

# VI WORKFORCE DEVELOPMENT BOARD POLICY DOCUMENT

## Workforce System Guidance WIOA 206-15

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**TO:** WIOA Grant Recipients; Administrative Entities; One-Stop Partners; Eligible Service Providers

**SUBJECT:** **NON- DISCRIMINATION ON THE BASIS OF DISABILITIES** – *General Provisions and Facilities Access*

**DATE:** July 2015

**References:** Workforce Innovation and Opportunity Act of 2014 Section 188; 28 CFR 35.130; 28 CFR 35.149 – 35.151

**Purpose:** To establish general guidance by which the VI Workforce System proffers WIOA activities and services to individuals with disabilities.

**Background:** In accordance with 28 CFR 35 - The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), which prohibits discrimination on the basis of disability by public entities.

### *§35.130 General prohibitions against discrimination*

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service 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;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

#### *§35.149 Discrimination prohibited*

Except as otherwise provided in §35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

#### *§35.150 Existing facilities*

(a) General. A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not --

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

#### *§35.151 New Construction and Alterations*

##### *(a) Design and construction*

(1) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

##### *(2) Exception for structural impracticability*

(i) Full compliance with the requirements of this section is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(ii) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(iii) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

*(b) Alterations*

(1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity 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 individuals with disabilities, if the alteration was commenced after January 26, 1992.

(2) The path of travel requirements of § 35.151(b)(4) shall apply only to alterations undertaken solely for purposes other than to meet the program accessibility requirements of § 35.150.

(3) (i) Alterations to historic properties shall comply, to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in § 35.151(c).

(ii) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of § 35.150.

**Policy:** It is the policy of the Virgin Islands Workforce Board and the VI Department of Labor, as the Administrative Entity, that no qualified disabled person shall be denied the benefits of or be excluded from participation in programs or activities utilizing WIOA title I or title III funds.

**Procedure:** To ensure that this policy is effective the VI Department of Labor, One-Stop Center Partners and Eligible Providers of Services will provide whatever reasonable assistance may be deemed necessary to assure programmatic and architectural accessibility including, but not limited to the following examples:

(1) Until our facilities are fully barrier free - -

(a) We will provide to our employees and customers with disabilities whatever assistance is deemed necessary to accommodate their needs, including assistive technology and alternate barrier free work/training locations.

(b) We will provide individuals usually serviced at those locations alternative service sites.

(2) Arrange for assistance for services to disabled customers and provide testing (if applicable) and placement support. Such services and support may include providing interpreters, readers and other accommodations deemed necessary.

Inquiries: Questions should be addressed to the:

Chairman of the Workforce Investment Board at VI Workforce Board, Sunny Isle Professional Building, Suite 7, Christiansted, VI 00820; (340) 773-5237.

*VIWIB July 2015*