

**GUIDANCE SHEET ON DISABILITY-RELATED QUESTIONS
DURING THE SELECTION PROCESS**

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General Information

What laws govern national and community service programs on the inclusion of people with disabilities?

National service programs are obligated under federal law to ensure non-discriminatory environments and practices and procedures for qualified persons with disabilities. In most cases, if a program is truly open to the full inclusion of persons with disabilities and to the creation of a respectful and inclusive service environment, that program is likely to be in legal compliance.

This section is intended to provide you with a brief overview of key areas of the federal laws that apply to service programs. There are two federal disability laws that are specifically relevant to national and community service programs: **Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 (ADA).**

What is Section 504?

Section 504 of the Rehabilitation Act of 1973 states that “[n]o 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 . . .”

Section 504 applies to any entity that receives federal assistance, including grant funds, services of federally sponsored participants, or federally subsidized training. While some entities, such as tribal governments or religious organizations, may be specifically exempted from certain federal nondiscrimination requirements, Section 504 does not include any such exemptions. The bottom line is that any entity that applies for and receives assistance from the Corporation for National and Community Service must certify that it will comply with Section 504.

Programs and activities covered by Section 504 must be accessible to persons with disabilities, and recipients must provide reasonable accommodations to allow a qualified person with a disability to receive services, participate in the entities’ programs, or perform the essential function of a position. Section 504 does not require grantees to take any action that would result in a “fundamental alteration” in the nature of a program or activity or that would cause an “undue financial or administrative burden.”

The Corporation has published regulations at 45 CFR Part 1232 specific to Section 504 requirements for entities that receive Corporation assistance. You should familiarize yourself with these rules, which include provisions on the selection and supervision of employees and service participants, reasonable accommodation, and program accessibility (regulations are available at www.nationalservice.org.)

Are there other federal statutes I need to be aware of?

Both national service laws, the National and Community Service Act (NCSA) and the Domestic Volunteer Service Act (DVSA), prohibit an individual with responsibility for the operation of a grantee's projects from discriminating on the basis of a disability against a qualified individual with a disability who is a participant or staff member. The Americans with Disabilities Act, or ADA, is perhaps the most well known federal statute that extends civil rights protections to persons with disabilities. The ADA, enacted in 1990, prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications.

While an entity that receives Corporation assistance may be subject to the ADA, compliance with the ADA is not a condition of receiving assistance from the Corporation. This Handbook focuses on the requirements under Section 504, which generally are stricter than requirements under the ADA.

Section 504 of the Rehabilitation Act, 1973: The federal statute that ensures the rights and participation of individuals with disabilities in federally funded programs.

Section 508 of the Rehabilitation Act: Section 508 requires that electronic and information technology of federal agencies is accessible to people with disabilities. For more information, go to www.section508.gov.

Americans with Disabilities Act 1990 (ADA): Provides civil rights protection to people with disabilities and guarantees those covered by the law equal opportunity in employment, state and local government services, transportation, places of public accommodation, and telecommunications services.

Are there other legal requirements I should be aware of?

State and Local Laws

Many states and localities have enacted laws that include additional requirements related to the inclusion of persons with disabilities. You should check with state and local government agencies to learn about other requirements.

Exclusions

There are some specific conditions that are specifically excluded from coverage under Section 504. These are: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs. The phrase physical or mental impairment does not include homosexuality or bisexuality; these are not considered disabilities.

Can I ask disability-related questions or request medical information as part of my selection process?

No. You may not ask disability-related questions and you may not request medical information prior to offering the position to the applicant. There are very specific rules to protect persons with disabilities. These rules protect the rights of all persons and allow applicants to be assessed on merit alone. An

inclusive manager focuses on an applicant’s abilities to perform the essential functions and not on speculation about possible disabilities.

An interview is often a conversation, and conversations with different applicants will often cover topics in different ways. It is important, however, to ask ALL applicants the SAME questions. This will help ensure that you do not inadvertently obtain information from one applicant that you do not obtain from all applicants. During the interview, focus on questions regarding the ability of an applicant to perform the essential functions of the position with or without accommodations. Even if an applicant has a visible disability, do not make assumptions about his or her ability or the accommodations that he or she will need.

Disability-Related Inquiry

A “disability-related inquiry” is any question or action likely to elicit the possible presence of a disability. The interview and selection process for participants is an area that has many legal do’s and don’ts and can be intimidating for program staff. In most cases when errors are made they are not because of intent to discriminate, but because the interviewer wants to help, desires more information, or wants to clarify information. An inclusive interview and selection process focuses on what an individual can contribute to his or her community through service and what the program can bring to the individual. The existence of a disability is a secondary consideration.

Disability-Related Inquiries, Medical Examinations, and Requests for Medical Information or Documentation

Specific rules govern making disability-related inquiries or requesting medical documentation or information. Not all health-related inquiries or questions are considered “disability-related.” Only those questions that are likely to elicit the disclosure of a disability are disability-related.

