

INSTRUCTION ON NONDISCRIMINATION FOR INDIVIDUALS WITH DISABILITIES IN DHS-CONDUCTED PROGRAMS AND ACTIVITIES (NON-EMPLOYMENT)

I. Purpose

This Instruction implements the Department of Homeland Security (DHS or the Department) Directive 065-01, Nondiscrimination for Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-Employment). Other related DHS directives and instructions are equally applicable.

II. Scope

This Instruction applies throughout DHS, except for programs or activities conducted outside the United States that do not involve individuals with a disability in the United States.

III. References

- A.** The Rehabilitation Act of 1973, as amended, Public Law (Pub. L.) 93-112, 29 United States Code (U.S.C.) 794 et seq.
- B.** The Americans with Disabilities Act Amendments Act of 2008 (effective January 1, 2009), Pub. L. 110-325, 42 U.S.C. 12101 et seq.
- C.** The Architectural Barriers Act of 1968, as amended, Pub. L. 90-480, 42 U.S.C. 4151 et seq.
- D.** Title 6, Code of Federal Regulations (C.F.R.) Part 15: Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security
- E.** Delegation 19003, "Delegation to the Officer for Civil Rights and Civil

Liberties for Matters Involving Civil Rights and Civil Liberties, Including Equal Employment Opportunity and Workplace Diversity”

F. DHS Directive 065-01, "Nondiscrimination for Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-Employment)"

G. DHS Directive 4010.2, "Section 508 Program Management Office and Electronic and Information Technology Accessibility”

IV. Definitions

A. **Auxiliary Aids and Services:** Services or devices that enable qualified individuals with disabilities to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department. Auxiliary aids and services include, but are not limited to:

1. Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

2. Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

3. Acquisition or modification of equipment or devices; and

4. Other similar services and actions.

B. **Complete Complaint:** A signed, written statement (which may be signed

by the complainant or by someone authorized to do so on his or her behalf) that contains the complainant's name and contact information, and describes the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of Section 504.

C. Component: Any organization which reports directly to the Office of the Secretary (the Secretary, the Deputy Secretary, the Chief of Staff, the Counselors, and their respective staff). This includes both operational and support components.

D. Conducted Programs and Activities: All programs and activities of the Department, including those carried out through contractual or licensing arrangements, except for programs and activities conducted outside the United States that do not involve individuals with a disability in the United States.

E. Electronic and Information Technology (EIT): Information technology including any equipment or interconnected system or subsystem used in the creation, conversion, or duplication of data or information. EIT includes, but is not limited to, software applications and operating systems, telecommunications products, information kiosks and transaction machines, Web sites (Internet, Intranet, and Extranet), video and multimedia products, desktop and portable computers, and office equipment such as copiers and fax machines.

F. Facility: All or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock (e.g., buses, vans, cars, railcars, or other conveyances), or other real or personal property that is owned, leased, or used by DHS or its contractors.

G. Fundamental Alteration: Modifications to essential aspects of programs, expansions to the substantive scope of a program, or eliminations of eligibility requirements for programs that impact public safety, as determined by the Secretary of Homeland Security (or his or her designee).

H. Individual with a Disability: An individual who has a physical or mental impairment that substantially limits one or more major life activities (an "actual disability"), or a record of a physical or mental impairment that substantially limits a major life activity ("record of"), or an actual or perceived impairment, whether or not the impairment limits or is perceived to limit a major life activity, that is not both transitory and minor ("regarded as").

I. Interactive Process: The process by which the qualified individual with a disability requesting an accommodation and the Component and/or contractor

engages with each other about the request for accommodation, the process for determining whether an accommodation can be provided, and identification of alternative accommodations.

J. Major Life Activities: Basic activities that the average person in the general population can perform with little or no difficulty, such as (but not limited to) caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, concentrating, thinking, interacting with others, and working. A major life activity can also include the operation of a major bodily function.

K. Qualified Individual with a Disability: With respect to a Department-conducted program or activity, an individual who can meet the essential eligibility requirements for receipt of services or participation in a federal entity's programs, activities, or services with or without (1) reasonable modifications to a federal entity's rules, policies, or practices; (2) removal of architectural, communication, or transportation barriers; or (3) provision of auxiliary aids and services.

L. Qualified Interpreter: A person who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, but are not limited to, sign language interpreters, oral transliterators, and cued-language transliterators.

M. Qualified Reader: A person who is able to read effectively, accurately, and impartially using any specialized vocabulary.

