

ALABAMA WORKFORCE INVESTMENT SYSTEM

**Alabama Department of Commerce
Workforce Development Division
401 Adams Avenue
Post Office Box 304103
Montgomery, Alabama 36130-4103**

June 28, 2019

GOVERNOR'S WORKFORCE INNOVATION DIRECTIVE NO. PY 2016-05, Change 1

SUBJECT: Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity and Nondiscrimination Requirements

- 1. Purpose.** This Directive transmits equal opportunity (EO) and nondiscrimination policies and procedures for programs and activities under the Workforce Innovation and Opportunity Act (WIOA).
- 2. Discussion.** Section 188 of the WIOA contains the Act's equal opportunity and nondiscrimination provisions. The regulations implementing those provisions are found at 29 CFR Part 38. The Act's EO and nondiscrimination provisions and the implementing regulations apply to any WIOA recipient, programs and activities that are part of the Alabama Career Center System and that are operated by Career Center System partners to the extent that the programs and activities are conducted as part of that system, and to the employment practices of recipients and Career Center System partners. Recipients are defined in 29 CFR §38.4 as any entity to which financial assistance under WIA Title I is extended, either directly from the Department of Labor or through the Governor or another recipient, but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity.

The Civil Rights Center (CRC), in the Department of Labor Office of the Assistant Secretary for Administration and Management is responsible for administering and enforcing the equal opportunity and nondiscrimination provisions of WIOA and the implementing regulations at 29 CFR Part 38. The policies and procedures described in this Directive are required by 29 CFR Part 38 and are part of the EO Nondiscrimination Plan each State must develop and implement to ensure that all WIOA Title I recipients of financial assistance will comply with equal opportunity and nondiscrimination provisions.

- 3. Action.** WIOA recipients will comply with WIOA Section 188, 29 CFR Part 38, and policies and procedures contained in this Directive. Recipients must establish and implement policies and procedures, as necessary, to comply with the requirements of this Directive.

- 4. Contact.** Questions should be directed to Lillian Patterson, EO Officer, Workforce Development Division at (334) 242-5861 or at lillian.patterson@commerce.alabama.gov.



Steve Walkley, Division Director
Workforce Development Division

Attachment

Alabama Workforce Investment System Nondiscrimination Policy

It is the policy of the Alabama Department of Commerce, Workforce Development Division (WDD) that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-funded program or activity based on that person's race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries, citizenship or participation in a WIOA Title I-funded program or activity.

WIOA recipients must not discriminate in deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

WIOA recipients shall not discharge, intimidate, retaliate against, threaten, coerce or discriminate against any person who has filed a complaint alleging a violation of WIOA Section 188 or 29 CFR Part 38; opposed a discriminatory or prohibited practice; assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of WIOA nondiscrimination and equal opportunity provisions, the exercise of authority or privilege under those provisions, or otherwise exercised any rights and privileges under the provisions.

Sexual Harassment

For purposes of programs and activities in the Alabama Workforce Investment System, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a WIOA program or activity; or (2) submission to or rejection of such conduct is used as the basis for decisions affecting an individual's status as an employee or participant in WIOA programs or activities; or (3) such conduct has the purpose or effect of creating an intimidating, hostile, or offensive work or training environment.

All WIOA Title I-funded programs and activities must be free of sexual harassment. Recipients shall implement policies and procedures to ensure that work and training environments are free of sexual harassment, and are responsible for informing employees and participants of the policies and procedures for reporting and resolving allegations of sexual harassment.

Disability

People with disabilities will continue to have equal opportunity and access to Alabama Workforce Investment System programs and activities. Recipients must take appropriate action to ensure that programs, activities, services and facilities are accessible to individuals with disabilities, and that when viewed in their entirety, are provided in the most integrated setting appropriate to meeting the needs of individuals with disabilities.

Recipients of WIOA Title-I financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. At the request of, and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

These policies apply to all WIOA Title I recipients. Recipients must comply with these policies and must ensure that other recipients to whom they provide WIOA Title I financial assistance are informed of and comply with the policies. A recipient must take initial and continuing steps to inform applicants, applicants for employment, eligible applicants, registrants, participants and others of its nondiscrimination policy.



Ed Castile, Deputy Director
Alabama Department of Commerce



Steve Walkley, Director
Workforce Development Division

Designation of Equal Opportunity (EO) Officer

Reference: 29 CFR §38.28 – §38.33

Summary: Every Governor must designate a State-level EO officer and each recipient, except small recipients and service providers, must designate an Equal Opportunity (EO) Officer.

