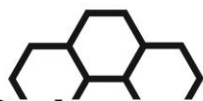


Workforce Solutions

Equal Opportunity Standards and Guidelines

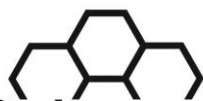
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Workforce Solutions

Equal Opportunity Standards and Guidelines

I. Standard

Workforce Solutions upholds the highest standard of equal opportunity and access to service for all its customers.

Workforce Solutions strives to deliver high-quality and valuable service for each of its customers in the most integrated setting appropriate to their needs. As the public workforce system, funded with taxpayer dollars, we adhere to and can provide upon request information concerning the requirements of federal and state equal opportunity, non-discrimination, and disability laws.

These *Equal Opportunity Standards and Guidelines* establish local procedures and are not intended to supersede any other applicable laws, regulations, or organizationally specific requirements. Workforce Solutions' contractor procedures and guidelines must contain these same mandates and can provide additional protections to customers with disabilities.

This policy is written to comply with all applicable disability non-discrimination laws including:

- Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and the implementing regulations found in 29 Code of Federal Regulations (CFR) Part 37;
- Americans with Disabilities Act (ADA) of 1990, which prohibits employers and social service agencies from discriminating against qualified individuals with physical or mental disabilities on any basis;
- Section 504 of the Rehabilitation Act of 1973, as amended, and the implementing regulations found in 29 CFR Part 32, which prohibits discrimination against persons with a physical, sensory or mental disability in programs receiving or benefiting from federal financial assistance; and
- Texas State law for accessibility requirements.



Equal Opportunity Standards and Guidelines

A. Workforce Solutions Equal Opportunity Requirements

All staff of Workforce Solutions and partnering agencies are responsible for adherence to these requirements.

1. Workforce Solutions does not discriminate against individuals or classes of individuals on the basis of a physical, mental, or sensory disability when providing assistance, benefits, and services.
2. Workforce Solutions assures that communications with beneficiaries, applicants, registrants, eligible applicants/registrants, customers, employees or applicants for employment, and members of the public are effective for individuals with or without disabilities.
3. No customer shall on the basis of a disability, be excluded from participation in, denied the benefit of, subjected to discrimination under, or be denied services, access to services or programs and/or facilities, in the administration of, or in connection with, any program or activity financially assisted in whole, or in part under Workforce Solutions.
4. The need to provide a reasonable accommodation or modification will not be a factor in the selection of a customer for program participation, or for any opportunity which may have an impact on the customer's career development.
5. Workforce Solutions staff must be compliant with all applicable disability non-discrimination laws including: the ADA, relevant portions of Section 188 of WIOA and its implementing regulations found in 29 CFR Part 37, Section 504 and the implementing regulations found in 29 CFR Part 32, and other applicable laws.
6. Workforce Solutions staff are required to attend training that is deemed necessary by the EO Officer. Records of training must be maintained and made available upon request.
7. Workforce Solutions sites shall be architecturally barrier free. When determining a site or location of a facility, Workforce Solutions' selection process will be made in a manner that does not have a discriminatory effect.
8. All services offered at Workforce Solutions sites shall be available and welcoming to all qualified customers, regardless of disability.



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Equal Opportunity Standards and Guidelines

9. All Workforce Solutions publications, brochures, and broadcasts must include:
 - an EO policy statement that indicates Workforce Solutions is “an equal opportunity employer/program.”
 - the tag line “auxiliary aids and services are available, upon request, to individuals with disabilities” (29 CFR §37.34).
 - the tag line indicating a TDD/TTY number (such as Relay Texas) or equally effective means of communication for individuals who are hearing impaired.
10. Workforce Solutions staff will provide reasonable accommodations and modifications for customers with disabilities and will comply with all applicable accessibility requirements (see *Providing Accommodations*).
11. Workforce Solutions staff may discipline, including denial of service to, any individual who violates office policy related to conduct, even if the conduct resulted from a disability, as long as the conduct policy is related to the provision of the services at issue, consistent with business necessity, and being imposed consistent with program policy.



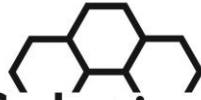
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Equal Opportunity Standards and Guidelines

B. Prohibited Discriminatory Actions

Actions that Workforce Solutions prohibits, because they are considered discriminatory based on a disability, include but are not limited to:

- Failing to provide a reasonable accommodation or modification, or failing to take appropriate steps to ensure that communications with persons with disabilities are as effective as communications with others
- Denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards
- Accepting any job orders from an employer that will not accept applications from qualified persons with disabilities
- Perpetuating discrimination by providing significant assistance to, or contracting with, an agency, organization or business that discriminates on the basis of a person's disability status
- Having/imposing eligibility criteria that screens out or tends to screen out an individual with a disability or class of individuals with disabilities unless such criteria can be shown to be necessary for the provision of aid, benefit, service, training, program or activity being offered
- Administering certification and licensing programs in a manner that discriminates on the basis of disability
- Using tests or other assessment processes that measure the impairments of persons with disabilities, not their skills and abilities
- Denying a qualified person with a disability the opportunity to participate in, or benefit from, the same program or activity afforded to other persons
- Failing to give a qualified person with a disability an equal opportunity to get the same results or benefits from a program or activity that people without disabilities receive
- Providing segregated or different services or training to individuals with disabilities
- Charging a particular person with a disability a surcharge fee to cover costs of accommodating the disability
- Stereotyping people with disabilities when evaluating their skills, needs, abilities, and interests
- Referring qualified persons with disabilities to different programs, activities, employers or types of jobs than other qualified people



Workforce Solutions

Equal Opportunity Standards and Guidelines

C. Methods of Administration

Workforce Solutions follows the nine elements of the provisions of TWC's Methods of Administration.