N. Reasonable Accommodation or Modification: A change or modification in the program or operation that would enable a qualified individual with a disability to enjoy an equal opportunity to participate in and benefit from a program or activity and that would not result in a fundamental alteration or financial and administrative burdens.

O. Section 504: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended. Section 504 prohibits discrimination based on disability in federally assisted and federally conducted programs or activities in the United States, including employment programs. As used in this Instruction, Section 504 applies only to programs or activities conducted by DHS, including through its contractors, and not its federally assisted programs.

P. Section 508: Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. Section 508 requires that when federal agencies develop,

procure, maintain, or use EIT, federal employees with disabilities have access to and use of information and data that is comparable to the access and use by federal employees without disabilities, unless an undue burden would be imposed on the agency. Section 508 also requires that any person with a disability from the general public seeking information or services from a federal agency have access to and use of information and data that is comparable to that provided to persons without disabilities, unless an undue burden would be imposed on the agency.

Q. Transliterators: A person who conveys the spoken message in another form of the same language and vice versa. For example, a transliterator works between a spoken language, such as English, and a signed language that uses a more English-based word order.

R. Undue Burdens: Those financial and administrative burdens that entail significant difficulty or expense or add significant new administrative responsibilities, when assessed in comparison to all Component resources available for use in the funding and operation of the conducted program or activity, as determined by the Secretary of Homeland Security (or his or her designee).

S. Video Remote Interpreting (VRI) Service: An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 28 C.F.R. § 35.160(d).

V. Responsibilities

A. The Officer for Civil Rights and Civil Liberties manages the execution of this Instruction consistent with the provisions of Directive 065-01.

B. The Component Heads oversee implementation of the content and procedures of this Instruction throughout their Component-conducted programs and activities.

VI. Content and Procedures

A. Disability Access Coordinator

1. Description: Each Component designates a lead Disability Access

Coordinator, along with supporting Coordinators, if necessary, in Component units or field offices, to coordinate and provide support for compliance with Section 504, including achievement of the requirements of Directive 065-01 and implementation of this Instruction.

2. Responsibilities: The lead Disability Access Coordinator:
 - a. Acquires and maintains a working knowledge of Section 504 and its application to the Component;
 - b. Has the ability and authority to reach across the Component's divisions and offices, including field offices across the United States, as needed;
 - c. Has the time and expertise to lead the development and implementation of the Component's efforts (e.g., policy, training) to coordinate compliance with Section 504;
 - d. Works with representatives across the Component's divisions and offices to serve as the central resource for Component compliance with Section 504;
 - e. Serves as the Component's primary point of contact for regional and field level Disability Access Coordinators, providing guidance and technical assistance as needed;
 - f. Serves as the point of contact for the public regarding questions and issues with respect to Component compliance with Section 504;
 - g. Coordinates the Component's fulfillment of the requirements of Directive 065-01 and this Instruction, including completion of the Self-Evaluation and preparation of the Component Plan;
 - h. Provides outreach to individuals with disabilities on the Component's Section 504 related efforts;
 - i. Serves as the Component's representative to the DHS Disability Access Working Group, and coordinates with the Office for Civil Rights and Civil Liberties (CRCL) and other Component representatives as needed to strengthen the DHS community of interest on this topic;

j. Maintains awareness of the Component's procedures for providing reasonable accommodations to members of the public with disabilities with respect to programs and activities of the Component and the requests made for such accommodations; and

k. Maintains awareness of Section 504 complaints related to Component programs and activities, consistent with privacy protections, and when appropriate takes actions to address issues that arise.

3. Procedures:

a. Within 15 days of the issuance of this Instruction, Components confirm to CRCL their designation of the lead Disability Access Coordinator for Directive 065-01, confirming the individual's contact information including name, title, office, email address, and phone number. This information is transmitted to crclexecsec@hq.dhs.gov.

b. Components make additions and/or adjustments as needed to their designation of supporting Coordinators to carry out the provisions of this Instruction.

c. Components notify CRCL within 15 days of any changes in the designation of the lead Coordinator and, in the event of a vacancy in the position, Components transmit to CRCL the name and contact information of the interim Coordinator. This information is transmitted to crclexecsec@hq.dhs.gov.

d. CRCL provides training to the lead Coordinators at the time of designation and subsequently as needed to support the development of the Coordinators' expertise; the lead Coordinator arranges for the training of supporting Coordinators. Supporting Coordinators may join the lead Coordinators in the CRCL trainings.