Key Definitions (29 CFR §38.4):

Recipient: Any entity to which financial assistance under WIOA Title I is extended, directly from the Department of Labor or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I-funded program or activity.

Small Recipient: A recipient who (1) serves fewer than 15 beneficiaries during the entire grant year; and (2) employs fewer than 15 employees on any given day during a grant year.

Service Provider: (1) Any operator of, or provider of aid, benefits, services, or training to (a) any WIOA Title I-funded program or activity that receives financial assistance from or through any State or Local Workforce Development Area (LWDA) grant recipient; or (b) any participant through that participant's Individual Training Account (ITA); or (2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

Action Required:

The Commerce/WDD, LWDA and other recipients, as applicable, other than a small recipient or service provider, must designate an EO Officer to coordinate its equal opportunity and nondiscrimination responsibilities. The EO Officer should be a senior-level employee and may or may not be assigned other duties. The EO officer must not have other duties and responsibilities that create a conflict, or the appearance of a conflict, with his/her primary responsibilities. The EO Officer must report on equal opportunity and nondiscrimination matters directly to an appropriate official (e.g., the State Agency director, LWDA director/chief administrator, etc.).

Recipients' obligations regarding EO Officers:

- 1) Ensuring that the EO Officer is a senior-level employee reporting directly to the person in the highest-level position of authority for the recipient.
- 2) Designating someone who can fulfill the responsibilities of an EO Officer found at 29 CFR §38.31.
- 3) Making the EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) public, and providing this information (including changes as they occur) to the Commerce WDD EO Officer.
- 4) Ensuring that EO Officers' duties related to equal opportunity and nondiscrimination obligations are included in job descriptions.
- 5) Ensuring that the EO Officer's identity and contact information appear on internal and external communications about nondiscrimination and equal opportunity programs.
- 6) Assigning sufficient authority, staff and resources to the EO Officer, and providing the necessary support of top management to ensure compliance with WIOA equal opportunity and nondiscrimination provisions.
- 7) Ensuring the opportunity for the EO Officer and his/her staff to participate in (at the recipient's expense) training necessary and appropriate to maintain competency.

Small recipients are not required to designate Equal Opportunity Officers, but they must designate an individual to coordinate discrimination complaint procedures, including developing and/or adopting and publishing the procedures. The duties of persons so designated should be reflected in their job descriptions.

The Commerce WDD, LWDA's and other recipients are responsible for ensuring service provider compliance with WIOA equal opportunity and nondiscrimination requirements.

WIOA EO Officers' responsibilities include, but are not limited to:

- 1) Serving as the recipient's liaison with the Commerce WDD EO Officer and/or the DOL Civil Rights Center (CRC), as necessary.
- 2) Monitoring and investigating the recipient's activities, and the activities of entities that receive WIOA funds from the recipient, to ensure compliance with WIOA equal opportunity and nondiscrimination obligations.
- 3) Reviewing written policies to make sure they are not discriminatory.
- 4) Developing and publishing the recipient's discrimination complaint procedures and making sure the procedures are followed.
- 5) Undergoing training, at the recipient's expense, to maintain competency, as required by the CRC Director.
- 6) For LWDA EO Officers, assisting the State-level or Commerce WDD EO Officers in monitoring activities and complaint investigations, as necessary or as requested.
- 7) Conducting outreach and education about EO/nondiscrimination requirements and instructions for filing complaints.

LWDAs must submit the names, titles, addresses, telephone numbers, and job descriptions of their EO Officers to the Commerce WDD EO Officer by no later than July 31, 2019.

Contact Information for the WIOA State-level EO Officer:

Lillian Patterson
Equal Opportunity Officer
Alabama Department of Commerce
Workforce Development Division
401 Adams Avenue
PO Box 304103
Montgomery, Alabama 36130-4103
(334) 242-5861
Dial 711 for Alabama Relay or
1-800-548-2546 (TTY) or
1-800-548-8317 (Español TTY/Voz)
lillian.patterson@commerce.alabama.gov

Contact information for the Equal Opportunity Officer, Alabama Department of Commerce, Workforce Development Division:

Lillian Patterson
Equal Opportunity Officer
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Dial 711 for Alabama Relay or

1-800-548-2546 (TTY) or
1-800-548-8317 (Español TTY/Voz)
lillian.patterson@commerce.alabama.gov

Contact information for the Equal Employment Opportunity Manager, Alabama Department of Labor:

