

# MAKING MUSEUMS AND LIBRARIES MORE ACCESSIBLE

## INTRODUCTION

In 1973, Congress passed the **Rehabilitation Act** in a national effort to end discrimination on the basis of disability by agencies and organizations that receive or benefit from federal financial assistance. Section 504 of the Act (see 20 U.S.C. §794) provides:

No otherwise qualified person with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

A principle objective of the lawmakers was to provide equal opportunity, not merely equal treatment, for disabled persons.

In 1990, Congress reaffirmed its commitment to the disabled community by enacting the **Americans with Disabilities Act**, which aims to correct the “serious and pervasive social problem” of “discrimination against individuals with disabilities” in American life. In passing this law, Congress found that “individuals with disabilities continually encounter various forms of discrimination,” including the “discriminatory effects of architectural, transportation and communication barriers” and “relegation to lesser services, programs, [and] activities.”

To ensure access to its programs and compliance with the accessibility laws, the Institute of Museum and Library Services has issued a regulation, 45 C.F.R. §1180.44(b), requiring that its grantees comply with the provisions set out in 45 C.F.R. part 1170, titled *Nondiscrimination on the Basis of Handicap in Federally Assisted Programs or Activities*. These regulations are specifically intended to protect individuals with disabilities from discrimination *based on their disability*. An *individual with a disability* (“handicapped person”) is “any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.” (45 C.F.R. §1170.3(j))

## GENERAL PROHIBITION AGAINST DISCRIMINATION

Under IMLS's regulations, your organization may not, *on the basis of disability*, directly or indirectly:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from any aid, benefit or service, or to participate as a member of a planning or advisory board.
- Afford a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit or service that is *not* equal to that afforded to others.
- 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.
- Provide different or separate aid, benefit or services to individuals with disabilities or to any class of persons with disabilities than is provided to others unless such action is necessary to provide qualified persons with disabilities with aid, benefits or services that are as effective as those provided to others.
- Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability.
- 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.

You are prohibited from, directly or through contractual or other arrangements, utilizing criteria or other methods of administration the purpose or effect of which would: (1) subject qualified persons with disabilities to discrimination on the basis of disability; or (2) defeat or substantially impair accomplishment of the objectives of a program or activity with respect to persons with disabilities.

In determining the site or location of a facility, you may not make selections the purpose or effect of which would: exclude person with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by your organization, or defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to persons with disabilities.

You are required to take appropriate steps to ensure that communications with your applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

## EMPLOYMENT

The Institute's regulations preclude your organization from discriminating against an individual with a disability, *on the basis of that person's disability*, with respect to:

- Recruitment, advertising, the processing of applications for employment, hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- Rates of pay or any other form of compensation and changes in compensation;
- Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- Leaves of absence, sick leave or any other leave, and fringe benefits available by virtue of employment, whether or not administered by your organization;
- Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;
- Employer sponsored activities, including social or recreational activities;
- And any other term, condition, or privilege of employment.

In the context of employment, *a qualified individual with a disability* is an individual who, with reasonable accommodation, can perform the essential functions of the job in question. **You are required to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless you can prove that the accommodation would impose an undue hardship (action requiring significant difficulty or expense) on the operation of your program or activity.** A reasonable accommodation is generally considered to be any change in the work environment or in the way things are normally done that enables an individual with a disability to have equal employment opportunities. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, part-time or modified work schedules, acquisition or modification or equipment or devices, the provision of readers or interpreters and other similar actions.

## PROGRAM ACCESSIBILITY

Under IMLS's regulations, your organization is required to operate each program or activity to which Part 1170 applies so that when each part is viewed in its entirety it is readily accessible to individuals with disabilities. The term "when viewed in its entirety" is essential to the concept of program accessibility. All elements of a program or activity need not be accessible to meet the regulatory requirements and offer persons with disabilities opportunities for full participation. When an entire program or activity (i.e., all aspects) is analyzed, however, equal opportunities for participation must exist for persons with disabilities.

For existing facilities, the focus of IMLS's regulations is on *programs*, not buildings. Thus, your organization is not necessarily required to make structural changes in existing facilities where other methods are effective in achieving compliance with IMLS's regulations on program accessibility. In choosing among available methods for meeting the requirements of the regulations, you are required to give priority to those methods that offer programs or activities to persons with disabilities in the most integrated setting appropriate.

You may comply with the requirements of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, alteration of existing facilities and construction of new facilities, or any other methods that result in making your programs or activities readily available to and usable by persons with disabilities.

### New Construction and Alterations

New facilities must be designed and constructed to be readily accessible to and usable by individuals with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by individuals with disabilities.

## ENFORCEMENT

To receive Federal financial assistance from IMLS, you are required to submit to IMLS an assurance, on a form specified by the Institute, that your programs will be operated in compliance with IMLS's regulations. The duration of your obligation under this assurance is dependent upon the type of Federal financial assistance you receive.

If the Director of IMLS finds that you have discriminated against individuals with disabilities in violation of the law, you must take such remedial action as the Director deems necessary to overcome the effects of the discrimination. The Director may require you to take remedial action with respect to individuals with disabilities who are no longer participants in your program or activity but who were participants in the program or activity when the discrimination occurred, or with respect to individuals with disabilities who would have been participants in the program or activity had the discrimination not occurred.

As a condition of receiving federal funds from IMLS, you are required to conduct a self-evaluation to ensure compliance with IMLS's regulations. As part of this self-evaluation, you are required to take the following steps:

- Evaluate with the assistance of interested persons, including persons with disabilities or organizations representing persons with disabilities (“interested persons”), your current policies and practices and the effects thereof that do not or may not meet the requirements of IMLS's regulations;
- Modify, after consultation with interested persons, any policies and practices that do not meet the requirements of IMLS's regulations;
- Take, after consultation with interested persons, appropriate remedial steps to eliminate the effects of discrimination that resulted from adherence to such policies and practices.