B. Component Self-Evaluation

1. Description: Each Component conducts a Self-Evaluation of the Component's programs and activities. The Component Self-Evaluation:

a. Identifies any barriers to access posed by existing policies,

communication mechanisms, and physical spaces;

b. Identifies any gaps in existing Component policies or procedures for providing reasonable accommodations and modifications to qualified individuals with disabilities; and

c. Provides a holistic picture of how the Component provides access to individuals with disabilities within its programs and activities and areas requiring strengthening for compliance with Section 504.

2. Contents: Each Component conducts a Self-Evaluation that evaluates the Component at two levels: the first is a comprehensive assessment of policies and procedures at the headquarters level; and the second is an assessment of how policies and procedures are implemented and how the Component's service delivery practices and/or operations are carried out. For each Component program, the Self-Evaluation examines the following:

a. Accessibility of Program Policies and Practices

i. Has the Component established a policy ensuring equal treatment for individuals with disabilities within the program?

ii. Are there any program policies, procedures, or eligibility criteria that explicitly exclude, or have the effect of excluding, individuals with disabilities?

iii. Are there any program policies, procedures, or eligibility criteria that result in individuals with disabilities receiving lesser or unequal treatment compared to persons without disabilities?

iv. How are the program's interactions with individuals with disabilities conducted in the most integrated setting appropriate?

v. If individuals with disabilities are offered a separate program setting, are they notified that they retain the option to participate within the integrated setting of the general program?

- vi. Describe any instances in which individuals with disabilities are asked to meet any other requirements not imposed on other program participants.
- vii. Describe the procedures established for the presence of service animals accompanying individuals with disabilities in program settings.
- viii. How are contractors informed about their nondiscrimination obligations under Section 504 and how do contractors provide assurances to this effect?
- ix. How does the program ensure that its contractors' interactions with individuals with disabilities do not result in discrimination?
- x. Describe any circumstances in which a consideration related to disability would influence the choice of a procurement contractor.
- xi. Describe the program's process for providing individuals with disabilities with reasonable modification of its policies, procedures, and practices.
- xii. How are program staff and members of the public notified that individuals with disabilities have the right to request a reasonable modification to a program's policies, procedures, and practices?
- xiii. Within the past three years, if an accommodation or modification was denied due to a determination that it would impose a fundamental alteration or an undue burden to the program, explain the circumstances of the denial.
- xiv. Do all the program's public and internal references to and portrayals of individuals with disabilities in written and audio-visual materials respect personal dignity, including use of appropriate terminology?
- xv. What actions does the program take to solicit the input of individuals with disabilities and their

representatives?

xvi. How are individuals with disabilities notified regarding their rights under Section 504 and the procedure for filing a complaint?

xvii. Describe the circumstances and resolution of any complaints received within the past three years in which failure to provide equal opportunity or reasonable accommodation or modification and/or discrimination based on disability was alleged.

b. Effective Communication

i. How do the program's personnel and procedures ensure that individuals with disabilities are treated in a nondiscriminatory manner?

ii. What are the procedures for personnel to follow to effectively communicate with individuals who have vision, hearing, speech, physical, and intellectual disabilities?

iii. What is the program's process for providing auxiliary aids and services (including sign language interpreters) upon request to ensure effective communication with individuals with disabilities?

iv. In providing auxiliary aids and services, how is primary consideration given to the preference of the individual with a disability?

v. Describe the training and instruction on the use of auxiliary aids and services provided to personnel.

vi. How is on-site information regarding the program provided in an accessible manner for individuals with vision, hearing, physical, and intellectual disabilities?

vii. How do individuals with hearing or speech disabilities access a TTY or an equally effective telecommunications system at the program location?

viii. How has staff responsible for phone communications been trained on the use of the accessible telecommunications system?

ix. How are the program's interactions with the public through telephone lines made accessible for individuals with disabilities?

x. If the program maintains a hotline for urgent issues from the public, how does this telephone line allow for direct access by a TTY or other equally effective communication system?

xi. How is on-site electronic and information technology (e.g., registration computers, application or information kiosks, security verification equipment) provided in an accessible manner for individuals with disabilities?

xii. How does the program ensure that its internet-based information and applications are accessible for individuals with disabilities?

xiii. Describe the processes in place to ensure that the Component complies with the obligation to ensure access to electronic and information technology in accordance with Section 508.

xiv. How are members of the public informed of their right to file a complaint under Section 508 related to accessibility of electronic and information technology?