Tonya Scott
Equal Employment Opportunity Manager
Alabama Department of Labor
649 Monroe Street
Montgomery, Alabama 36131
(334) 956-5835
Dial 711 for Alabama Relay or
1-800-548-2546 (TTY) or
1-800-548-8317 (Español TTY/Voz)
tonya.scott@labor.alabama.gov

Notice and Communication

Reference: 29 CFR §38.34 - §38.40

Summary: Recipients must provide initial and continuing notice that they do not discriminate on any basis prohibited by WIOA Section 188 and 29 CFR Part 38. The notice must be made available to registrants, applicants, eligible applicants, participants, applicants for employment, employees, unions or professional organizations with which the recipient holds collective bargaining or other agreements, other recipients that receive WIOA Title I funds from the primary recipient, and to the public, including individuals with vision or hearing impairments and individuals with limited English proficiency.

Action Required:

Initial and Continuing Notice

Recipients, including the Commerce WDD, local workforce development areas (LWDAs), small recipients and others must provide initial and continuing notice that they do not discriminate on any prohibited ground. The notice must be communicated to registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, subrecipients, unions or professional organizations with which the recipient holds collective bargaining agreements, and the public. Each recipient must take appropriate action to ensure that communication of the notice of nondiscrimination to individuals with disabilities is as effective as communications with others. Where a significant proportion of the people eligible to be served or who are being served are individuals with limited English proficiency, recipients must make available and provide information in appropriate languages other than English. The Commerce WDD and LWDAs are responsible for meeting the notice requirements for service providers, or of otherwise ensuring that the requirements are met.

Methods of initial and continuing notice may include, but are not limited to:

- Disseminating information electronically
- Posting notices available to customers, staff, the general public
- Issuing memoranda and/or other written communications
- Developing brochures, leaflets, etc.
- Posting information on intranet and internet sites
- Publishing in newspapers and magazines

The Commerce WDD has developed an ***Equal Opportunity is the Law*** ["EO Poster"] poster containing the notice prescribed by WIOA nondiscrimination regulations at 29 CFR §38.35. The poster is available in English and Spanish and is distributed to LWDAs, Career Centers and other recipients. The ***Equal Opportunity is the Law*** posters may be obtained from the Commerce WDD by contacting Lillian Patterson, EO Officer, by mail at Alabama Department of Commerce, Workforce Development Division, 401 Adams Avenue, PO Box 304103, Montgomery, Alabama 36130-4103; by telephone at (334) 242-5861; or by e-mail at lillian.patterson@commerce.alabama.gov.

At a minimum, the notice required by 29 CFR §§38.34, 38.35 and 38.36 (i.e., notice of the recipient's obligation to operate programs and activities in a nondiscriminatory manner) must be:

- Posted prominently, conspicuously and in reasonable numbers and areas (e.g., EO Poster) and on recipients' web sites;

- Issued in internal memoranda and/or other forms of written or electronic communications with staff;
- Included in electronic and paper participant and employee handbooks and/or manuals;
- Provided to each participant and employee and made a part of his/her file;
- Available and provided in appropriate formats to individuals with vision impairments and in appropriate languages for individuals with limited English proficiency;
- Provided by recipients who provide WIOA financial assistance to other recipients; and
- Included in Requests for Proposals and other solicitations for services or program operation.

Additional Notice and Communication Responsibilities

EO Tags

When recipients develop, prepare, purchase or otherwise obtain recruitment or other materials that are distributed or made available in written, oral, electronic, or other forms to staff, customers, or the general public, describing WIOA programs and activities, including requirements for applicants, participants and recipients, the following EO tags must be included:

- **“equal opportunity employer/program” and**
- **“auxiliary aids and services are available upon request to individuals with disabilities.”**

Where telephone contact information is given, the recipient’s text telephone (TTY) number or other effective telecommunications system (e.g., relay service) must be included. For publications and other written materials already printed but that do not contain the required EO tags, recipients may use adhesive labels, imprinted stamps, inserts or attachments to affix/include the tags.

Media Publications

Any WIOA program information published or broadcast in the news media must include the EO tags or indicate in some other manner that the recipient does not discriminate and that auxiliary aids and services are available.

WIOA Orientations

Recipients must include discussions of equal opportunity and nondiscrimination rights and obligations in orientations ordinarily or routinely presented to new employees, new participants, current employees, applicants for participation, applicants for WIOA Title I funding (potential recipients). Any such orientation should include an explanation of the right to file a complaint.

