



# **The ADA Amendments**

**What They Mean for  
the One-Stop System  
and Job Corps**

# Presented by:

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# What we're discussing today:

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- The Americans with Disabilities Act Amendments Act (ADAAA)
  - Signed into law on September 25, 2008
    - ✓ Public Law No. 110-325
  - Became effective on January 1, 2009
- How the ADAAA changes Federal disability nondiscrimination law
- What you need to do

# Key point #1

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- Federal disability nondiscrimination laws:
  - are not *identical*, but . . .
  - are *consistent*
- What this means:
  - We're going to give you the legal citations, but . . .
  - the main things we'd like you to remember are the *underlying ideas*



# What hasn't changed: these disability laws still apply to you

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- Workforce Investment Act of 1998 (WIA), Section 188
- Implementing regulations: 29 CFR part 37
  - Apply to WIA financial assistance recipients, such as:
    - ✓ All programs and activities:
      - offered by One-Stop partners
      - through One-Stop delivery system
    - ✓ Job Corps



# These disability laws still apply to you (cont'd)

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- Section 504 of the Rehabilitation Act of 1973, as amended
- DOL's implementing regulations: 29 CFR part 32
  - Statute and regs apply to all recipients of Federal financial assistance from DOL
  - Subparts B and C of regs apply to same entities as on previous slide



# These disability laws still apply to you (cont'd)

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- Americans with Disabilities Act of 1990, as amended (known as “the ADA”)
  - ADA Title I: applies to employers, employment agencies, others
  - ADA Title II: applies to State and local public entities, whether or not they receive federal financial assistance



# So why did Congress pass the ADAAA?

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- When it enacted the ADA, Congress intended it to be broadly construed (as the Rehabilitation Act had been)
- But Supreme Court decisions interpreted the ADA narrowly, reducing the number of people who were protected from discrimination
- Trickle-down effect:
  - Lower courts went even further
  - ADA interpretations were applied to Rehab Act





# Why did Congress pass the ADAAA? (cont'd)

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- Statutory language of ADAAA explicitly states that the focus of disability nondiscrimination law:
  - *should* be on whether the covered entity has complied with its obligations to provide equal opportunity
  - *should not* be on analyzing whether a particular individual's impairment is, or is not, a "disability"



# What changes did the ADAAA make to Federal disability law?

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- Rejected the Supreme Court's interpretations of the definitions of "disability" and related terms
- Clarified a number of issues that had been the subject of debate
- Amendments will make it much easier for an individual to:
  - meet the definition of disability
  - be protected from discrimination
  - be entitled to reasonable accommodations



# The ADAAA's relationship with WIA Section 188 and its regs

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- WIA Section 101 contains definitions that apply to the entire Act
- Definition of “individual with a disability”:  
“an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990)”
- The ADAAA changed the definition in Section 3 of the ADA

# Also amended Rehabilitation Act

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- Section 7 of ADAAA amends definition section of Rehabilitation Act
  - Uses language similar to Section 101 of WIA (ties definition to Sec. 3 of ADA)
- Result: all Federal disability nondiscrimination laws applicable to WIA recipients have been amended to conform with ADAAA



# Important note about change in WIA definition

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- Changes took effect on January 1, 2009
- *Statute supersedes regulations!*
  - Even though CRC has not amended 29 CFR parts 32 or 37 . . .
  - . . . the ADAAA changes still apply to those regs!



# Key Changes



# Core text of definition of “disability” is the same

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- **DISABILITY.**—The term ‘disability’ means, with respect to an individual—
  - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
  - (B) a record of such an impairment; or
  - (C) being regarded as having such an impairment (as described in paragraph (3)).



# Changes in *interpretation* of definition

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- Congress explicitly directed that definition of “disability” is to be construed broadly
  - Statutory language: “The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”
  - Applies to all three categories of “disability”





# Category One: Is the individual a person with an actual, current disability?

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- Does the person have a *physical or mental impairment*?
- Does the impairment affect one or more of his/her *major life activities*?
- Is the effect a *substantial limitation*?