Element 1: Designation of State and Local Level Equal Opportunity Officer

The Board EO Officer is a senior-level employee as documented in the H-GAC Human Services organization chart. Required EO Officer education, experience and responsibilities are contained in the job description; additional responsibilities or activities that create a conflict with the responsibilities of being an EO Officer will not be assigned.

The EO Officer's name, position, title, business address, and telephone number (including TDD/TTY number) are made public on all internal and external communication regarding non-discrimination and equal opportunity to all applicants, eligible applicants, customers, employees, applicants for employment, and members of the public in compliance with 29 CFR 37.26.

a. Equal Opportunity Officer Responsibilities

The EO Officer is responsible for coordinating the Gulf Coast Workforce Board's obligations and compliance activities under the non-discrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) and 29 CFR 37.25. Those responsibilities include, but are not limited to:

- Serving as the liaison with TWC and the U.S. Department of Labor Civil Rights Center
- Monitoring Gulf Coast Workforce Board and contractor activities to ensure they are not violating non-discrimination and EO provisions of Federal and State Laws and Regulations, including *WIOA §188*
- Reviewing Gulf Coast Workforce Board and Workforce Solutions written standards and guidelines to ensure they are not discriminatory
- Developing and publishing procedures for processing discrimination complaints and ensuring those procedures are followed
- Reporting directly to the appropriate official (TWC, Governor, or other appropriate authority) about equal opportunity (EO) matters
- Undergoing training to maintain competency
- Monitoring complaint procedures for compliance with 29 CFR 37.76-37.79



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- Developing, coordinating, scheduling, maintaining records of, and monitoring EO training for staff assigned responsibilities for non-discrimination and equal opportunity

Element 2: Notice and Communication

The notice contained in 29 CFR 37.30, can be found on Workforce Solutions website at <http://www.wrksolutions.com/equal-opportunity-is-the-law>. It is also prominently displayed on posters in our career offices and on the *Orientation to Discrimination Complaint Procedures Form* which becomes a part of the customer's individual record.

To help ensure communication with all customers is effective, Workforce Solutions includes required “tag lines” on official publications and provides interpreter services when needed (as per the *Limited English Proficiency Plan, Providing Accommodations, and Interpreter Services Desk Aid*).

When the notice is given in an alternative format (to individuals with visual impairments, other disabilities, or limited English proficiency) this must be documented in the customer's individual record.

Element 3: Assurances

Workforce Solutions complies with the requirements of 29 CFR 37.20 through 29 CFR 37.22 related to the review of assurances, job training plans, contracts, and policies and procedures. Each request for proposal, proposal, and application for financial assistance under WIOA Title I shall contain the current required assurance. The assurance is passed on to the contractors to include in their vendor agreements as per the *Contract Management Standards and Guidelines*.

Element 4: Universal Access

Workforce Solutions provides universal access to all programs and activities funded by WIOA. We also partner with community based organizations to give additional assistance to customers with special needs.

Workforce Solutions has Navigators who provide training and technical assistance in serving persons with disabilities. They maintain good working relationships with community based organizations in providing support services to our disabled customers. The Navigators along with the Board EO Officer are considered the “go to” subject matter experts on all disability and accessibility issues.



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Element 5: Compliance with Section 504 of the Rehabilitation Act of 1973, as amended and 29 CFR 37

As stated earlier in this policy, Workforce Solutions prohibits discriminatory actions based on a disability. Workforce Solutions ensures that persons with disabilities have access to all benefits offered by providing programmatic and architectural accessibility as well as requested reasonable accommodations to all customers. This is verified through the *Monitoring and Oversight Standards and Guidelines*.

Element 6: Data and Information Collection and Maintenance

As documented in *Disability Related Inquiries*, Workforce Solutions complies with the requirements of 29 CFR 37.37 through 29 CFR 37.41 related to data and information collection and maintenance.

Four pieces of demographic information (sex, race/ethnicity, age, and disability status) are gathered and stored in The Workforce Information System of Texas (TWIST), an automated system separate from individual records, for each applicant, eligible applicant, customer, terminee, employee, and applicant for employment.

Complaints alleging discrimination on one or more of the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, participation in any WIOA Title I-financially assisted programs or activities, and/or for beneficiaries only, citizenship, may be filed at the office level, board level, state level, or with the Civil Rights Center (CRC). Each written complaint is noted on the *Orientation to Discrimination Complaint Log* following the steps listed in *Complaint Processing* and the *Discrimination Complaint Desk Aids*.

The Board EO Officer will notify the state-level EO Officer and the CRC within five business days of receipt of any administrative enforcement action and/or lawsuit brought against them that alleges discrimination on one or more of the bases listed above.

Element 7: Equal Opportunity Monitoring

As documented in the *Monitoring and Oversight Standards and Guidelines*, Workforce Solutions complies with the requirements of 29 CFR 37.54 related to monitoring. All Workforce Solutions financially assisted services and/or activities in the Gulf Coast Workforce Board (including WIOA Title I) are monitored for compliance with all applicable disability non-discrimination laws including the requirements of Section 188 of WIOA; Title VI of the Civil Rights Act of 1964, as amended; and Section 504 of the Rehabilitation Act of 1973, as amended.

Equal Opportunity Monitoring is accomplished through annual desk reviews of H-GAC and Contractor administrative offices using the Section 188 Checklist and on site monitoring



Equal Opportunity Standards and Guidelines

visits to check for physical accessibility, demonstration of assistive technology and auxiliary aids, physical retention of medical and disability related information, handling of discrimination complaints, and review of corrective actions. Monitoring will include an analysis of demographics for customers served to ensure program accessibility. It will also include a review of job descriptions to ensure they are not discriminatory and an inspection to ensure private medical information is filed in a secured location separately from customer and personnel files.

