

WIA Section 188 Disability Checklist

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The Checklist is a **tool** designed to:

- Help ensure non-discrimination and equal opportunity for persons with disabilities in the One-Stop system
- Provide practical tips and suggestions to help the One-Stop (and you) to comply with Federal requirements

URL for the Checklist

<http://www.dol.gov/oasam/programs/crc/WIASection188DisabilityChecklist.htm>

Laws Barring Disability-Based Discrimination

- Disability nondiscrimination laws are *different* from other civil rights laws
 - Just letting people with disabilities participate in a program or activity is *not enough*
 - Legal duty to *work with* people with disabilities to make sure they have an equal opportunity to *benefit from* the program or activity

What Federal Laws Protect One-Stop Clients with Disabilities?

- **Three relevant laws**

- **Title II of the Americans with Disabilities Act of 1990 (ADA)**

- **Covers all States, counties and other local governments administering public services**

Federal Laws Protecting One-Stop Clients with Disabilities (cont'd)

– Section 504 of the Rehabilitation Act of 1973

- Covers any **State or local agency, private institution or organization, or any public or private** entity that receives **Federal financial assistance**, directly or through another recipient/covered entity



Federal Laws Protecting One-Stop Clients with Disabilities (cont'd)

- **WIA Section 188**

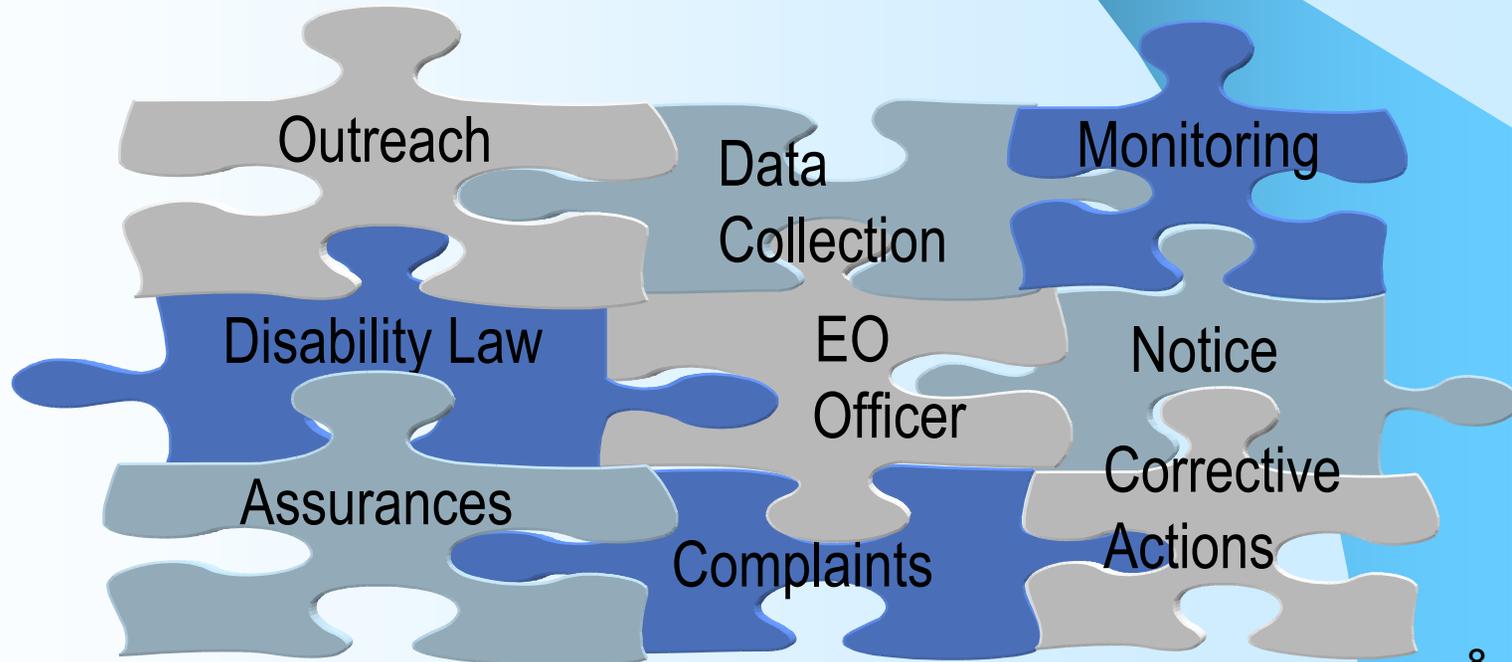
- Protects **clients and employees** of programs and activities that are:

