proper job placement or referral to appropriate training programs. Factors which may be assessed may include, for example, use of limbs and extremities, mobility and posture, endurance and energy expenditure, ability to withstand various

- working conditions and environments, use of senses and mental capacity;
- (2) The results of the medical examination shall be specific and objective so as to be susceptible to review by independent medical evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;
 - (3) The results of the medical examination shall not be used to screen out qualified applicants and employees but to determine proper placement and reasonable accommodation. The employing official, using physical or mental information obtained pursuant to this section should be familiar with physical or mental activities involved in performing the job, and the working conditions and environment in which it is carried out. If the applicant is being considered for a variety of jobs having different requirements or skills, the employing official should make a functional assessment of the physical or mental demands of the jobs in order to match the applicant with the most suitable vacancy;
 - (4) All of potential employees for the jobs are subjected to the medical examination;
 - (5) The procedures for using medical examinations or the medical information shall be constructed in such a manner that:
 - (I) A conditional job offer was made or the individual was conditionally placed in a job pool or conditionally placed on an eligibility list prior to the medical examination being performed; or
 - (II) The results of the medical examination were considered by the employing official only after a conditional decision to make a job offer or the individual had been placed conditionally in a job pool or conditionally placed on an eligibility list; that is the medical results were the last factor evaluated by the employing officials' before a final decision to make an offer of employment was made.
 - (6) Unless a conditional job offer is made prior to the medical examination, all potential employees for the job shall be informed at the time of the medical examination that:
 - (I) The results of the medical examination are the last factor evaluated by the employing official before a final decision to make an offer of employment is made, and,
 - (II) The medical examination results shall be transmitted to the employing official and the applicant only after a conditional decision to make a job offer has been made.
 - (d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:
 - (I) Employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was placed conditionally in a job pool or placed conditionally on an eligibility list.
 - (II) Supervisors and managers may be informed regarding restrictions on

the work or duties of qualified handicapped persons and regarding necessary accommodations;

- (3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and
- (4) Government officials investigating compliance with the Act shall be provided information upon request.

§ 32.16 Listing of employment openings.

Recipients should request State employment security agencies to refer qualified handicapped individuals for consideration for employment.

132.17 Labor unions and recruiting and training agencies.

- (a) The performance of a recipient's obligations under the nondiscrimination provisions of these regulations may necessitate a revision in a collective bargaining agreement(s). The policy of the Department of Labor is to use its best efforts, directly or through the recipients, sub-grantees, local officials, vocational rehabilitation facilities, and other available instrumentalities, to cause any labor union, recruiting and training agency or other representative or workers who are or may be engaged in work under programs of Federal financial assistance to cooperate with; and to comply with the implementation of section 504.
- (b) To effectuate the purposes of paragraph (a) of this section, the Assistant Secretary may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.
- (c) Whenever compliance with section 504 necessitates a revision of a collective bargaining agreement or otherwise significantly affects a substantial number of employees represented by the union, the collective bargaining representatives shall be given an opportunity to present their views to the Assistant Secretary.
- (d) The Assistant Secretary may notify any Federal, State, or local agency of his/her conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his/her judgment has failed to cooperate with the Department of Labor, recipients, subgrantees or applicants in carrying out the purposes of section 504. The Assistant Secretary also may notify other appropriate Federal agencies when there is reason to believe that the practices of any such labor organization or agency violates other provisions of Federal law.

Subpart C--Program Accessibility

§ 32.26 Discrimination prohibited.

No qualified handicapped individual shall, because a recipient's facilities are inaccessible to or unusable by handicapped individuals, be denied the benefits of, be excluded from: participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 32.27 Access to programs.

- (a) Purpose. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to qualified handicapped individuals. . This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by qualified handicapped individuals. However, if a particular program is available in only one location, that site must be made accessible or the program must be made available at an alternative accessible site or sites. Program accessibility requires non-personal aids to make the program accessible to mobility impaired persons. Reasonable accommodations, as defined in §32.3, are required for particular handicapped individuals in response to the specific limitations of their handicaps.
- (b) Scope and application. (1) For the purpose of this subpart, prime sponsors under the Comprehensive Employment and Training Act and any other individual or organization which receives a grant directly from the Department to establish or operate any program or activity shall assure that the program or activity, including Public Service Employment, Work Experience, Classroom Training and On-the-Job-Training, when viewed in its entirety, is readily accessible, to qualified handicapped individuals.
- (2) Job Corps. All agencies, grantees, or contractors which screen or recruit applicants for the Job Corps shall comply with the nondiscrimination provisions of this part. Each regional office of the Department of Labor's Employment and Training Administration which makes the decision on the assignment of a Job Corps applicant to a particular center may, where it finds, after consultation, with the qualified handicapped person seeking Job Corps services, that there is no method of complying with § 32.27(a) at a particular Job Corps Center, other than by making a significant alteration in its existing facilities or in its training programs, assign that individual to another Job Corps Center which is accessible in accordance with this section and which is offering comparable training. The Job Corps, and each regional office of the Employment and Training Administration, shall assure that the Job Corps Program, when viewed in its entirety, is readily accessible to qualified handicapped individuals and that all future construction, including improvements to existing Centers, be made accessible to the handicapped.
- (3) If a small recipient finds, after consultation with a qualified handicapped person seeking its services, that there is no method of complying with §32.27(a) other than making a significant alteration in its existing facilities or facility the recipient may. as an alternative, refer the qualified handicapped person to other providers of those services that are accessible.
- (c) *Methods.* A recipient may comply with the requirement of §32.27(a) 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 alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of §32.28, or any other method that results in making its program or activity accessible to handicapped individuals. A recipient is not

required to make structural changes in existing facilities where other methods are effective in achieving compliance with §32.27(a). In choosing among available methods for meeting the requirement of §32.27(a), a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

- (d) *Time period.* A recipient shall comply with the requirements of § 32.27(a) within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any even as expeditiously as possible.
- (e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of §32.27(a), a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including qualified handicapped individuals. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:
 - (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to qualified handicapped individuals;
 - (2) Describe in detail the methods that will be used to make the facilities accessible;
 - (3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
 - (4) Indicate the person responsible for implementation of the plan.
- (f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by qualified handicapped individuals.

§ 32.28 Architectural standards.

- (a) *Design and construction.* 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, if the construction was commenced after the effective date of this part.
- (b) *Alteration.* 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.
- (c) *Standards for architectural accessibility.* Design, construction, or alteration of facilities under this subpart Shall meet the most current standards for physical accessibility prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101-19.6. Alternative standards may be adopted when it is clearly evident that equivalent or greater, access to the facility or part of the facility is thereby provided.