Should the contractor require technical assistance, it will be provided by the contract liaison, Board EO Officer, the Navigators, and/or the contracted provider for staff training, National Workforce Institute.

Element 8: Complaint Processing Procedures

Workforce Solutions follows the steps outlined in *Complaint Processing*, which comply with the requirements of 29 CFR 37.70 through 37.81 related to discrimination complaint processing procedures and the complaint procedures developed and published by TWC for use by all recipients as required by 29 CFR 37 (TWC Letter 18-07). Early informal resolution is encouraged with all complaints.

Element 9: Corrective Actions and Sanctions

Workforce Solutions complies with all requirements of 29 CFR 37.97 related to corrective actions and sanctions. Should the EO Officer find it necessary to pursue deficiencies that have not been corrected in a reasonable amount of time, we will use the TWC Corrective Action and Sanctions procedure contained in the State of Texas Methods of Administration (MOA). We will immediately notify the State EO Officer of any actions we may take if a deficiency is not handled appropriately. Sanctions will be assessed according to the repeat findings statement found in the *Contract Management Standards and Guidelines*.



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II. Limited English Proficiency Plan

The thirteen county Gulf Coast Region served by Workforce Solutions is home to almost 6 million people; a 26% increase from the 2000 Census, compared to less than 10% growth for the U.S. as a whole. The residents of this region are diverse in every sense of the word; by ethnicity, life experiences, educational attainment, ability levels, and the primary languages they speak. Workforce Solutions is committed to serving **all** residents seeking fulfilling employment. For those residents with limited English proficiency, this commitment to serve necessitates making reasonable provisions to offer assistance and service in the customer’s primary language.

In compliance with directives from the U.S. Departments of Justice, Labor, and Health and Human Services requiring those who provide services to customers using federal funds to take reasonable steps to provide equal access to persons with limited English proficiency, this is the plan for how Workforce Solutions will ensure that language is not a barrier to service. Exclusions, delays, or denials from services based on language barriers could be determined to constitute discrimination on the basis of National Origin, in violation of Title VI of the Civil Rights Act of 1964.

A. Analysis

U.S. Census data for the Gulf Coast Region, released in November 2015, indicates that there are at least 1.8 million residents above the age of five who speak a foreign language and that more than 145 different languages are spoken at home. Many residents who speak one or more foreign languages are also proficient in English; however, about 20% of residents rated themselves as speaking English “less than well”.

Commonly spoken languages for Gulf Coast residents with limited English proficiency (LEP)	Relative Proportion of LEP Persons
Spanish	77%
Vietnamese	4%
Chinese	2%
French	1%
Various African Languages	1%

As the table shows, the majority of residents in the Gulf Coast Region with limited English proficiency speak Spanish as their primary language. In an effort to provide services to these customers, most offices have at least one staff member who speaks Spanish. Workforce Solutions has also translated some forms, outreach marketing, and other commonly used materials into Spanish.



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B. Plan

To best serve customers with limited English proficiency, the Board recognizes that it must be able to work with a customer in a language in which he or she is proficient. In addition, Workforce Solutions must ensure that the language services provided are adequate to ensure customers are able to fully communicate their needs and receive services that meet those needs; adequate translation may necessitate some cultural sensitivity and specialized interpreter skills as well as proficiency in the language the customer speaks. With these objectives in mind, Workforce Solutions plans to take the following actions to ensure reasonable access to services for customers with limited English proficiency:

1. The Board will make its website available in both English and Spanish.
2. The Board will ensure that its marketing and outreach materials are accessible to those with limited English proficiency and specifically will adopt uniform Spanish translations of commonly used documents.
3. The Board will hold career offices responsible for identifying languages commonly spoken by their customer bases to supplement demographic information collected by Board staff. Office staff will include language information in customer records to help with this step.
4. The Board will ask career offices to ensure that staff bilingual in Spanish be available to assist customers, because Spanish is the predominant language used by area residents with limited English proficiency.
5. The Board will assist career office contractors in procuring other interpretation services as needed. This includes the use of community-based interpreters who may be available at little or no cost through organizations such as the Alliance for Multicultural Community Services, web-based translation services such as freetranslation.com and translate.google.com, and the use of approved vendors (see *Interpreter Services Desk Aid*).
6. The Board will review this plan and data relating to those with limited English proficiency at least annually, and will make adjustments as needed.
7. The Board EO Officer will monitor to ensure compliance with this plan and its effectiveness in serving customers with limited English proficiency.



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III. Disability Related Inquiries

WIOA non-discrimination regulations require that every applicant, registrant, eligible applicant/registrant, customer, terminatee, applicant for employment, and employee must be asked to provide four pieces of demographic data: (1) race/ethnicity; (2) gender; (3) age; and (4) disability status. Demographic data gathered pursuant to this requirement must be kept confidential; data stored in TWIST meets this confidentiality requirement.

Before asking any questions that may lead to the disclosure of medical or disability related information, staff must clearly inform the person that: (1) providing the information is voluntary; (2) the information will be kept confidential; (3) refusal to provide information will not subject the applicant, employee, or customer to any adverse treatment; and (4) the information will be used only in accordance with law.

Although Workforce Solutions or service provider staff *must ask* the individual for the data, the individual is *not required to provide* it.

A. Invitation to Self-Identify

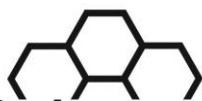
Workforce Solutions staff may invite customers to disclose their disability status if the following criteria are met; however, they must inform the customer about how the information will be used:

- The office, or the employer for which the office staff is seeking applicants, is taking remedial action to correct the effects of past discrimination; or
- The office, or the employer for which the office staff is seeking applicants, is taking voluntary action to overcome the effects of conditions that resulted in limited participation by people with disabilities in the recipient's program or activity; or
- The office, or the employer for which the office staff is seeking applicants, is a Federal contractor or subcontractor that is taking affirmative action under Section 503 of the Rehabilitation Act of 1973, as amended.