xv. How are public meetings and events (both in-person and virtual) made accessible for individuals with disabilities?

xvi. How is the existence and location of accessible services, activities, and facilities communicated to individuals with disabilities?

xvii. How are the program's structural communications (including displays, signage, and elevator controls) made accessible for individuals with disabilities?

xviii. How are the program's evacuation procedures and emergency communications made accessible for individuals with disabilities?

xix. Describe the circumstances and resolution of any complaints received within the past three years in which lack of effective communication with individuals with disabilities was alleged.

c. Physical Accessibility

i. What are the key physical features of the program's facilities that ensure access for individuals with disabilities (including approach/entrance, service areas, housing units, restrooms, and amenities)?

ii. Describe any structural changes that have been made within the past three years to ensure access to program facilities for individuals with disabilities.

iii. Describe any nonstructural strategies that have been used within the past three years to ensure overall program access for individuals with disabilities.

iv. What policies and criteria have been established to ensure that selection of new program sites/facilities comply with applicable accessibility standards?

v. What policies have been established to ensure that DHS-owned and leased property and facilities provide physical access for individuals with disabilities?

vi. Describe how facility managers consult with program managers about the purpose and function of the physical space to ensure that new construction and alterations are readily accessible to and usable by individuals with disabilities?

vii. What assurances are required of contractors to ensure that their facilities provide physical accessibility for individuals with disabilities?

viii. What procedures have been established to ensure that accessible features (including mechanical elements) are maintained?

ix. What measures have been taken to ensure that transportation activities associated with the program have been made accessible to individuals with disabilities?

x. Describe any circumstances within the past three years in which the inaccessible features of facilities resulted in segregated interactions with individuals with disabilities.

xi. Describe the circumstances and resolution of any complaints received within the past three years in which lack of physical access for individuals with disabilities was alleged.

3. Procedures: The Component Self-Evaluation is carried out as follows:

a. The Component Self-Evaluation and associated Component Plan are completed within 18 months of the kick off meeting of Disability Access Coordinators.

b. Implementation of the Component Plan occurs over the subsequent six months after completion of the Self-Evaluation and Component Plan.

c. The Component Self-Evaluation and Component Plan are conducted on a recurring basis, at least once every seven years, as determined by CRCL.

d. CRCL convenes a kick-off meeting with the Component Disability Access Coordinators and distributes a Guidance Manual that provides instructions on conducting the Self-Evaluation and preparing the Component Plan.

e. Components prepare and submit to CRCL a Self-Evaluation Methodology within the first two months of the project. The Component Methodology uses the Guidance Manual to:

i. Identify all the points at which the Component

encounters and serves individuals with disabilities in its conducted programs and activities;

ii. Identify the key individuals within each program with whom the Coordinator will be working to conduct the evaluation; and

iii. Describe the approach the Component will take in conducting the comprehensive assessment of policies at the program headquarters level and in conducting the assessment at the field level.

f. CRCL reviews the Component Methodology and provides comments to Components within three months of the start of the project.

g. Components address CRCL comments and commence the Self-Evaluation within four months of the start of the project.

h. Components provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the Self-Evaluation; participation of interested persons will be consistent with guidance developed by CRCL, taking into consideration unique circumstances across Component operations including sensitive and/or law enforcement settings.

i. Components keep CRCL informed and involved as appropriate throughout the Self-Evaluation.

j. CRCL provides Components technical assistance as needed throughout the Self-Evaluation, including providing guidance on tailoring the Self-Evaluation to fit the Components' size, mission, and interactions with individuals with disabilities.

k. Components complete the Self-Evaluation and submit it to CRCL within 11 months of the start of the project.

l. CRCL provides comments to Components on the Self-Evaluation within 13 months of the start of the project.

C. Component Plan

1. Description: Each Component develops, and submits to CRCL for review and approval, a Component Plan that:

- a. Addresses any barriers identified in the Self-Evaluation; and
- b. Documents the Component's policies on disability access and procedures for providing reasonable accommodations and modifications for qualified individuals with disabilities encountered or served by the Component in DHS-conducted programs and activities.