A recipient must be able to demonstrate that it has methods of notice and communication that inform registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and the public of its obligation to operate programs and activities in a nondiscriminatory manner, and that meet these requirements. This obligation will be monitored by the Commerce WDD EO Officer and LWIA EO Officers.

Affirmative Outreach

LWDAs and other recipients must take appropriate action to ensure that they are providing equal access to WIOA Programs and activities by making reasonable efforts to include members of populations protected by nondiscrimination regulations including various racial and ethnic/national origin groups, different sexes, various religions, individuals with disabilities, individuals with limited English proficiency, and individuals in various age groups.

Assurances

References: 29 CFR §§38.25 – 38.27

Summary: Any application for WIOA Title I financial assistance must include the prescribed assurance at §38.25(a)(i). Where the assurance is not physically included in any grant, contract, cooperative agreement, or other arrangement, it is considered incorporated by law. The assurance may also be referenced in these type documents. The assurance obligates the recipient for the period during which WIOA assistance is extended. Covenants assuring nondiscrimination and equal opportunity are required for transfers of property.

Key Definition:

Application for Assistance: the process by which required documentation is provided to the Department of Labor, Governor, LWDA, or other recipient before and as a condition of receiving WIOA Title I financial assistance.

Action Required:

Assurances

Each recipient of WIOA Title I financial assistance, including service providers, must assure that it will not discriminate and that it will comply with WIOA equal opportunity and nondiscrimination laws. The Commerce WDD, LWDA's and other recipients must include the following assurance in any of its applications for WIOA Title I financial assistance:

As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:
Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I financially assisted program or activity;
Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR, Part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

Review of Assurances, Plans, Contracts, Policies and Procedures

Recipients must have a process for reviewing plans, contracts, policies and procedures to ensure that required nondiscrimination assurances are present, that the documents do not contain discriminatory references or materials, and that they do not discriminate in intent or effect.

Universal Access

References: 29 CFR §37.42 (§38.40 Affirmative Outreach)

Summary: Recipients must take appropriate and reasonable steps to ensure that WIOA services, programs, and activities are available to a diverse group of people representative of the various population groups in their service areas.

Action Required:

Outreach and Recruitment

Recipients should make sure that outreach and recruitment efforts attempt to expand the pool of applicants for their programs and activities, not only to attract under-represented groups, but to make services, programs and activities universally available. Outreach and recruitment efforts may include:

- Identifying media sources and organizations that target specific population groups;
- Advertising programs and activities in media that target specific populations;
- Consulting community organizations that serve specific target groups, including providing the groups with program information and soliciting input on ways to improve outreach;
- Ensuring that printed materials that describe programs and activities are available in alternate formats for people with vision and/or hearing impairments, or who have limited English proficiency, and sending the materials (e.g., brochures, announcements, etc.) to schools, community organizations, and other entities that serve various population groups either exclusively or to a great extent.

LWDAs and other recipients must take into account their obligations under the requirements for notice and communication as they apply to communications with individuals with disabilities and those with limited English proficiency.

Customers with Limited English Proficiency

WIOA Title-I recipients must not discriminate on the basis of national origin, including limited English Proficiency, in providing any aid, benefit, service, or training. LWDAs and other recipients, as applicable:

- must take reasonable steps to ensure meaningful access to each limited English proficient individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity.
- should ensure that every program delivery avenue (e.g., electronic, in person, by phone) informs in appropriate languages how an individual may learn about, participate in and access services, programs and activities.
- should offer language assistance timely and free of charge, and must provide adequate notice of the existence and interpretation of translation services.
- must translate vital information in written materials into languages spoken by a significant portion of the population eligible to be served.
- Should develop a written language access plan to ensure meaningful access for LEP individuals.

LWDAs and other recipients, as applicable, should refer to the WIOA nondiscrimination regulations at §38.9 and the appendix included there for promising practices and guidance related to developing language assistance plans.

The Commerce WDD EO Officer will monitor LWDAs' and other recipients' compliance with this obligation.

Compliance with Laws Regarding Individuals with Disabilities

References: 29 CFR §§38.12 – 38.18

Summary: Recipients must not take any discriminatory actions prohibited by §38.12 or other applicable discrimination laws (identified in 29 CFR Part 38) based on disability.

Key Definitions:

Disability: With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of that individual; a record of such an impairment; or being regarded as having such an impairment.

Individual with a Disability: A person who has a disability, as defined above.

Qualified Individual with a Disability: (1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question. (2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of aid, benefits, services, or training.