If a customer discloses a disability and requests an accommodation or modification, follow the guidelines for *Providing Accommodations*.

B. Types of Interactions

Workforce Solutions can work with customers in many different capacities. Whether it is lawful to ask questions that may lead to the disclosure of a disability, or of medical-related information, depends upon the context. Some practices that are legal in the context of providing services are illegal in the context of employment related activities. Each of these



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capacities has its own set of guidelines for the types of questions that can be asked and how the information must be stored.

Workforce Solutions staff members must determine the context of the interaction in order to determine what questions can and should be asked.

1. All Interactions

Following are some questions that are not considered disability-related and can be asked of all customers:

- What is your overall goal in using the Workforce Solutions Office?
- What specific things are you trying to accomplish today?
- Do you need any support or assistance today?
- Do you have the skills, experience, and ability to perform the listed job functions?
- What do you think might help you to be successful?
- What are things you have tried before that work for you?
- Are there other organizations or resources with whom you interact that you would find it helpful for us to contact?

If a disability is obvious or has been disclosed it is also acceptable to ask:

- Will you need any accommodations for the application process?

2. Services context

Services related legal standards apply to activities such as assessment of a customer's skills, prior work experience and employability; creation of a service strategy for an individual customer; or supportive programs such as child care, transportation, housing assistance, or benefits counseling.

In the services context, disability related inquiries are not only legal, but recommended. Examples of circumstances in which an office would be permitted, and may wish, to ask questions that may disclose disability-related information include screening customers who have particular types of employment problems for signs of hidden disabilities, determining eligibility for targeted programs, or determining whether, and which, reasonable accommodations would help a customer succeed in employment.

3. "Employment agency" context

Workforce Solutions staff are considered to be acting as an "employment agency" if they regularly have a principal function of (1) procuring employment for at least one employer



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or (2) procuring work opportunities for customers. Staff members engaged in these activities must follow the employment related context.

4. *Employment related context*

Employment related legal standards apply to activities such as job placement, job referral, and employment related training.

Employment related training is training that allows or enables an individual to obtain employment; examples include occupational skills training, on-the-job training, and job readiness training. Other types of training, such as basic educational skills or English as a Second Language (ESL), *may* fall within the definition of employment related training; when in doubt, the safest course is to only ask those questions related to the training that would be permissible in the employment context

In employment-related contexts, disability related questions are illegal except under certain limited circumstances including the collection of demographic data and the invitation to self-identify.

C. Confidentiality

Confidentiality is paramount. Any information disclosed is considered confidential. All staff will safeguard the confidentiality of the public served.

Workforce Solutions staff must keep any customer's medical or disability related information confidential, with the following limited exceptions: (1) supervisors, managers and trainers at Workforce Solutions may be informed about a customer's disability, but only to explain limitations or reasonable accommodations; (2) first aid and safety personnel may be informed about a customer's disability or medical condition, but only if the disability or condition may require emergency treatment, including evacuation; and (3) other staff may be informed about a customer's disability or medical condition, but only on a need-to-know basis, interpreted narrowly.

All customer information related to a disability or medical condition must be: (1) kept in separate files, apart from all other information about a customer, applicant or employee; (2) stored securely with limited access (i.e., electronic files must be password protected, hard files must be locked); and (3) available only to authorized persons.

Access to files containing medical or disability related information is limited to staff members who work with the particular customer and require the confidential file information. This group is more limited than the group of staff members or others who may



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be informed about a customer's medical or disability status. For example, access to medical documentation that a customer is an individual with a disability should be limited to those staff that needs to ensure that there is documentation supporting that disability status; for example, for purposes of documenting eligibility for a program or activity that includes disability status as an eligibility criterion. In addition, first aid personnel may need access to underlying documentation related to a customer's medical condition in an emergency.

D. Disclosure

As a general rule, Workforce Solutions staff must not disclose medical or disability related information about a customer to an employer. Workforce Solutions staff may disclose information related to a customer's disability only if: (1) the job-seeker customer has made an independent decision to disclose to the employer; (2) the job-seeker has specifically asked Workforce Solutions to make the disclosure on his or her behalf; and (3) the disclosure request has been initiated by the job-seeker customer, not by office staff.

Again, the disclosure must be voluntary on behalf of the customer. Staff cannot request, persuade, coerce or otherwise pressure the customer to get him or her to disclose medical or disability related information.

Staff working on behalf of employers should not have access to any customer's file containing medical or disability related information, except where necessary to document a customer's disability status for eligibility for an employer's remedial, voluntary, or affirmative action program, as discussed above.



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IV. Providing Accommodations

Workforce Solutions staff will provide assistance to help a customer with a disability to receive equal benefits from the program or activity, to compete fairly in educational and work settings, and in general, to ensure equal opportunity. It is prohibited to place a surcharge on an individual or group of individuals with disabilities to cover the cost of measures such as accommodation request, auxiliary aids, or program accessibility. Workforce Solutions will provide reasonable accommodations and modifications for customers with disabilities, at no cost to the customer; however, customers are responsible for requesting needed accommodations.

There is no specific wording or format that must be used to request an accommodation. Customers who ask for an adjustment or change in the application or registration process, delivery of programs/policies/practices/procedures, or the service environment, related to a medical condition, are considered to have requested a reasonable accommodation or modification.

Workforce Solutions will follow the *Interactive Process* recommended by the EEOC in evaluating requests. This simply means that Workforce Solutions staff and the person with a disability who requests the accommodation will work together.

To ensure compliance with the law, efforts taken to provide accommodations must be documented and made a part of the customer/employee file; however, the results must be stored separately from any other information and access must be limited as required for all medical and disability related information.