- Operated by **One-Stop partners**

- **Part of the One-Stop system**

- *Doesn't matter* if program is *physically* located in **One-Stop Center**

Overview of the Checklist Elements



The Nine Elements

- Element 1: Designating an EO Officer
- Element 2: Notice and Communication
- Element 3: Assurances
- Element 4: Universal Access
- Element 5: Compliance with Disability Nondiscrimination Law
- Element 6: Data Collection
- Element 7: Monitoring
- Element 8: Complaint Processing
- Element 9: Corrective Actions/Sanctions

Element 1:

Appointment of EO Officer

- Recipients (except service providers and small recipients) must appoint an EO Officer, and
 - Provide education and training for the EO Officer and his/her staff
 - Publicize contact info for EO Officer, including TDD/TTY number
 - Allocate sufficient staff and resources
- EO Officer may also serve as Section 504 Coordinator

Element 2: Notice and Communication

- Recipient must provide specific notice that it is covered by Federal nondiscrimination law
- Two types of notice
 - “Equal Opportunity is the Law”
 - Tag lines and other info

“Equal Opportunity is the Law” (*aka* The Notice)

- **Must use exact text provided in regulation (29 CFR § 37.30), which:**
 - Explains that discrimination on specific listed bases (including disability) is against the law
 - Explains where and when to file a discrimination complaint

Who should receive the Notice?

- **Basically, everyone!**
 - The regulations contain a complete list (29 CFR 37.29)
- Applicants/registrants
- Participants
- Applicants for employment / employees
- Unions and professional organizations
- Subrecipients
- Members of the public

How must the Notice be distributed?

- Posted prominently
- Through internal memoranda / other communication methods
- In handbooks / manuals
- Made available to each participant / made part of the participant's file

Specific requirements for people with disabilities

- Notice must be communicated as effectively as to people without disabilities
- If Notice provided in alternate formats to a participant with a disability, record must be included in participant's file

Tag lines and other information – what materials are covered?

- Must be included in any materials / publications / broadcasts that:
 - Describe programs or activities
 - Explain requirements for programs or activities

What materials are covered?

- Distributed by any method
 - orally
 - in writing
 - electronically
- Distributed to any person or organization
 - staff, clients, the public at large

What tag lines are required?

- “Equal opportunity employer / program”
- “Auxiliary aids and services available upon request to individuals with disabilities”
- Must use this exact text – can’t make up your own tag lines

What other info must be included?

- If materials / broadcasts / publications include a voice telephone number . . .
- they **must** include either:
 - the recipient's TDD/TTY number, or
 - the number of the relay service the recipient uses

Notice and Communication (illustrative examples)

- Marketing and recruitment materials (including photos and ad copy) :
 - Mention people with disabilities as one of the groups served
 - Show people across the full range of physical, mental, cognitive, and sensory disabilities
 - Show people with disabilities who are from various racial / ethnic groups
 - Indicate the recipient's commitment to hire people with disabilities

Notice and Communication (more examples)

- The Notice is available in Braille and/or large print, recorded on audiocassette, or placed on ASCII diskette.
- The nondiscrimination policy and complaint procedures are read or explained to individuals with cognitive impairments as a matter of routine or on request.

Element 3: Assurances

- An assurance is an agreement to comply with certain Federal laws
- To receive Federal financial assistance, you must enter into specific assurances
- Grant applicants / recipients in One-Stop system must assure compliance with WIA Section 188 and Rehab Act Section 504

Grant applicants and non-discrimination assurances

- All grant applications must include specific written assurance
 - This includes applications by sub-recipients (such as training providers)
- Required text is in 29 CFR 37.20(a)(1)

Recipients and non-discrimination assurances

- If WIA Title I financial assistance is being provided, the assurance applies by operation of law – no matter what
- Assurance applies even if:
 - **the assurance isn't included in the written document**
 - **there isn't any written document**
 - **the recipient is a sub-sub-subrecipient**

Element 4: Universal Access

- This phrase has a specific meaning under the WIA nondiscrimination regulations
- Different from its meaning in the disability community

What does “Universal Access” mean?