Disability-related inquiry	Non-disability-related inquiry
“Do you have (or ever had) a disability?” or “What impairments do you have?”	Asking about an employee’s well being. Asking “How are you?” “Are you feeling OK?” “Are your allergies bad today?” or “How are you doing [after divorce, death of loved one, etc.]?”
“Please provide me medical documentation” (unless in context of a reasonable accommodation request by the employee)	Asking about non-disability impairments, such as “How did you break your leg?”
“How did you become disabled?” or “Have you ever been on workers’ compensation?”	Asking whether he/she has been drinking or asking about current illegal use of drugs.
“Tell me what prescription drugs or medications you’re taking, and what have you taken in the past?”	Asking for name and phone number of an emergency contact person.

<p>“Disability-related inquiries” also include actions, such as asking an employee’s doctor, co-worker, family member, or other person about an employee’s disability/potential disability; asking about genetic information; asking an employee to provide medical documentation about his/her disability (unless in the context of employee’s reasonable accommodation request); or monitoring an employee’s taking of drugs or medications.</p>	

Medical Examinations/Medical Forms filled out by a Physician

In no instance may you require a medical exam prior to an offer of a position, but your offer may be contingent on the results of a medical exam.

If you require a medical examination after a contingent offer is made, you must require it of every applicant offered similar positions. You may not require one only for persons with disabilities or persons you might think have disabilities. You will need to justify any disqualification based on the results of the medical examinations as job-related and consistent with business necessity.

If you are unsure of any of this information, it is strongly recommended that you seek additional technical assistance. **Not all medical or health procedures are considered to be medical examinations.**

Medical Exams Include	Medical Exams Do Not Include
<p>Vision tests; blood, urine, and breath analyses to check for alcohol use; blood, urine, saliva, and hair analyses to detect genetic markers; blood pressure screening and cholesterol testing; nerve conduction, range-of-motion or pulmonary tests; psychological tests designed to identify a mental disorder or impairment; and X-rays, CAT scans, MRIs.</p>	<p>Tests to determine current illegal use of drugs</p> <p>Physical agility and fitness tests (as long as they measure employee’s ability to perform actual or simulated service tasks and do not include medical exams [e.g., measuring heart rate or blood pressure])</p> <p>Tests to evaluate ability to read labels or distinguish objects (as long as they are part of a demonstration of the ability to perform actual service functions)</p> <p>Psychological tests that measure personality traits like honesty preferences, and habits</p> <p>Polygraph exams (as long as no disability-related questions are asked)</p>

Drug Use

A person who is addicted to drugs is sometimes protected under Section 504 because addiction sometimes results in a substantial limitation of major life activities. A person who has a past history of addiction to illegal substances who is successfully participating in a drug rehabilitation program is protected, as is a person perceived to have a drug addiction. However, an individual who is currently using illegal substances is not protected under the statutes. This includes persons currently using illegal substances (e.g., using heroine, cocaine, methamphetamine, or marijuana) as well as persons currently

illegally using legal substances (e.g., use of someone else's prescription drug, underage use of alcohol, or sniffing glue, cleaners, or solvents to "get high").

What do I do if an applicant raises the issue of his or her disability or requests accommodations during the interview?

If accommodations are requested for the interview, you may make sufficient inquiries to enable you to provide the accommodations for the interview. Such accommodations are provided to enable equal opportunity to interview. Accommodations that may be required to perform the essential functions of the service position should not be discussed at this point.

If an applicant has a visible disability or, during or prior to the interview, he or she discloses a disability or a need for accommodation to perform the essential functions of the position, it is not advisable to pursue the issue at this point and you cannot consider this in your selection decision. A response might be, "We are an inclusive project that encourages participation by all persons with the skills and abilities to do the job, and we provide needed accommodations."

CNVS Program Specific Information

CNVS Programs that include a living component may not ask disability-related questions during the selection process (either on the application or in applicant interviews). CNVS understands such questions are not meant to be discriminatory, rather they arise out of the context in which members will function—simple living, intense service conditions, and intentional community. There are, however, other ways to assess a members' suitability for the program in a legal manner. In most cases, the problem is in the way questions are raised.

Medical Forms filled out by physician and applicant

These forms cannot be included in the formal application, nor form part of the selection process. However, programs may require applicants to undergo a medical exam after an offer has been extended and provided that this is required for all applicants. It is acceptable to ask the member to sign a statement that they understand that a job-related medical examination is required and that the offer of employment is contingent upon a satisfactory job-related medical examination.

The program can make the offer contingent on the results of the medical exam. The medical exam may include both physical and psychological tests.



You cannot ask applicants to undergo a physical examination prior to an offer, even if the program does not access that information until after an offer is extended.

Be aware that if an applicant is disqualified at this point, you must be able to show that the disqualification was related to the essential functions of the service position and/or their ability to function within the community living setting you provide and consistent with program necessity. An applicant may also be disqualified if they would pose a "direct threat" (i.e., a significant risk of substantial harm to the individual or others), even with a reasonable accommodation.