A. Readily Available Auxiliary Aids and Assistive Technology

Workforce Solutions staff are generally not required (though they may choose) to provide personal devices such as wheelchairs, individually prescribed devices such as eyeglasses or hearing aids, readers for personal use and study, or services of personal nature such as assistance with eating, toileting, or dressing.

Workforce Solutions takes advance actions to ensure that communication with individuals with disabilities is effective and they have access to all benefits offered. The following aids are available for anyone requesting them, without requiring documentation.

Computers

- Screen magnification and screen reading software
- Speakers / Headphones
- Large print keyboard
- Trackball mouse



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Telephones

- Video Relay Services (VRS) and/or TTY phone
- Hearing aid compatible (HAC) phones and phones with volume control

Other Services/Equipment

- Interpreters (see *Interpreter Services Desk Aid*)
- Large print materials
- Adjustable height desks, tables, and/or chairs

B. Customer Requests for Accommodation

All customers are welcome to bring a professional or personal support person and/or attendant to help them access Workforce Solutions services, with the exception of assistance with testing.

Workforce Solutions customers with accommodation or modification needs, may direct their request to any staff person they come in contact with. Customers should be assumed to be experts in understanding their disability and the specific needs based on that disability, unless otherwise indicated by facts pertaining to that individual customer.

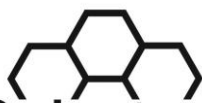
If a customer with a disability who has violated Center policy related to conduct asks for reasonable accommodations to be able to comply with the policy in the future, that accommodation must be provided unless it imposes an undue hardship; however, Workforce Solutions is not required to excuse misconduct that took place before the accommodation request.

For accommodations or modifications that are not **readily available** or those that require additional consideration to determine whether an undue hardship or fundamental alteration would occur, the request will be forwarded to the office manager or other appropriate person who will make an individual determination within five working days of the request.

If additional communication is needed with the customer during the five-day period, it will take place via the method of communication chosen by the customer; phone, mail, e-mail, or in person.

1. Request for Testing Accommodation

If a customer requests an accommodation or modification for testing or assessments, assistance will be determined on a case-by-case basis. The specific test used, in combination with appropriate accommodations or modifications, must be able to provide



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a valid and reliable evaluation of the knowledge, skills, abilities, and/or interests of the customer. Where a particular test cannot provide an accurate measure, an alternate test or assessment tool must be offered as long as it does not cause an undue hardship or fundamental alteration.

If the results of the test/assessment indicate the customer was provided with an accommodation, the results must be stored separately from any other information and access must be limited as required for all medical and disability related information.

C. Documentation

Under Federal disability non-discrimination law, Workforce Solutions cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the person has already provided Workforce Solutions staff with sufficient information to substantiate that they have an actual, current disability and need the reasonable accommodation requested.

When the disability and/or the need for accommodation is not obvious, Workforce Solutions is allowed to ask for reasonable documentation of the disability, medical condition, or functional limitations following the guidelines in Step 2 of the *Interactive Process*. Reasonable documentation means that Workforce Solutions may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation. Thus Workforce Solutions, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. Workforce Solutions may require that the documentation come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, Workforce Solutions staff must specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. For example, the person can be asked to sign a limited release allowing Workforce Solutions staff to submit a list of specific questions to the health care or vocational professional. Workforce Solutions staff must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from.



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1. Insufficient Documentation

If a person provides insufficient documentation of a disability in response to Workforce Solutions initial request, Workforce Solutions staff may require the person to go to a health care professional of Workforce Solutions choice; however, Workforce Solutions staff must explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

2. Refusal to Provide Documentation

A customer is not entitled to a reasonable accommodation if the disability or need for accommodation is not obvious, and they refuse to provide the reasonable documentation requested by Workforce Solutions. On the other hand, failure by Workforce Solutions staff to initiate or participate in the *Interactive Process* with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

3. Alternative to Documentation

As an alternative to requesting documentation, Workforce Solutions staff may simply discuss with the customer the nature of the person's disability and functional limitations. It would be useful for Workforce Solutions staff to make clear they are requesting this information to verify the existence of a disability and the need for a reasonable accommodation.

D. Determination

Requested accommodations and modifications must be provided unless they would cause an undue hardship or fundamentally alter the nature of the service, program, or activity. The determination of which reasonable accommodation or modification is appropriate is based on individual circumstances relating directly to the customer. Workforce Solutions is authorized to expend funds to provide a reasonable accommodation based on a review of the request and documentation submitted if applicable.

If it is determined that the request is not "reasonable", Workforce Solutions must provide a written statement of reasons for denying the requested accommodation or modification, give a copy of the statement to the customer requesting the accommodation or modification, and offer another "reasonable" alternative to avoid discrimination, provide equal opportunity, and allow the person with the disability to participate to the maximum extent possible. If the customer needs the written determination to be provided in an alternate format, the format used will be at the discretion of the customer.



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To be considered reasonable, an accommodation need not be the most expensive accommodation available, as long as it is effective in meeting the needs of the individual customer with a disability.

An individual with a disability is not required to accept an accommodation, aid, benefit, service, training, or opportunity should they choose not to.

1. Determining Undue Hardship or Fundamental Alteration

Workforce Solutions staff must go through a formal process considering all of the factors listed in the definitions to determine whether a particular requested accommodation or modification would cause undue hardship or result in a fundamental alteration.

a. Undue hardship/burden

An accommodation that would cause significant difficulty or expense based on these factors:

- type of accommodation requested
- net cost of accommodation (taking into consideration the availability of tax credits and deductions, and/or outside funding)
- overall size of the organization (including number of employees, number of customers, number and type of facilities, and size of budget)
- overall financial resources of the organization as a whole and the individual facility or facilities that would be involved with the accommodation
- effect on ability to serve other customers and carry out organization mission

Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger entity would be expected to make accommodations requiring greater effort or expense than would be required of a smaller organization.

b. Fundamental alteration

Either a change in the essential nature of a program or activity, or a cost that would result in an undue burden, as noted above.