- People can't have meaningful “access” to One-Stop system . . .
- if they don't know about the system
- So providing “universal access” means . . .
- doing **OUTREACH** to specific communities (including communities of people with disabilities)

Suggested ways of providing Universal Access

- Advertising in targeted media
- Sending notices about openings in the recipient's programs and activities to schools and community service groups that serve various populations

More ways of providing Universal Access

- Collaborating with entities that have experience working with persons with disabilities (e.g., developing networks and linkages through MOUs)
- Consulting with appropriate community organizations about ways to improve outreach

Assessing the local population

- One way to ensure universal access is to conduct an assessment of the local population of people with disabilities
- Use the results of the assessment to:
 - **decide how and where to conduct outreach**
 - **improve services to people with disabilities in your service area**
 - **increase available opportunities for people with disabilities**

Element 5: Compliance with Federal Disability Nondiscrimination Law

- This element includes both:
 - actions that are prohibited (things you must not do), and
 - actions that are required (positive steps you must take to level the playing field for people with disabilities)

Sections within Element 5

- 5.1: General Prohibitions
- 5.2: Reasonable Accommodations
- 5.3: Reasonable Modifications
- 5.4: Most Integrated Setting
- 5.5: Effective Communication
- 5.6: Programmatic Accessibility
- 5.7: Architectural Accessibility
- 5.8: Employment Practices

Element 5.1: General Prohibitions

- These are the “don’ts” – actions that are considered discriminatory
- Impossible to list every single action that may violate the law
- **Important:** these actions are unlawful *even if* the person(s) who take them *do not intend* to discriminate

Examples of General Types of Discriminatory Actions

- *Denying* a qualified person with a disability the *opportunity to participate in, or benefit from,* a program or activity because of his/her disability
- *Failing to give* a qualified person with a disability an *equal opportunity* to get the same results or benefits from a program or activity that people without disabilities receive
- *Charging* a particular person with a disability any *extra fees* to cover the costs of accommodating the disability

Specific Examples of Discriminatory Actions

- Accepting any job orders from an employer that will not accept applications from qualified persons with disabilities
- Stereotyping people with disabilities when evaluating their skills, needs, abilities, and interests
- Referring qualified people with disabilities to different programs / activities / employers / types of jobs than other qualified people

What is **steering**?

- Based **solely** on a person's disability:
 - Referring him or her to a particular job / employer / program / activity
 - Directing him or her to a particular profession / career path
- **Steering is illegal!**
- Deciding on an **individualized basis** is appropriate – and required by law

Additional Specific Examples of Discriminatory Actions

- Using tests or other assessment processes that measure customers' impairments, *not* their skills and abilities
- Failing to provide reasonable accommodations or modifications

5.2: Reasonable Accommodations

5.3: Reasonable Modifications

- Must be provided for all aspects of a recipient's programs and activities
 - registration for, and provision of, aid, benefits, services, and training
 - core, intensive, training, and support services

What are reasonable accommodations/ modifications?

- Actions that must be taken when a *particular person with a disability* seeks:
 - to apply for / participate in a program or activity
 - to apply for / perform the essential functions of a job

What are the differences between them?

- Modifications specifically apply to “policies, practices, and procedures” (the way things are done)
- Accommodations also apply in employment context (discussed under 5.8)

What are the differences between them? (cont'd)

- Terminology

- Accommodations must be provided unless would cause undue hardship
- Modifications must be provided unless would fundamentally alter the nature of the service, program, or activity

Undue hardship and fundamental alteration

- Recipient must:
 - go through specific, formal process to decide whether hardship / alteration would occur
 - if so, take other action that would allow the person with a disability to participate to the fullest extent possible

General examples of recommended practices

- Implement a written policy explaining:
 - the circumstances under which accommodations / modifications must be provided
 - the process for handling a request for a reasonable accommodation / modification
 - the system for documenting the types of accommodations / modifications that have been provided
 - examples of accommodations / modifications

Specific examples

- Registration and orientation: ask all registrants if they need assistance for the registration / application process
- Initial screening and assessment: give customers an opportunity to receive a comprehensive screening for hidden disabilities
- Service delivery: provide counseling re: the effect of employment on SSI / SSDI benefits

5.4: Most Integrated Setting

- Recipients must:
 - Administer programs and activities in the most integrated setting possible
 - Not provide segregated aid, benefits, services, or training to people with disabilities unless necessary to provide services as effective as those provided to others; and
 - Let qualified people with disabilities participate in integrated programs or activities, even if lawful “special” programs / activities exist

Segregation – is it lawful?