2. Contents: The Component Plan addresses the barriers and gaps identified in the Self-Evaluation and contains the following elements:

- a. **Responsible Staff:** Identifies the lead and supporting Disability Access Coordinators for the Component, along with the senior management staff, work group, committee, or other staff who will have the authority and be responsible for implementing the Component Plan, as well as establishing and implementing operational procedures.
- b. **Component Overview:** Briefly describes the nature and scope of the Component's programs and activities in the context of the overarching DHS mission.
- c. **Program Interactions:** Describes all the points at which the Component encounters and serves individuals with disabilities in its conducted programs and activities.
- d. **Existing Policy Barriers:** Sets out the process for eliminating existing barriers to equal opportunity for individuals with disabilities by modifying the policies, directives, and guidance governing the Component's conducted programs and activities.
- e. **Program Accessibility:** Sets out the methods, including removal of structural barriers where necessary, that will be used to ensure that programs and activities are readily accessible to and usable by individuals with disabilities in the most integrated setting appropriate.
- f. **Interaction Procedures/Protocols:** Sets out the process for

modifying existing or developing new procedures or protocols that staff will follow to provide access for individuals with disabilities encountered or served by the Component.

g. Reasonable Accommodation Policies/Procedures: Sets out the process for modifying existing or developing new policies and procedures for providing reasonable accommodations and modifications to qualified individuals with disabilities.

h. Auxiliary Aids Policies/Procedures: Sets out the process for modifying existing or developing new policies and procedures to furnish auxiliary aids and services to qualified individuals with disabilities.

i. Dissemination of Policies and Procedures: Sets out the process for making the following readily available to all Component personnel interacting with or providing information to the public:

i. Directive 065-01, Nondiscrimination for Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-Employment);

ii. Component Plan developed in accordance with Directive 065-01 and this Instruction;

iii. Component procedures for interacting with members of the public who have disabilities and associated procedures for processing requests for accommodations from these individuals;

iv. Component procedures for processing complaints from individuals alleging discrimination on the basis of disability, consistent with the DHS Section 504 regulation (6 C.F.R. Part 15);

v. The link to the DHS publication, "A Guide For Interacting With People Who Have Disabilities;" to be printed for use as appropriate; and

vi. The link to the DHS Disability Access web site hosted by CRCL.

j. Training: Sets out the process for managerial and program staff training on disability access responsibilities, including the following:

- i. Information on who the lead Disability Access Coordinator and supporting Coordinators are and how to contact them;
- ii. Section 504 obligations related to program, physical, and communication access;
- iii. Provision of reasonable accommodations and modifications, including auxiliary aids and services; and
- iv. Tips for successfully interacting with individuals with disabilities found in "A Guide For Interacting With People Who Have Disabilities."

k. Notification to the Public: Sets out the processes for publicizing and disseminating information to inform persons served or encountered by the Component in DHS-conducted programs and activities of the following:

- i. Their rights under Section 504;
- ii. How to request reasonable accommodations and modifications; and
- iii. How to file a complete complaint under Section 504.

l. Resources: Assesses the resources necessary to provide disability access, identifying existing resources to the extent practical and describing funding and procurement needs.

m. Implementation Steps: For all action items identified above, describes the timeframes, milestones, and responsible parties for the steps to be taken in implementing the Component Plan.

3. Procedures: The Component Plan is prepared and carried out as follows:

- a. CRCL provides Components with a Guidance Manual to

guide the preparation of the Component Plan.

b. Components utilize the results of the Self-Evaluation and the Guidance Manual to prepare and submit to CRCL a draft of the Component Plan within 15 months of the start of the project.

c. CRCL reviews the draft Component Plan and provides initial comments to Components within 17 months of the start of the project.

d. Components address CRCL comments and submit the completed Component Plan to CRCL for approval within 18 months of the start of the project.

e. Components carry out the actions contained in the Component Plan during the six months following approval of the Component Plan by CRCL.

f. Components disseminate to interested persons, including the individuals with disabilities or organizations representing individuals with disabilities involved in the Self-Evaluation, the completed Component Plan approved by CRCL.

g. CRCL provides technical assistance to Components during the implementation of the Component Plan.

h. Components submit to CRCL an Implementation Report detailing achievement of the actions contained in the Component Plan at the end of the six-month implementation period.

i. Components provide CRCL a Biennial Update Report detailing the actions taken to accomplish the Component Plan and other actions taken to strengthen compliance with Section 504.

j. CRCL periodically solicits feedback from Components on how to strengthen its role in serving as a clearinghouse for best practices on providing access to individuals with disabilities in DHS programs and activities.

VII. Questions

Address any questions or concerns regarding this Instruction to the Deputy Officer for

Programs and Compliance in the Office for Civil Rights and Civil Liberties. Questions should be sent to crclexecsec@hq.dhs.gov.



Megan H. Mack
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March 13, 2015

Date