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E. Interactive Process

This information comes from the Job Accommodation Network's (JAN) Effective Accommodation Practices Series.

**Figure 1:
THE INTERACTIVE PROCESS**





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Step 1: Recognizing an Accommodation Request

The interactive process starts with an accommodation request from an employee with a disability so it is important for employers to be able to recognize a request. So what constitutes an accommodation request? According to the EEOC, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation" when requesting an accommodation. Therefore, any time an employee indicates that he/she is having a problem and the problem is related to a medical condition, the employer should consider whether the employee is making a request for accommodation under the ADA.

The EEOC Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (ADA) located at EEOC.gov provides the following examples:

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

Tips:

- **Err on the side of caution:** If an employer is not sure whether an employee has requested an accommodation, the employer should ask the employee to clarify what is being requested and why.
- **Act quickly:** Once an accommodation request is identified, the employer should respond immediately – unnecessary delays in processing an accommodation request can violate the ADA.
- **Assign responsibility:** Employers should assign at least one person who is responsible for making sure an accommodation request is processed so the request is not lost on someone's desk.
- **Conduct training:** Employers should train all managers and supervisors to recognize accommodation requests and what to do with a request once it is received.



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Step 2: Gathering Information

Once an accommodation request has been received, the employer should gather whatever information is necessary to process the request. Necessary information may include documentation of the disability and need for accommodation. In some cases, the employee's disability and need for accommodation are obvious and no additional information is needed. For example, if an employee who recently started using a wheelchair indicates that he needs a ramp to get into the workplace, the disability and need for accommodation are obvious.

However, in other cases the individual may know that he/she is having difficulty, but may be uncertain about the exact cause or possible solution. For example, if an employee with a non-visible disability indicates she is having trouble completing her work tasks because of her disability, the employer does not have enough information to provide effective accommodations. The employer needs to know what limitations are interfering with job performance and what specific work tasks are at issue.

So how should an employer get the information that is needed? The employee who requested the accommodation is often the best source of information about the disability and possible accommodations. If the employee cannot provide the necessary information, then medical documentation can be useful. The important thing for employers to remember is not to ask for too much information. Under the ADA, when an employee requests an accommodation and the disability and need for accommodation are not obvious, then the employer can request medical documentation to help determine whether the employee has a disability and needs the requested accommodation and information to help process the accommodation request.

Tips:

- **Find out the limitation and problem.** In most cases, to find effective accommodations employers need to know what limitation is causing what problem so this is usually a good place to start.
- **Get information from the employee when possible.** Employees with disabilities are familiar with their limitations and often know what accommodations will work best for them.
- **Remember ADA rules for medical inquiries.** A good policy for employers is to only ask for what is absolutely necessary. Asking for all medical records will rarely, if ever, meet this test.



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Step 3: Exploring Accommodation Options

Once the employer has identified the employee's limitation that is causing a problem and has identified what that problem is, then the employer is ready to explore accommodation options. At this step, employers should be open to new ideas and new ways of doing things. This is the time to brainstorm and consider what might work.

Again, the employee who requested the accommodation is a good place to start so employers should always invite the employee to suggest accommodations. If more accommodation ideas are needed, the employer can ask the employee's medical provider for ideas – in some cases medical professionals are able to suggest effective accommodations. In other cases, they may not be able to suggest ideas, but may be able to say whether ideas under consideration will help overcome the employee's limitations.

And if still more ideas are needed, then the employer should consult with outside resources such as JAN, vocational rehabilitation, rehabilitation engineers, and disability-related organizations. Remember when consulting with outside resources, employers must comply with the confidentiality rules of the ADA. One good approach is to withhold the employee's name and identifying information from outside resources.

Tips:

- **Keep an open mind.** Accommodations are about doing things differently to help overcome disability-related limitations, so keep an open mind when exploring accommodation options.
- **Invite the employee to suggest accommodations.** The employee who requested the accommodation may have some good accommodation ideas, but may be hesitant to bring them up without being asked to do so.
- **Ask the employee's medical provider for ideas.** Some medical professionals will brainstorm accommodation ideas with employers.
- **Use JAN when needed.** JAN is a free, national resource for employers who are seeking help coming up with accommodation ideas.



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Step 4: Choosing an Accommodation

Once accommodation options have been explored, the employer must choose what accommodation to implement. If there is more than one option, the employer should consider the preference of the employee. However, the employer gets to choose among effective options and can choose, for example, the lowest cost accommodation.

Sometimes employers are not sure whether an accommodation will work and are afraid if they try it out they will be locked in forever. This is not the case – employers are free to try accommodations and stop them if they do not work. One thing employers might want to do when testing accommodations is to make a written agreement with the employee that the accommodation is being tested, how long the test will be, and what will happen if the accommodation does not work. That way, no one is surprised when the accommodation is revisited down the road.

Tips:

- **Consider the employee's preference.** Although not required by the ADA, when possible employers should choose the accommodation the employee prefers.
- **Consider a trial period.** When it is not clear whether an accommodation will work, it might be possible to try out the accommodation.

Step 5: Implementing the Accommodation

Once an accommodation has been chosen, it is time to implement the accommodation. This step is very important to the success of an accommodation. If equipment is involved, then it needs to be properly installed and the employee needs to be trained in its proper use. If the accommodation involves a schedule change or policy modification, then certain managers or supervisors may need to know of the change to effectively implement it. If the accommodation involves an outside service, someone needs to make sure the service is provided promptly and effectively. If the accommodation is a reassignment, then the employee may need time to acclimate to the new job.