# Changes to definition / interpretation of “major life activities”

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- Previously, this term was defined only in case law
  - Regs included some examples (29 CFR 37.4, definition of “major life activities”)
  - Courts and EEOC guidance documents recognized others
- Supreme Court ruled that term should be interpreted narrowly



# Changes to definition / interpretation of “major life activities” (cont’d)

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- In ADAAA, Congress:
  - Explicitly *rejected* Supreme Court’s ruling that activity must be “of central importance to daily life”
  - *Inserted* a definition of “major life activities” in the statute

# Changes to definition / interpretation of “major life activities” (cont’d)

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- New definition includes two non-exhaustive lists
  - List One: based on regulatory lists; adds some examples recognized by courts and/or EEOC guidance docs
  - List Two: entirely new list of “major bodily functions”

# Major Life Activities -- First List

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- Remember: this list is non-exhaustive
  - Includes activities listed in 29 CFR 37.4 and other regulations
  - Also includes other activities (some recognized by courts or EEOC Enforcement Guidances)



# Major Life Activities -- First List

## (cont'd)

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- “Other activities” (some recognized by courts or EEOC Enforcement Guidances):
  - eating
  - standing
  - bending
  - thinking

# Major Life Activities -- First List

## (cont'd)

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- More “other activities” (some recognized by courts or EEOC Enforcement Guidances):
  - communicating
  - sleeping
  - lifting
  - reading
  - concentrating

# Major Life Activities – Second List: “Major Bodily Functions”

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- **Major bodily functions** include, but are not limited to (non-exhaustive list):
  - normal cell growth
  - immune system
  - other types of functions (more on next slide):
    - ✓ digestive
    - ✓ bowel
    - ✓ bladder
    - ✓ neurological



# Major Life Activities – Second List: “Major Bodily Functions” (cont’d)

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- Other types of functions (cont’d):

- ✓ brain

- ✓ respiratory

- ✓ circulatory

- ✓ endocrine

- ✓ reproductive

- Remember: non-exhaustive list

# One “major life activity” is enough

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- ADA AAA clarifies that:
  - An individual’s impairment meets the definition of disability if it substantially limits him/her in just *one major life activity*

(more on next slide)

# One “major life activity” is enough (cont’d)

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- The individual is not excluded from coverage simply because s/he is *not* substantially limited in *other* major life activities
  - ✓ In other words, s/he *still* has a disability even if she is able to do many other things

# Changes to interpretation of “substantially limits”

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- No new statutory definition, but . . .
  - EEOC must revise its regulatory definition to eliminate “significantly restricted”
  - Supreme Court interpretation was too narrow
    - ✓ required “a greater degree of limitation than was intended by Congress”
    - ✓ created an “inappropriately high level of limitation necessary” for a person to be protected



# “Substantially limits” and “mitigating measures”

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- Supreme Court said “mitigating measures” had to be considered in determining substantial limitation
- No definition of “mitigating measures” before or after ADAAA

# “Mitigating measures”: major changes

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- Two major changes made by ADAAA
  - One: List of examples of “mitigating measures” included in statute
    - ✓ hearing aids; walkers, canes, or other mobility devices; medication; prosthetics
    - ✓ “learned behavior or adaptive neurological modifications”
    - ✓ reasonable accommodations; auxiliary aids and services (communication aids)



# “Mitigating measures”: major changes (cont’d)

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- Two: Congress *explicitly rejects* Supreme Court’s holding that mitigating measures must be considered in determining substantial limitation
- Under ADAAA, consider how the impairment affects the person before, or without, the “mitigating measure”
- ✓ Example: if a person has an amputated leg, you consider whether the amputation substantially limits him/her when s/he’s not wearing a prosthesis



# “Mitigating measures”: major changes (cont’d)

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- Sole exception: you “shall” consider the effect of “ordinary eyeglasses and contact lenses”
  - ✓ Defined as “lenses that are intended to fully correct visual acuity or eliminate refractive error”
  - ✓ If the employee can’t see well without them but can see well with them, then his/her vision impairment is not “substantially limiting”
- These are distinguished from “low vision devices,” defined as “devices that magnify, enhance, or otherwise augment a visual image”





# “Mitigating measures”: major changes (cont’d)

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- The flip side of the requirement to consider “ordinary eyeglasses and contact lenses” in determining substantial limitation:
  - Employer or employment agency:
    - ✓ cannot consider an applicant’s *uncorrected* vision as a job qualification . . .
      - in other words, must consider the applicant’s vision *with* glasses or contacts . . .
    - ✓ . . . *unless* the requirement is “job related and consistent with business necessity”