When you can and cannot ask disability-related questions:

- ⊙ **Pre-service (prior to service):** A program is prohibited from asking any disability related questions prior to acceptance.
- ⊙ **Post-acceptance but prior to starting service:** For housing, insurance, or other purpose related to the accommodation of volunteers, programs may ask disability-related questions regardless of whether they are related to the position, as long as they ask the same question to every member.
- ⊙ **Post-acceptance once service has begun:** If, at this point, the program screens the individual out because of poor performance, health, or accommodation concerns, the program must be able to show that the exclusionary criteria was service-related and consistent with program necessity.

Health Information for Insurance Purposes or Community Living Purposes

- © You can collect this information after the member has accepted the position and prior to the start of service.

Confidentiality of Medical Information

- © The results of all medical examinations or information from inquiries about a disability must be kept confidential. They should be kept separately from the member files and under lock and key, with restricted access.

What You Can and Cannot ask during the Selection Process

- © You can ask an applicant questions about ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. You can also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation; the applicant will perform job-related functions.

Technical Assistance Resources

- © National Service Inclusion Project (NSIP) <http://serviceandinclusion.org>

Have a question about the inclusion of people with disabilities in national and community service programs? Searching for additional resources? Call the NSIP toll-free voice/TTY line at 1-888-491-0326
All requests are kept confidential.

Possible areas of inquiry include:

- Building partnerships with the disability community
- Developing recruitment and networking resources
- Responding effectively to accommodation requests
- Using accommodation strategies and adaptive products
- Implementing universal design strategies
- Managing members and volunteers - supervising and performance concerns
- Understanding disability benefits: Supplemental Security Income and Social Security Disability Income
- Using person-first language and inclusion etiquette
- Creating an environment that encourages disclosure
- Interviewing: Welcoming and appropriate questions and statements
- Developing inclusive service descriptions
- Understanding the ADA and Section 504 of the Rehabilitation Act

Examples of Questions OK and Not OK to ask

Not OK to Ask	OK to Ask
Mental Health	
<ul style="list-style-type: none"> ⊙ Please indicate any counseling or psychotherapy you have received. ⊙ Requesting contact information for therapist or counselor. ⊙ Asking for reference from therapist or counselor. ⊙ Do you have a history of depression or any other mental illness? Are you or have you ever been on medication for depression or another mental illness? ⊙ Have you been receiving or have you received counseling or psychiatric treatment in the last 5 years? 	<ul style="list-style-type: none"> ⊙ How do you handle stress? ⊙ How do you succeed in working under pressure? ⊙ How do you handle conflict? ⊙ How do you deal with authority? ⊙ How do you deal with criticism? ⊙ Explain the intensity or difficulties of the program, high-stress, or other conditions under which the applicant might live and work, and ask them to comment on whether or how they would function in this environment. ⊙ Present a scenario and ask them to comment on how they would react.
Physical Health	
<ul style="list-style-type: none"> ⊙ How do you appraise your current health? ⊙ Are you in good health? ⊙ How many days have you been sick in the past year? ⊙ Are there any medical conditions which might affect your service? (eg. disability, etc.) ⊙ Do you need any special accommodations? ⊙ Are you pregnant? ⊙ Have you been under a physician's care or received prescribed medication within the last year? ⊙ When did you have your last physical exam? ⊙ Requesting physician contact or reference. ⊙ Have you been hospitalized in the past three years? ⊙ Do you have any pre-existing health conditions? <p>Ask about existing or past use of medications.</p>	<ul style="list-style-type: none"> ⊙ How are you feeling today? ⊙ Are you able to lift boxes weighing up to 50 pounds, with or without a reasonable accommodation? ⊙ Describe your attendance policy and ask if the employee can meet those requirements ⊙ Are you able to perform the specific duties of this position, with or without a reasonable accommodation (service and community living components)? ⊙ Are you able to perform the essential functions of this job (service and living component), with or without reasonable accommodations? ⊙ Can you perform _____ (a specific job function, such as loading three-pound boxes of paper into the copier), with or without a reasonable accommodation?
Drugs, Alcohol, and Substance Abuse	
<ul style="list-style-type: none"> ⊙ Have you been addicted to drugs and/or alcohol? If yes, how long have you been in recovery? ⊙ Questions regarding recovery or treatment. ⊙ Do you abuse prescription medications? ⊙ Comment on your use of tobacco, alcohol, and other drugs. 	<ul style="list-style-type: none"> ⊙ Specific job-related inquiries such as whether the applicant has been convicted for drunk driving, drinks alcohol, or uses illegal drugs. ⊙ In the past, have you been disciplined for violating company or school policies forbidding the use of alcohol or tobacco products? ⊙ Do you use illegal drugs? ⊙ Do you think underage drinking is a serious problem in this community? Probe: Why? Why not? ⊙ Do you think alcohol use by underage youth is a serious problem? Probe: Why? Why not?