Tips:

- **Make sure all necessary steps are taken to implement the accommodation.** A good way to do this is to check to see if the accommodation is actually working.
- **Communicate with essential personnel about the accommodation.** Remember ADA confidentiality rules and only let managers and supervisors know about the accommodation if necessary.



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Step 6: Monitoring the Accommodation

An important but often forgotten part of the interactive process is monitoring accommodations after they are in place. In some cases, an accommodation stops being effective for various reasons such as: the employee's limitations change, workplace equipment changes, the job changes, the workplace itself changes, or the accommodation becomes an undue hardship for the employer.

Because changes occur, employers may need to periodically check on the ongoing effectiveness of accommodations. If equipment is involved in the accommodation, someone may need to be assigned to perform maintenance or upgrades as needed. The most important way to monitor accommodations is to encourage ongoing communication. Employees who are receiving accommodations need to understand that they should let their employers know if there are changes or problems with the accommodation and who specifically to contact.

Tips:

- **Check on effectiveness.** As things change in the workplace, accommodations may need to also change so employers should periodically check the effectiveness of accommodations.
- **Maintain the accommodation.** Equipment will not function forever without maintenance so when equipment is part of an accommodation, employers need to make sure the equipment is properly maintained.
- **Encourage ongoing communication.** For any workplace issue, ongoing communication is the key to success. The same is true for accommodations – employers should encourage employees to communicate any issues they have with their accommodations.



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V. Complaint Processing

Anyone may initiate a complaint for any reason, any time he or she is dissatisfied with Workforce Solutions services.

Workforce Solutions will advise customers, subrecipients, applicants for and participants in programs and services, applicants for employment, employees and members of the public, both verbally and in written format, of their right to file a complaint if the customer believes we have illegally discriminated against them on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief, or, for beneficiaries only, on the basis of citizenship / status as a lawfully admitted immigrant authorized to work in the United States, or participation in any WIOA Title I financially assisted program or activity. Retaliation for participating in a discrimination inquiry or opposing unlawful discrimination is also prohibited.

Posters and pamphlets informing applicants of complaint processes are posted throughout the Workforce Solutions system including recipients, sub recipients, affiliates and co-location sites. Workforce Solutions' website (<http://www.wrksolutions.com/equal-opportunity-is-the-law>) provides information about how to file a complaint.

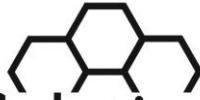
A. Complaint Process Notification

Information regarding the complaint process and EO notice are made available in multiple formats to Workforce Solutions staff as well as customers. During orientations that inform new customers, new employees, and/or the general public of WIOA Title I-financially assisted programs and activities, Workforce Solutions staff will include a discussion of the rights under the non-discrimination and equal opportunity provisions, including the right to file a complaint of discrimination with a recipient, TWC, or the CRC.

Workforce Solutions staff must provide a copy of the *Orientation to Discrimination Complaint Procedures Form* and show customers the location of the *Workforce Solutions Comment and Complaint Form*. These notices must be provided in appropriate formats to individuals with hearing and/or visual impairments. Where the notice has been given in an alternate format to accommodate a disability or limited English proficiency, it must be documented as part of the customer's file [29 CFR 37.31(b)].

B. Filing a Complaint

The complainant may complete the *Workforce Solutions Comment and Complaint form*, submit a complaint without using a form (such as in a letter or email), or discuss a problem with any Board staff member without being required to initially file a written complaint. The



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Board's process for addressing the complaint is the same whether it is on a complaint form or has been received in some other format.

C. Complaint Types

Complaints will generally fall into one of the following categories:

1. Customer service
2. Discrimination
3. Denial, reduction or termination of a service

1. Customer Service Complaints

Customer service complaints can be made in person, called in, submitted via the Workforce Solutions website, mailed, emailed, or referred from the Workforce Solutions offices.

When a customer service complaint is received it must be recorded in the customer service complaint log.

a. Customer Service Complaints Received at the Office Level

The Office Manager and/or other appropriate staff will work with the complainant to resolve their concern. If the complaint is resolved to the customer's satisfaction, a summary of the resolution should be documented in the customer's file and on the complaint log.

If the complaint can't be resolved to the customer's satisfaction at the office level, it should be submitted to the Board customer service representative and follow the process for customer service complaints received at the board level.

b. Customer Service Complaints Received at the Board Level

The Board's customer service representative will take the following actions when a customer service complaint is received. In all of the following steps any Board staff person may substitute for the customer service representative when necessary. Customers will not be asked to call back.

1. Keep a record of all complaints received and their status using the customer service complaint log.
2. Ask the complainant if they spoke to the office manager.



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3. If the answer is no, the representative will suggest that the office manager may be able to satisfy the complaint and provide the complainant with their name and number.
4. If the customer prefers not to contact the office manager, but is open to handling the complaint at the office level, the Board customer service representative will contact the representative person designated by each contractor, asking them to respond to the complaint and notify the involved office manager.
5. If the customer has already spoken with the office manager or insists that they want to make the complaint to the Board staff, the representative will gather and document the details surrounding the complaint.
6. The Board customer service representative will then notify the office manager and other appropriate contractor staff about the complaint, including complainant's name, nature of the complaint, and any contact information.
7. H-GAC will work with the office/contractor to resolve the complaint.
8. Unless documented otherwise, contractors must respond to Board staff within 10 calendar days of receipt of the complaint.
9. For all written customer service complaints, Workforce Solutions will send a final resolution letter to the complainant. A copy of the letter will be maintained by the contractor and the Board customer service representative.
10. The customer service representative's role is to encourage the complainant and office/contractor to communicate and resolve the issues, they are not responsible for resolution; however, they are responsible for logging when and how the complaint is resolved.

