

§ 37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?

(a) With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of "reasonable accommodation" and "undue hardship" in § 37.4 of this part.

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

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of "undue hardship" in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

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

(b) A recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of "fundamental alteration" in § 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving

that the modification would result in such an alteration.

(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of "fundamental alteration" in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.

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

§ 37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?

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

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

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

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

(e)(1) A recipient must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the most current standards prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101-19.6. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information.

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

(f) This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity.

(1) In those circumstances where a recipient believes that the proposed action would fundamentally alter the WIA Title I—financially assisted program, activity, or service, the recipient has the burden of proving that compliance with this section would result in such an alteration.

(2) The decision that compliance would result in such an alteration must be made by the recipient after considering all resources available for use in the funding and operation of the WIA Title I—financially assisted program, activity, or service, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(3) If an action required to comply with this section would result in the fundamental alteration described in paragraph (f)(1) of this section, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

29 CFR Subtitle A (7-1-06 Edition)

§ 37.10 To what extent are employment practices covered by this part?

(a) Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with:

(1) Any WIA Title I—financially assisted program or activity; and

(2) Any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

(b) *Employee selection procedures.* In implementing this section, a recipient must comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3.

(c) *Standards for employment-related investigations and reviews.* In any investigation or compliance review, the Director must consider Equal Employment Opportunity Commission (EEOC) regulations, guidance and appropriate case law in determining whether a recipient has engaged in an unlawful employment practice.

(d) As provided in § 37.3(b) of this part, 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 accommodation, have been incorporated into this part by reference. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(e) 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. *See* 29 CFR part 1630 and 28 CFR part 35.

(f) Similarly, recipients that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision. *See* 8 U.S.C. 1324b, as amended.

(g) This rule does not preempt consistent State and local requirements.