Auxiliary aids or services include:

- 1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;
- 2) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;
- 3) Acquisition or modification of equipment or devices; and
- 4) Other similar services and actions.

Reasonable Accommodation: (1) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified individual is seeking; or (2) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities.

Action Required:

Specific Discriminatory Actions Based on Disability That are Prohibited

(1) Recipients, including the Commerce WDD, LWIAs, and other recipients, must not take any of the following actions, based on disability, when providing any aid, benefits, services, or training:

- Deny the opportunity to participate or benefit;
- Provide a benefit not equal to that afforded others;
- Provide a benefit that is not as effective in affording an equal opportunity to achieve the same results as others;
- Provide different or separate benefits, unless necessary to meet the equally effective requirement;

- Perpetuate discrimination by providing assistance to persons, agencies, organizations who/that discriminate on the basis of disability;
- Deny the opportunity to participate on planning or advisory boards;
- Otherwise limit the enjoyment of any right, opportunity, privilege, or advantage enjoyed by others.

(2) Programs and activities must be operated in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(3) Recipients may not use criteria, procedures or policies, or select facilities that (1) have the effect of discriminating on the basis of disability; (2) have the purpose or effect of substantially impairing the accomplishment of program objectives; or (3) perpetuate the discrimination of another entity, if both are subject to common administrative control or are agencies of the same state.

Communications with Individuals with Disabilities

(1) Recipients must take appropriate steps to communicate with individuals with disabilities.

Appropriate steps may include, but are not limited to:

- Ensuring that communications with individuals with disabilities are as effective as with others;
- Furnishing appropriate auxiliary aids or services where necessary to afford equal opportunity for participation and benefit;
- Giving primary consideration to the requests of individuals in determining an auxiliary aid of service, as necessary;
- Using telecommunications devices (TDDs/TTYs) for hearing-impaired individuals, relay services, or equally effective systems, where the recipient communicates with beneficiaries, applicants/registrants, eligible applicants, participants for employment, and employees by telephone;
- Ensuring that interested persons, including visually- or hearing-impaired persons, can obtain information about the location of accessible services, activities, and facilities; providing signage at a primary entrance to each inaccessible facility directing users to a location where they may obtain information about accessible facilities;
- Using the international symbol for accessibility at each primary entrance to an accessible facility.

(2) Recipients are not required to take any action that they can demonstrate would result in a fundamental alteration to the nature of a service, program, or activity or in undue financial and administrative burdens. In cases where the recipient has reason to believe that any action proposed to provide effective communications would result in such alteration or undue burdens, the recipient must:

- Be able to prove that the action would result in fundamental alteration or undue burden;
- Make a decision only after considering all available resources;
- Provide a written statement of the reasons for the decision; and
- Take other action that would not result in fundamental alteration or undue burden, but which would ensure that, to the maximum extent possible, the services or benefits are available to individuals with disabilities.

(3) Recipients must establish procedures for communicating with individuals with disabilities, giving consideration to the kinds of programs and services provided, how programs/services are provided, and the frequency of contact with individuals with disabilities. In establishing communication procedures, recipients should consider the following:

- Contacting individuals with disabilities and agencies that represent them to discuss specific communication needs, to identify problems individuals with disabilities may have experienced in seeking or receiving services, to get input regarding how to address any problems identified, to identify effective communication methods, and to identify sources for interpreters;

- Making formal arrangements with individuals and/or organizations to provide qualified interpreters, as necessary, and maintaining a list of such persons and description of the arrangements;
- Identifying staff who may be responsible for specific actions in the communication process.

(4) Recipients must inform staff and other recipients of the procedures for communicating with individuals with disabilities, and must train appropriate staff, as necessary.

Program Accessibility

- (1) Recipients must operate programs and activities so that, when viewed in their entirety, the programs and activities are readily accessible to qualified individuals with disabilities. Recipients are not required to make each facility accessible to and useable by qualified individuals with disabilities. If, however, a program is available in only one location, the program site must be accessible or must be made available at an alternate accessible site.
- (2) When a small recipient finds, after consulting with a qualified individual with a disability seeking services, that there is no method of complying with the accessibility requirement other than making substantial alterations to its facilities, the recipient may refer the individual to other entities that can provide accessible services.
- (3) Recipients are not required to alter or modify existing facilities where other methods are effective in providing accessibility. Alternative methods may include redesign of equipment, reassignment of activities or services to accessible sites, or use of auxiliary aids.
- (4) Recipients must ensure that meetings, workshops, training sessions, and conferences are accessible to individuals with disabilities. Recipients must take appropriate steps to schedule meetings, etc. at accessible locations and to determine the need for and provide appropriate auxiliary aids and/or accommodations for attendees.

