

## IMLS GUIDANCE ON MAKING MUSEUMS AND LIBRARIES MORE ACCESSIBLE

### Preventing Discrimination Against People with Disabilities in the US

Congress passed the **Rehabilitation Act** in 1973 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 states:

No otherwise qualified individual 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. (See 20 U.S.C. §794).

The lawmakers aimed to provide equal opportunity, not merely equal treatment, for disabled persons.

Congress reaffirmed its commitment to ending discrimination on the basis of disability by enacting the [Americans with Disabilities Act of 1990](#). 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 compliance with these accessibility laws, the Institute of Museum and Library Services requires that its grantees comply with regulations titled [“Nondiscrimination on the Basis of Handicap in Federally Assisted Programs or Activities.”](#) (45 C.F.R. §1170). These regulations 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))

### IMLS Regulations Against Discrimination

Under IMLS’s regulations, you 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;
- 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, 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 aid, benefits, or services that are as effective as those provided to others;
- 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;
- Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
- 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 may not deny a qualified person with a disability the opportunity to participate in aid, benefits, or services that are not separate or different, despite the existence thereof.
- You may not, directly or indirectly, use criteria that would: (1) subject qualified individuals 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 individuals with disabilities.
- In determining the site or location of a facility, you may not make selections that would: exclude individuals 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 individuals with disabilities.
- You are required to offer programs or activities in the most integrated setting appropriate, and take steps to ensure that communications with your applicants, employees, and beneficiaries are available to individuals with impaired vision and hearing.

## IMLS Regulations Against Employment Discrimination

Under IMLS's regulations, you may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of a disability, or participate in a contractual or other relationship that subjects qualified individuals with disabilities to discrimination. These employment provisions apply 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 demonstrate 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 individuals with disabilities; and
- Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

## **IMLS Regulations on Making Programs Accessible**

Under IMLS's regulations, you must operate your programs and activities so that they are readily accessible to individuals with disabilities. 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. However, when an entire program or activity (i.e., in all aspects) is analyzed, equal opportunities for participation must exist for persons with disabilities.

You must also take steps to ensure that individuals with disabilities, including individuals with impaired vision or hearing, can obtain information as to the availability of services, activities, and facilities that are accessible to them.

For existing facilities, the focus of IMLS's regulations is on programs, not buildings. You are 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 individuals with disabilities in the most integrated setting appropriate.

You may comply with the requirements of this section by redesigning equipment, reassigning classes or other services to accessible buildings, altering existing facilities and construction of new facilities, or any other methods that result in making your programs or activities readily accessible to and usable by individuals with disabilities.

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

## **IMLS Regulation Enforcement**

To receive Federal financial assistance from IMLS, you must certify that you will comply with IMLS's regulations. Your obligations to comply with these regulations will last for the entire period during which you receive Federal financial assistance (with certain exceptions, as specified in 45 C.F.R. §1170.51(b)).

If the Director of IMLS finds that you have discriminated against individuals with disabilities in violation of the law, you must take any steps 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 individuals with disabilities or organizations representing individuals 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; and
- Take, after consultation with interested persons, appropriate remedial steps to eliminate the effects of discrimination that resulted from adherence to such policies and practices.

Organizations employing 15 or more persons are also required to:

- Maintain on file a list of persons consulted, areas examined, problems identified, and descriptions of any modifications made or remedial steps taken in connection with your self-evaluation;
- Designate at least one individual to coordinate your organization's efforts to comply with these regulations;
- Adopt grievance procedures that provide fair and prompt resolution of complaints alleging any violation of these regulations; and
- Notify participants, applicants, and employees that you do not discriminate on the basis of disability.