- Can the respondent *prove*:
 - that segregation is *necessary*?
 - that it provides *alternate services* that are as *effective* as services for people without disabilities?
 - that it gave people with disabilities the *option* of participating *in either* the segregated or regular program?

Most integrated setting (some examples)

- **Recipients should not rely solely on Vocational Rehabilitation agencies to provide services to customers with disabilities**
- **Recipients should make every effort to provide job assistance that leads to employment for customers with disabilities in a competitive, integrated work environment**
- **Recipients should not automatically place customers with disabilities in “sheltered workshops”**

5.5: Effective Communication

- **Take steps to ensure that communications with people with disabilities are as effective as communications with others**
- **Furnish appropriate auxiliary aids and services where necessary to give a person with a disability an equal opportunity to participate**
- **Give primary consideration to the requests of the person with a disability when determining the appropriateness of a particular auxiliary aid or service**

More Communication Requirements

- Where a recipient communicates by voice telephone, the recipient must also use TDDs/TTYs or a relay service
- Recipients must make sure that people with disabilities can find out:
 - what accessible services and facilities are available
 - where they are located

Effective Communication (some examples)

- Inform customers of the recipient's obligation to provide auxiliary aids and services
- Provide a list, in accessible formats, of all currently available assistive technology devices and services (such as closed captioned TV monitors or ZoomText)
- Provide "Pocket Talkers" or interpreter services, as appropriate, for people with hearing impairments

Effective Communication (more examples)

- For people with visual impairments:
 - Provide materials in Braille or large print, or recorded on audiocassette or ASCII diskette
 - If recipient has a video library, make videos available with audio descriptions

Effective Communication (more examples)

- For persons with cognitive impairments:
 - Provide assistance and/or extra time for completing forms
 - Repeat instructions, use a slower voice and simple sentences
 - Provide a quiet environment for reading if the public area has distractions

Effective Communication (more examples)

- For persons with mobility impairments:
 - Staff put themselves at the wheelchair user's eye level (if possible, sit next to the customer)
 - Staff 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 or counter during interaction

Effective Communication (more examples)

- **For persons with speech impairments:**
 - **Staff does not pretend to understand; rather, staff asks the person to repeat what s/he said and then repeats it back**
 - **Staff asks questions that require short answers or a nod of the head**
 - **If staff has difficulty understanding, considers having the customer write or use computer (BUT FIRST ASKS CUSTOMER IF THIS IS OK)**
 - **If no other solution can be worked out, staff asks whether there is someone who can interpret on customer's behalf**

5.6: Programmatic Accessibility

5.7: Architectural Accessibility

- Programmatic accessibility applies only where architectural accessibility isn't required!
- The Access Board (800) 872.2253. TDD/TTY: (800) 993-2822. E-mail: info@access-board.gov.

The “hierarchy of obligations”

- New construction
- Alteration or renovation
 - Done by you, on your behalf, or for your use?
 - Before or after you received Federal financial assistance?
- “Existing facilities”

5.8: Employment Practices

- Prohibit discrimination on the basis of disability;
- Provide reasonable accommodation;
- Develop and use a **regular schedule** for **reviewing selection criteria** to ensure they do not screen out, or tend to screen out, qualified individuals with disabilities; and
- Prohibit pre-employment and pre-selection inquiries regarding disability.

Employment Practices (some examples)

- Develop a written policy for providing reasonable accommodations;
- Be aware of what constitutes legal and illegal pre-employment and medical inquiries. Unless an exception applies, none of the following should be asked during the application (pre-offer) process:
 - Health or physical condition;
 - Medical history;
 - Previous workers' compensation claims; or
 - Prior health insurance claims.

Employment Practices (more examples)

- Recipient should not require that applicants for employment take any of the following tests as part of the application process:
 - Alcohol test;
 - HIV test; or
 - Psychological tests that are designed to identify a mental impairment.

Medical Information (special considerations)

- Medical information of employees and customers must be kept separate from non-medical information;
- Medical information must be securely stored in a separate location from non-medical information; and
- Medical information may include insurance application forms, health certificates, results from physical examinations, etc.