Data and Information Collection and Maintenance

References: 29 CFR §38.41

Summary: Recipients must collect data and maintain records in a manner determined by the Director, Civil Rights Center, as necessary to assess whether recipients are complying with equal opportunity and nondiscrimination requirements of WIOA and 29 CFR Part 38.

Action Required:

(1) The Alabama Department of Commerce, Workforce Development Division, LWDA's and other recipients, as appropriate, must collect data and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment, and must record the race/ethnicity, sex, age, and where known, disability status, and the limited English proficiency and preferred language of each applicant, registrant, participant and terminatee. LWDA's and other recipients must ensure that the information regarding race/ethnicity, sex, etc. is (1) stored in such a manner as to ensure confidentiality; and (2) used only for the following purposes:

- Recordkeeping and reporting;
- Determining eligibility, where appropriate for WIOA programs/activities;
- determining the extent to which a recipient is operating its programs and activities in a nondiscriminatory manner; or
- Other use authorized by WIOA nondiscrimination and equal opportunity provisions or 29 CFR Part 38.

(2) Race/ethnicity designations must comply with Office of Management and Budget (OMB) guidelines.

(3) LWDA's and other recipients must promptly notify the Director, Workforce Development Division, and the Director, DOL Civil Rights Center (CRC), of any administrative enforcement actions or lawsuits filed against them alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation, and for beneficiaries only, citizenship or participation in WIOA. The notification must include:

- Names of the parties to the action or lawsuit;
- The forum in which each case was filed; and
- The relevant case numbers.

(4) The WDD EO Officer will maintain records of discrimination complaints.

(5) The Commerce WDD, LWDA's and other recipients, as appropriate, must maintain complaint information and other records required to be retained by 29 CFR Part 38 for not less than three (3) years from the close of the applicable program year.

(6) The Commerce WDD, LWDA's, and other recipients are responsible for collecting and maintaining data required for EO purposes for their service providers.

(7) The Commerce WDD, LWIAs, and other recipients must permit access by the DOL Civil Rights Center and Commerce/Workforce Development Division staff during normal business hours to its premises, employees, and participants for the purpose of conducting complaint investigations, compliance reviews, monitoring activities, and inspecting and copying records, documents, etc. pertinent to determining compliance with the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38.

(8) Medical or disability-related information about a particular individual, including any information that could lead to disclosure of a disability, must be collected on separate forms. This information must be kept in one or more separate files, apart from other information about the individual, and kept confidential.

(9) The identity of any person who furnishes information relating to an investigation or compliance review, or who otherwise assists in an investigation or review, will be kept confidential to the extent possible, consistent with a fair determination of issues. When it is necessary to reveal the identity of any person, the person must be free from retaliation in compliance with §38.19.

Monitoring for Compliance

References: 29 CFR §38.51

Summary: The Governor is responsible for oversight and monitoring

Action Required:

The State-level EO Officer will be responsible for monitoring compliance with oversight responsibilities assigned to State Programs and other entities involved in the Alabama Workforce Investment System. The Commerce/WDD EO Officer is responsible for conducting compliance monitoring reviews of LWDA's and other WIOA recipients, including service providers. LWDA's and other recipients will be monitored for compliance with 29 CFR Part 38, WIOA Section 188, and any additional nondiscrimination obligations. LWDA's will be monitored on-site at least once per program year. Other recipients will be scheduled as possible and as necessary.

Desk reviews of LWOA programs may include:

- Analysis of applicant, registrant, participant, and terminee data;
- Review of discrimination complaint files;
- Review of local area grant agreements and/or strategic plans.

On-site reviews will include:

- Written notice of review and request for data and documents, as necessary;
- Entrance conference;
- File review;
- Review of information and materials used for outreach and recruitment and as resources for customers;
- Staff and participant interviews;
- Observation of activities (e.g., intake, assessment);
- Facility reviews;
- Review of contracts, agreements, and written policies and procedures;
- Review of recipient's obligations established by Commerce WDD policies and procedures;
- Exit conference, including discussion of preliminary findings.

The Commerce EO Officer will prepare written compliance review reports, including summary findings and a determination of compliance or non-compliance, or compliance with deficiencies. Reports will be sent to recipients with recommendations for corrective action, if necessary, and timeframes for response.

LWDA EO Officers or other staff are responsible for monitoring its programs and activities and those of recipients to whom the LWDA extends WIOA financial assistance, including service providers.

