

## **Statement Regarding Proposed Rule Affecting ADA Accommodation in Examinations**

Dear NOCA member:

The NOCA Government Relations Committee was recently asked to determine the need to comment on a Notice of Proposed Rulemaking (NPRM) published by the U.S. Department of Justice (DOJ) that would affect 28 CFR 36.309, Examinations and Courses. This section of the Code of Federal Regulations (CFR) promulgates the rules that private entities must adhere to when granting an accommodation on the basis of disability in the administration of a test.

The DOJ explains in the NPRM that it proposes to amend section 36.309 by adding a requirement that any request for documentation of a disability must be “reasonable and limited to the need for the modification or aid requested.”<sup>1</sup> DOJ indicates this change is necessary because “[t]hrough its enforcement efforts, [DOJ] has discovered that the requests made by testing entities for documentation regarding the existence of an individual’s disability and her or his need for a modification or an auxiliary aid or service are often inappropriate or burdensome.”<sup>2</sup>

After review of the NPRM and taking into consideration the range of opinion expressed on this matter by NOCA members, the NOCA Government Relations Committee recommended to the NOCA Board of Directors that NOCA not comment on the proposal. It remains unclear whether this proposal would have any dramatic negative or positive impact on existing accommodation procedures that certification bodies and testing entities currently have in place. While NOCA remains committed to protecting the public and strongly supports removing barriers that may limit disabled persons from fully accessing the opportunities of occupational certification, the Government Relations Committee believes that NOCA members are best served by responding directly to this NPRM if they so desire.

NOCA members who have opinions on the proposal are encouraged to submit formal comments to the DOJ on their own behalf. Please note that while the NPRM lists the deadline for public comment as August 18, 2008, agencies do accept comments after the deadlines listed.

Additional information about this proposal may be viewed by clicking below:

Proposed Rule - [http://www.ada.gov/NPRM2008/t3NPRM\\_federalreg.pdf](http://www.ada.gov/NPRM2008/t3NPRM_federalreg.pdf)

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<sup>1</sup> See p. 34556 at [http://www.ada.gov/NPRM2008/t3NPRM\\_federalreg.pdf](http://www.ada.gov/NPRM2008/t3NPRM_federalreg.pdf).

<sup>2</sup> See p. 34539 at [http://www.ada.gov/NPRM2008/t3NPRM\\_federalreg.pdf](http://www.ada.gov/NPRM2008/t3NPRM_federalreg.pdf).