Element 6: Data Collection and Maintenance

- Some general requirements:
 - Race/ethnicity, sex, age, and disability status (where known) must be collected and maintained;
 - Securely stored to ensure confidentiality; and
 - Maintained for at least three years from close of applicable program year.
- Limited use of information:
 - Record-keeping and reporting;
 - Determining eligibility; and
 - Determining whether recipient is operating WIA Title I program in non-discriminatory manner.

Data Collection and Maintenance

- Discrimination complaint log must be maintained:
 - Statement of basis (race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, participation in a WIA Title I-financially assisted program);
 - Name and address of complainant;
 - Description of complaint;
 - Date complaint filed; and
 - Disposition and date of disposition.
- Maintained for at least three years from the date of resolution of the complaint.

Element 7: Monitoring

Each Governor must establish a monitoring system that contains two aspects:

- Periodic monitoring of all aspects of the recipients' compliance with general WIA program reqts; and
- Monitoring compliance with the nondiscrimination and equal opportunity requirements under WIA.

More on monitoring

Periodic monitoring must include:

- Investigating significant differences across groups;
- Analyzing data and records on who is being served; and
- Evaluating compliance with administrative obligations.

Monitoring the One-Stops

- How will the State/LWIA communicate monitoring obligations to all recipients and One Stop Centers?
- How will the State/LWIA ensure that monitoring is occurring?
- How will the State monitor and evaluate the success of the LWIA's monitoring efforts?

Element 8: Complaint processing

- Governor or LWIA (as provided in State's MOA) is responsible for developing and publishing complaint processing procedures to be used by service providers.
- State's or LWIA's EO Officer has specific responsibility for developing and publishing.
- Recipient's EO Officer must ensure that the discrimination complaint procedures are followed.

More on complaint processing

- Procedures must provide the complainant with the option to file with the recipient or directly with the Civil Rights Center.
 - These rights are clearly delineated in the “Equal Opportunity is the Law” notice which must be posted and given during in-take or orientation to every customer.

More on recipient's procedures

- The procedures must include the following required elements:
 - Initial written acknowledgement of receipt;
 - Written statement of issues;
 - Process for fact-finding;
 - Alternative dispute resolution (ADR); and
 - Written notice of final action (including notice of right to file with CRC).
- Process must be completed within 90 days

Alternative dispute resolution

- Must be included as an option in the recipient's procedures.
- Cannot be required as an initial step *before* a discrimination complaint is filed.
- Must be chosen by the complainant *after* the discrimination complaint is filed and
 - the recipient has provided written acknowledgement that complaint received; and
 - the recipient has provided a written statement of issues that are accepted for attempted resolution.

Element 9: Corrective actions/sanctions

- Corrective action is required where there is cause to believe a violation has occurred and a violation has been identified as the result of:
 - A compliance / monitoring review;
 - Investigation of a discrimination complaint; or
 - Both.

Examples of violations and possible corrective actions

- Failure to include “tag lines” in communication
- Reissue communication with “tag lines” included
- Discrimination on the basis of disability
- “Make-whole” relief

More on corrective actions

- Take immediate corrective action or agree on a plan if immediate corrective action is not possible:
 - Completely correct each violation;
 - Establish minimum time frame to completely correct the violation;
 - Institute follow-up monitoring procedures to ensure commitments to take corrective action and remedial action are being fulfilled; or
 - Provide written agreement or assurance to document corrective action taken or prospective relief planned.

Sanctions

- State and LWIA must have procedures in place to impose sanctions when:
 - Voluntary correction of a violation fails; or
 - It is apparent that the recipient refuses to correct the violation within the timeframe established.

Summary

- Two key components to ensuring success:
 - Allocate sufficient staff and resources (such as training and equipment) to the EO Officers/Section 504 Coordinators so that they will be able to effectively ensure compliance with WIA Section 188 and Section 504 of the Rehabilitation Act; and
 - Develop thorough monitoring and self-evaluation tools to gauge compliance.

Where to Get More Information

- ***CRC website***

(<http://www.dol.gov/oasam/programs/crc/crcwelcome.htm>)

- Contains information such as:

- the WIA Section 188 Disability Checklist
- instructions on how to keep and submit complaint logs

- ***ODEP website*** (<http://www.dol.gov/odep/>)

How to contact me

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