Discrimination Complaints

References: 29 CFR §§38.69 – 38.75;

Summary: Any person who believes he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIOA or 29 CFR Part 38, may file a written complaint, either by him/herself or through a representative.

Local Workforce Investment Area Role in Discrimination Complaint Procedures

Filing a Discrimination Complaint

No person in the United States may be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-funded program or activity based on that person's race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or because he/she is a beneficiary of, applicant to, or participant in programs financially assisted under WIOA Title I, on the basis of the individual's citizenship status or participation in a WIOA Title I financially assisted program. Any person who believes that he/she, or any specific class of persons, has been or is the object of discrimination that is prohibited by WIOA may file a written complaint, either by him/herself or through a representative, with the Commerce WDD Equal Opportunity Officer or the Director, Department of Labor, Civil Rights Center.

Receipt of Discrimination Complaints

Discrimination complaints filed in-State, including those involving local area activities, will be received and processed only by the Commerce Workforce Development Division. However, local workforce development areas may be requested/required to assist in WDD-led investigations and resolution efforts.

Local area grievance and complaint procedures must include a method of informing participants and others affected by or interested in local workforce development area programs, activities and services of discrimination complaint procedures. At a minimum, local areas must inform participants, service providers, One-Stop partners, and other customers affected by or interested in local workforce development area programs, activities and services of the right to file, and where and when to file discrimination complaints.

LWDAs should maintain records of any discrimination complaints they or their recipients refer to the WDD.

Where to File Discrimination Complaints: The complainant has the option of filing a written complaint with either the EO Officer, Commerce WDD or the Director, USDOL Civil Rights Center.

When to File: Discrimination complaints must be filed within 180 days of the alleged violation, unless the Director, Civil Rights Center, extends the time for good cause shown.

Discrimination Complaint Procedures
Workforce Development Division

Filing a Discrimination Complaint

No person in the United States may be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-funded program or activity based on that person's race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or because he/she is a beneficiary of, applicant to, or participant in programs financially assisted under WIOA Title I, on the basis of the individual's citizenship status or participation in a WIOA Title I financially assisted program.

Any person who believes that he/she, or any specific class of persons, has been or is the object of discrimination that is prohibited by WIOA may file a written complaint, either by him/herself or through a representative, with the Commerce WDD Equal Opportunity Officer or the Director, Department of Labor, Civil Rights Center. Complainants and respondents (individuals or entities against whom allegations of discrimination are made) have the right to be represented by an attorney or other individual of their choice.

Where to File Discrimination Complaints:

The complainant has the option of filing a

written complaint with either

Lillian Patterson, EO Officer
Workforce Development Division
Alabama Department of Commerce
401 Adams Avenue
PO Box 304103
Montgomery, Alabama 36130-4103

or

Director
Civil Rights Center
US Department of Labor
200 Constitution Avenue NW
Room N-4123
Washington, D.C. 20210

When to File: Discrimination complaints must be filed within 180 days of the alleged violation, unless the Director, Civil Rights Center, extends the time for good cause shown.

Content of Complaints: Each complaint must be filed in writing and must contain the following information:

- the complainant's name, address and telephone number (or another means of contact);
- the identity of the person or entity the complainant alleges is responsible for the discrimination (respondent);
- a description of the allegations; and

- the complainant's or his/her representative's signature.

Complaint Processing Procedures

The date of a complaint is the date the written complaint is received in the WDD. Upon receipt of a complaint, the WDD EO Officer will determine if the WDD has jurisdiction, and if so, will provide written notice to the complainant within five (5) days that

- acknowledges receipt of the complaint;
- notifies the complainant of his/her right to representation in the complaint process, at his/her expense;
- identifies or restates the issues raised in the complaint;
- states the issues the WDD will accept or reject, including the reason an issue is rejected;
- offers the complainant the option of an investigation or alternative dispute resolution by mediation; and
- notifies the complainant that a *Notice of Final Action* will be issued within ninety (90) days of receipt of the complaint and of appeal procedures if the *Notice of Final Action* is not issued within that time.

If the WDD does not have jurisdiction, the complainant will also be notified within five (5) days.

Investigation

If the complainant chooses to have his/her complaint resolved through investigation, the WDD EO Officer (or other staff assigned by the WDD Director) will conduct an investigation, make efforts to bring the parties to agreement, as appropriate, and make recommendations for resolution and/or corrective actions to the WDD Director.