# Other Category One issues that the ADAAA resolves

- “Episodic” or cyclical impairments, or impairments that go into remission
  - Examples: depression, bipolar disorder, Post-Traumatic Stress Disorder, other psychiatric conditions, epilepsy, cancer
  - Are considered disabilities if they would substantially limit a major life activity *when active*



## Category Two: Is the individual a person with a record of a disability?

- Past history of a genuine disability
- Misclassified as having a disability
- The record or misclassification has to meet the three elements of an actual disability (impairment, major life activity, substantial limitation)
  - This last part has *not* changed

# Special note: Category Two and reasonable accommodation

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- In the past, CRC has taken the position that *only* people who fit the definition in Category One (*i.e.*, have an actual, current disability) are entitled to reasonable accommodations



## Special note: **Category Two** **and reasonable accommodation (cont'd)**

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- The ADAAA:
  - States that people who fall under the *Category Three definition* (are regarded as having a disability) are not entitled to reasonable accommodations
  - Signifies that people in *both* of the other two categories *are* entitled to accommodations

## Category Three: Has the person been regarded as having a disability?

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- Some aspects of this definition remain the same -- either the individual:
  - Has an impairment, but:
    - ✓ Impairment doesn't substantially limit a major life activity, or
    - ✓ Impairs a major life activity because of other people's attitudes; or
  - Doesn't have an impairment, but is treated as having one



## Category Three: Has the person been regarded as having a disability? (cont'd)

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- Significant change to this category!
  - Before the ADAAA, an individual wasn't protected under this category unless:
    - ✓ s/he could prove that the person or entity who allegedly took action against him/her because of a perception of impairment . . .
    - ✓ viewed that impairment as substantially limiting a major life activity!

## Category Three: Has the person been regarded as having a disability? (cont'd)

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- Congress changed that interpretation in the ADAAA
  - Post-ADAAA, all s/he has to prove is:
    - ✓ S/he was subjected to adverse treatment
    - ✓ Treatment was because of a physical or mental impairment, regardless of whether:
      - the impairment is actual or perceived (whether or not it really exists)
      - the impairment limits or is perceived to limit a major life activity





## Category Three: Has the person been regarded as having a disability? (cont'd)

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- Exception: Impairments that are minor AND transitory (6 months or less)
  - Example: Broken leg
- As stated earlier, an individual who is “regarded as” a person with a disability is not entitled to reasonable accommodation either pre- or post-ADAAA

# Other general issues that the ADAAA resolves

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- No “reverse discrimination” in disability nondiscrimination law
  - “Nothing in this Act shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual’s lack of disability.”
- *Confusing language* related to “qualified individual with a disability” has been clarified



# Effective date and retroactivity

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- Changes took effect this past January 1
- Is the ADAAA retroactive?
  - Courts that have considered the issue have said that it is **NOT** retroactive



# Effective date and retroactivity

(cont'd)

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- EEOC says:
  - Accommodation *decisions* made before January 1, 2009, if challenged, would likely be evaluated under *pre-ADAAA legal standards*
  - Evaluate accommodation *requests made before* January 1, 2009, but that were *still pending* on that date, under *new standards*
  - Evaluate accommodation *requests renewed after* January 1, 2009, under *new standards*

# What about regulations?

- No implementing regulations have been published as yet
  - Title I: EEOC responsible
    - ✓ Current status of regs:
      - Notice of Proposed Rulemaking (NPRM) published September 16, 2009
      - EEOC received hundreds of public comments about NPRM
      - Status in mid-March 2011: EEOC making changes to final rule based on comments

# What about regulations? (cont'd)

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- Title II: Justice Dept. responsible
  - ✓ Our understanding is that DOJ will:
    - wait until EEOC final rule is published
    - base relevant parts of its proposed rule on EEOC's

# What CRC will do

- CRC:
  - *Must* amend affected regulations
    - ✓ WIA nondiscrimination regs – 29 CFR part 37
    - ✓ Regulations implementing Rehab Act Section 504:
      - For financial assistance recipients: 29 CFR part 32
      - For programs conducted by DOL: 29 CFR part 33
  - *Cannot take the lead* in publishing new regulations
  - *Will* provide guidance and training to the extent possible

# The practical effects

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- What will *definitely* happen under ADAAA
  - More people will be:
    - ✓ protected under disability nondiscrimination law
    - ✓ entitled to reasonable accommodations
  - Courts will interpret various aspects of the Act
- What *may* happen under ADAAA
  - More disability complaints filed
  - Confusion about significance of ADAAA



# What you should do

- Equal Opportunity (EO) Officers
  - Remember that ADAAA changed legal standards, even though WIA nondiscrimination regulations *have not been revised*

(more on next slide . . .)