2. Discrimination Complaints

Discrimination complaints must be submitted in writing. When a discrimination complaint is received it is recorded on the *Discrimination Complaint Log* (see *Discrimination Complaint Log Desk Aid*).

Complaints must be filed within 180 days of the alleged discrimination, unless the Director of the U.S. Department of Labor Civil Rights Center has extended the filing time for good cause shown. Complainants may file with the local EO Officer, Board level EO



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Officer, state level EO Officer, or directly with the Director of the Civil Rights Center (CRC).

Upon receipt of a written complaint, the EO Officer is required to keep the following information confidential to the maximum extent possible, consistent with applicable law and fair determination of the complaint. An individual whose identity it is necessary to disclose must be protected from retaliation (29 CFR 37.41).

1. The fact that the complaint has been filed;
2. The identity of the complainant(s);
3. The identity of individual respondents to the allegations; and
4. The identity of any person(s) who furnished information relative to, or assisted in, a complaint investigation or compliance review.

a. Discrimination Complaint Process at Office Level

If the complaint originates in or with a career office, the appropriate office manager should attempt to resolve the complaint before Board staff become involved and attempt to resolve it; however, the Board level EO Officer should be notified immediately.

Complainants who have not spoken to office managers will be encouraged to do so. A complainant may be offered the opportunity to meet with the contractor EO Officer and involved staff.

Once the complaint is resolved, the contractor will send a letter to the complainant stating the resolution. The letter must offer the complainant the opportunity for a formal hearing with the Board EO Officer if the customer finds the resolution unsatisfactory in its implementation. A copy of this letter must be sent to the Board EO Officer.

If the local EO Officer or designated office staff determines that another entity has jurisdiction and it is appropriate to refer a complaint, they should refer the complaint to that entity, document it on the *Discrimination Complaint Log*, and promptly inform those with a need to know of this decision.



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b. Discrimination Complaint Process at Board Level

If a discrimination complaint makes it to the Board level, the EO Officer will:

1. Determine jurisdiction by considering the basis of the complaint; the timeliness of the complaint; and whether the respondent is a recipient of WIOA funds
2. Provide an initial written notice to the complainant within 5 days
 - a. If it is determined the Board has jurisdiction it will include the following elements:
 - Acknowledgement of receipt of the complaint
 - Notice of right to representation
 - Written statement of issues raised in the complaint and the Board’s stand on each
 - An offer of alternative dispute resolution (ADR) services as detailed below
 - b. If it is determined that the Board lacks jurisdiction, it will provide:
 - Reasons for the determination
 - Notice that the complainant has the right to file a complaint with CRC within 30 days of the date the complainant receives the notice.
3. If ADR is not elected, or is unsuccessful, initiate the fact-finding process, which shall be completed within 45 days of the initial written notice or 30 days from date of the failed ADR.
4. Provide a written notice of final action to the complainant within 90 days of the date on which the complaint was filed.

3. Denial of Service Complaints

Complaints alleging a violation of the law by denying, reducing, or terminating a service that a customer is or believes they are entitled to, must be received in writing. When these complaints are received, they are recorded on the *Discrimination Complaint Log* (see *Discrimination Complaint Log Desk Aid*). Anyone may complain directly to any State or Federal agency.



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a. Denial of Service Complaint Process at Office Level

If the complaint originates in or with a career office, the appropriate office manager should attempt to resolve the complaint before Board staff become involved and attempt to resolve it; however, the Board level EO Officer should be notified immediately. Complainants who have not spoken to office managers will be encouraged to do so. A complainant may be offered the opportunity to meet with the local (contractor) EO Officer and involved staff. If the complaint is handled in this manner, the contractor will send a letter to the complainant stating the resolution. The letter must offer the complainant the opportunity for a formal hearing with the Board EO Officer if the customer finds the resolution unsatisfactory in its implementation. A copy of this letter must be sent to the Board EO Officer.

b. Denial of Service Complaint Process at Board Level

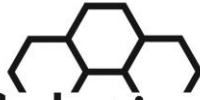
If a denial of service complaint is not resolved within 10 working days:

1. The Board EO Officer will, within 3 working days of the 10th day, offer the complainant, either via mail or phone call, the opportunity to attend a hearing.
2. The complainant has 5 working days to respond to the written offer of a hearing, either in writing or via telephone.
3. The Board EO Officer or designee will have 5 working days from the customer's request to schedule a hearing. The hearing date will be no later than 30 calendar days after the request.
4. The Board EO Officer will be responsible for sending a Notice of Hearing to the interested parties and scheduling an impartial hearing officer.
5. The Board EO Officer will mail a written copy of the resolution to all interested parties no later than 10 calendar days following the hearing.

D. Alternate Dispute Resolution (ADR) Services

The choice of whether to use ADR or the customary process rests with the complainant. If ADR is selected, it shall be completed within 40 days of the initial written notice.

1. Complainant must submit notice to elect ADR within 7 calendar days of receipt of the initial written notice.



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2. EO Officer coordinates scheduling of mediation with a qualified mediator at a convenient location for complainant and respondent.
3. A written settlement agreement is prepared and signed by all parties when mediation is successful.
 - a. If mediation is not successful, return to the fact-finding process.
4. A copy of the signed agreement is given to each party and a notice of final action will be provided to the complainant.
5. In the event a party to a mediation agreement breaches the agreement, the non-breaching party may notify the EO Officer and may also file a complaint with the Civil Rights Center within 30 calendar days of the date the non-breaching party learned about the breach of the agreement.
 - a. The complainant may file a complaint with the CRC based on the original allegations, even if the 180 days have elapsed since the alleged discrimination.

E. Record Retention

All logs and records relating to customer complaints must be maintained for a minimum of 3 years from the date of resolution.