Notice of Final Action

A written *Notice of Final Action* will be signed and issued by the WDD Director within 90 days of receipt of a complaint. The *Notice of Final Action* will include

- a discussion of the WDD's decision on each issue and the reason(s) for the decision; or
- a summary of the way the parties resolved the issue; and
- notice of the complainant's right to complain to the Civil Rights Center (CRC) within thirty (30) days of issuance of the *Notice of Final Action*, if he/she is dissatisfied with the WDD's final action.

Mediation

The WDD will use mediation as a means of alternative dispute resolution. If the complainant chooses mediation as the means of resolution, a third party mediator, acceptable to both parties, will be selected. Because WIOA nondiscrimination regulations entitle a complainant to choose mediation, any respondent who/that is a recipient of WIOA Title I funds from the Commerce WDD must cooperate in the mediation process.

The complainant and respondent will be notified of the date, time, place, and conditions of the mediation session by the WDD EO Officer or the mediator. All parties must agree to keep the mediation proceedings and any resultant agreements confidential, and not to involve the mediator in any litigation. If the complaint is settled, all parties must sign a written settlement agreement. A *Notice of Final Action* that describes the way the parties resolved the complaint will be issued within 90 days of the date the complaint was filed.

Conditions Under Which Parties to Mediation May File a Complaint with CRC

If any party to the settlement agreement breaches the agreement, the non-breaching party may file a written complaint with the CRC Director within thirty (30) days of learning of the breach.

If the parties do not reach an agreement as the result of mediation, the complainant may file a complaint with the CRC Director and will be so advised.

Records

Complaint logs containing the name and address of the complainant; the date the complaint is filed; the disposition of the complaint and date of disposition will be maintained by the WDD EO Officer.

All records related to complaints and actions taken will be maintained for a period of not less than three (3) years from the date of resolution.

Retaliation and Intimidation

According to 29 CFR §38.19, a WIOA recipient must not discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has

- filed a complaint alleging a violation of Section 188 of WIA or 29 CFR Part 38;
- opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 38;
- furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to any of the following:
 - administration of the nondiscrimination and equal opportunity provisions of WIOA;
 - exercise of authority under WIOA nondiscrimination and equal opportunity provisions;
 - exercise of privilege secured by those provisions;
- otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIOA.

Sanctions and penalties may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

Corrective Actions/Sanctions

References: 29 CFR § 38

Summary: EO Methods of Administration must include procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.

Action Required:

When the Commerce WDD finds, as a result of a complaint investigation, compliance review, or other monitoring activity, that there is reasonable cause to believe that a LWDA or other recipient is in violation of 29 CFR Part 38 or WIOA Section 188, the Commerce WDD will notify the recipient in writing. The notice will specify the action necessary to achieve voluntary compliance within a specific time period. As appropriate, the written notice will include:

- Initial findings;
- Notice of opportunity to present evidence/documentation to refute findings;
- Recommended/required action to end and/or redress the violation(s);
- Notice of opportunity to appeal findings through a grievance/complaint process;
- Description of relief where discrimination has been clearly identified, including, as appropriate, back pay. Make-whole relief may also include other monetary relief, hire or reinstatement, retroactive seniority, promotions, and benefits/services denied as a result of discrimination;
- Description of other remedial, corrective, or affirmative relief deemed necessary by the Commerce WDD Division Director to achieve and ensure equal opportunity;
- Notice of opportunity to propose alternative corrective/ remedial action instead of that proposed by the Commerce WDD. Any alternative proposals must be approved by the Commerce WDD Division Director.

Monetary relief will not be paid from federal funds. As necessary, a written conciliation agreement describing corrective or remedial actions will be developed by the State-level EO Officer and/or the Commerce WDD EO Officer, as appropriate. The agreement will include:

- Timeframes for completing corrective/remedial actions;
- The individual(s) responsible for implementing the agreement;
- Any reporting requirements; and
- A description of consequences for breach of the agreement.

Sanctions:

When all efforts at voluntary compliance fail, the Commerce WDD may impose sanctions against LWDA's or other recipients found to be in violation of nondiscrimination and equal opportunity requirements of the WIOA. Sanctions will be applied based on the nature of the violation and may include, but are not limited to:

- Partial/reduced funding;
- Disallowance of costs;
- Referral, as appropriate, for litigation under state contract law;

Other Recipients' Obligations

LWDAs and other recipients that extend WIOA funds to other recipients must have policies/procedures for taking remedial and corrective actions and imposing sanctions when they find noncompliance with WIOA nondiscrimination obligations.