# What you should do (cont'd)

- EO Officers (cont'd)
  - *Be careful* when you're reviewing complaints, other matters related to disability
  - *Use pre-ADAAA or post-ADAAA law* as appropriate, depending on date of allegedly discriminatory act



# What you should do (cont'd)

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- EO Officers (cont'd)
  - Review and revise written (and unwritten) policies and procedures to ensure consistency with ADA AAA standards
  - ✓ Reasonable accommodation policies and procedures
  - ✓ Any other policies and procedures that may be relevant



# What you should do (cont'd)

- EO Officers (cont'd)
  - Train and educate
    - ✓ Top official (to whom you report) and key staff
    - ✓ Lower-level agency staff and administrators
    - ✓ Others as appropriate



# What you should do (cont'd)

- EO Officers (cont'd)
  - Remember that different definitions of disability apply to different laws!
    - ✓ ADAAA did not change standards for:
      - Voc Rehab
      - “Disabled veterans” programs
      - Social Security disability benefits
      - Others



# What you should do (cont'd)

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- Disability Program Navigators
  - Learn more about the ADA AAA
    - ✓ Seek out other sources of information
  - Work with EO Officers to:
    - ✓ Educate administrators, staff, customers, others
    - ✓ Ensure policies and procedures appropriately applied

# What you should do (cont'd)

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- Everyone: Ask for help!
  - Local EO Officers: contact State EO Officers
  - Local DPNs: contact State leads
  - State EO Officers and leads: contact CRC



# Resources



# Resources on the ADAAA

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- Be VERY CAREFUL when consulting supposed “experts” in the private sector – check with CRC to see whether we agree with the interpretation being made by the “expert”

# Resources on the ADAAA

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- Archive of documents and history of ADAAA and ADA:

<http://www.law.georgetown.edu/archiveada/>

- Fascinating article by law professor who was involved in drafting both ADA and ADAAA:

<http://www.law.georgetown.edu/archiveada/documents/ADAAMendmentsActArticle.pdf>



# More resources on the ADAAA

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- Transcript of Cornell Univ. Disability Policy Forum on the ADAAA:

[http://www.ilr.cornell.edu/edi/p-eprrtc-policyforum.cfm#2008\\_12](http://www.ilr.cornell.edu/edi/p-eprrtc-policyforum.cfm#2008_12)

- Includes extensive comments from EEOC Commissioner Christine Griffin

- Job Accommodation Network (JAN) Bulletin on ADAAA:

<http://www.jan.wvu.edu/bulletins/adaaa1.htm>

# Still more resources on the ADAAA

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- Interesting unpublished Sixth Circuit decision on ADAAA applicability to case

[http://www.nacua.org/documents/Jenkins\\_v\\_NatBdMedExam.pdf](http://www.nacua.org/documents/Jenkins_v_NatBdMedExam.pdf)

- Case involved student seeking test accommodations
- Court said ADAAA should be used to determine what accommodations student should be given for future tests



# Where to get general information

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- All of these websites *must still be amended* to take account of ADAAA changes
  - DOL websites
    - ✓ **CRC website**  
(<http://www.dol.gov/oasam/programs/crc/>)
    - ✓ **ODEP website** (<http://www.dol.gov/odep/>)
    - ✓ **ETA DDWP website** (<http://www.doleta.gov/disability/>)
  - EEOC Enforcement Guidances
    - ✓ <http://www.eeoc.gov/policy/guidance.html>



**Questions?**

# How to contact Denise\*

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- *Postal Mail* for Denise Sudell:
  - Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210
- *E-Mail*:
  - [sudell.denise@dol.gov](mailto:sudell.denise@dol.gov)

\* Sadly, Ms. Tadvalkar passed away in May 2010. We retain her name on this presentation in tribute to the work she did.

# How to contact Denise (cont'd)

- *Telephone for Denise Sudell:*
  - 202-693-6554 (voice)
  - 202-693-6516 (TTY/TDD)
  - 800-877-8339 (Federal Information Relay Service – toll-free)