

# ALABAMA WORKFORCE INVESTMENT SYSTEM

Department of Economic and Community Affairs  
Workforce Development Division  
401 Adams Avenue  
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Montgomery, Alabama 36103-5690

May 30, 2008

## GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY2007-08

### **SUBJECT: Workforce Investment Act (WIA) 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 Investment Act (WIA), including updates.

**2. Discussion.** Section 188 of the WIA contains the Act's equal opportunity and nondiscrimination provisions. The regulations implementing those provisions are found at 29 CFR Part 37. The Act's EO and nondiscrimination provisions and the implementing regulations apply to any WIA 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 §37.4 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 Department of Labor, Civil Rights Center is responsible for administering and enforcing the equal opportunity and nondiscrimination provisions of WIA and the implementing regulations at 29 CFR Part 37. The policies and procedures described in this Directive are part of the EO Methods of Administration (MOA) that the Civil Rights Center requires each State to develop and implement to ensure that all recipients will comply with the WIA equal opportunity and nondiscrimination provisions.

**3. Action.** WIA recipients will comply with WIA Section 188, 29 CFR Part 37, 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 and applicable nondiscrimination law.

**4. Contact.**

Questions should be directed to Lillian Patterson, EO Officer, Workforce Development Division at (334) 242-5861 or at [lillian.patterson@adeca.alabama.gov](mailto:lillian.patterson@adeca.alabama.gov).



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Steve Walkley, Division Director  
Workforce Development Division

Attachment

**BOB RILEY**  
GOVERNOR

**Bill JOHNSON**  
DIRECTOR

STATE OF ALABAMA

**Alabama Workforce Investment System  
Nondiscrimination Policy**

It is the policy of the Alabama Department of Economic and Community Affairs (ADECA), 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 WIA Title I-funded program or activity based on that person's race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, citizenship or participation in a WIA Title I-funded program or activity.

WIA recipients shall not discharge, intimidate, retaliate against, threaten, coerce or discriminate against any person who has filed a complaint alleging a violation of WIA Section 188 or 29 CFR Part 37; 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 WIA 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 WIA 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 WIA programs or activities; or (3) such conduct has the purpose or effect of creating an intimidating, hostile, or offensive work or training environment.

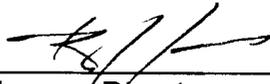
All WIA Title I-funded programs and activities must be free of sexual harassment. Recipients shall implement policies and procedures to ensure that work and training environments are free of sexual harassment, and are responsible for informing employees and participants of the policies and procedures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

These policies apply to all WIA Title I recipients. Recipients must comply with these policies and must ensure that other recipients to whom they provide WIA 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. The EO Officer, ADECA WDD will monitor compliance with this obligation.



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Bill Johnson, Director  
Alabama Department of Economic and Community Affairs



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Steve Walkley, Director  
Workforce Development Division

## **EO Requirement 1: Designation of Equal Opportunity (EO) Officer**

**Reference:** 29 CFR §37.23 – §37.28

**Summary:** Each recipient must designate an Equal Opportunity (EO) Officer, except small recipients and service providers.

### **Key Definitions:**

**Recipient:** 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. Recipients include

- State agencies that administer WIA Title I programs or that are wholly or partially financed with WIA Title I funds
- State Employment Security Agencies
- State and local Workforce Investment Boards
- Local Workforce Investment Area grant recipients
- One-Stop Operators
- Service Providers
- On-the-Job Training (OJT) employers

**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 WIA Title I-funded program or activity that receives financial assistance from or through any State or Local Workforce Investment Area (LWIA) 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 training provider of training services to participants.

### **Action Required:**

ADECA WDD, LWIAs and other recipients, as applicable, other than a small recipient or service provider, must designate an EO Officer to coordinate equal opportunity and nondiscrimination responsibilities. The person designated 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 WIA director, LWIA director or chief administrator, etc.).

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

- 1) Serving as the recipient's liaison with the ADECA WDD EO Office and the DOL Civil Rights Center (CRC).
- 2) Monitoring the recipient's activities, and the activities of entities that receive WIA funds from the recipient, to ensure compliance with WIA 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, if required by the CRC Director.

- 6) For LWIA EO Officers, assisting the State EO Officer in complaint investigations, as necessary.

ADECA/WDD, LWIAs and other recipients that have EO Officers with duties related to the administration of WIA Title I programs are obligated to:

- 1) Make 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 ADECA WDD EO Officer.
- 2) Ensure that EO Officers' duties related to equal opportunity and nondiscrimination obligations are included in job descriptions.
- 3) Ensure that the EO Officer's identity and contact information appear on internal and external communications about nondiscrimination and equal opportunity programs.
- 4) Assign sufficient staff and resources and providing the necessary support of management to ensure compliance with equal opportunity and nondiscrimination obligations.
- 5) Ensure access for the EO Officer and his/her staff to training necessary and appropriate to maintain competency.
- 6) Ensure service provider compliance with WIA equal opportunity and nondiscrimination requirements.

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, and assisting in complaint investigations, as necessary. The duties of persons so designated should be reflected in their job descriptions.

Career Centers are not required to designate EO Officers. LWIA EO Officers are responsible for coordinating and overseeing EO responsibilities for the Career Centers.

The ADECA WDD, LWIAs and other recipients are responsible for ensuring service provider compliance with WIA equal opportunity and nondiscrimination requirements.

The ADECA/WDD EO Officer is available to provide technical assistance to LWIAs, local workforce boards, career centers, and other recipients to ensure effective implementation of equal opportunity and nondiscrimination requirements. You may reach the ADECA/WDD EO Officer at:

Lillian Patterson  
Equal Opportunity Officer  
Alabama Department of Economic and Community Affairs  
Workforce Development Division  
401 Adams Avenue  
PO Box 5690  
Montgomery, Alabama 36103-5690  
(334) 242-5861  
Dial 711 for Alabama Relay Center TTY  
[lillian.patterson@adeca.alabama.gov](mailto:lillian.patterson@adeca.alabama.gov)

Contact information for the Director, Equal Employment Opportunity and Grievance Division, Alabama Department of Industrial Relations:

Shirley Z. Brown  
Director  
Equal Employment Opportunity and Grievance Division  
Alabama Department of Industrial Relations  
649 Monroe Street  
Montgomery, Alabama 36131  
(334) 242-8495

Dial 711 for Alabama Relay Center TTY  
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## **EO Requirement 2: Notice and Communication**

**Reference:** 29 CFR §37.9 and §37.29 - §37.34

**Summary:** Recipients must provide initial and continuing notice that they do not discriminate on the basis of race, color, national origin, age, sex, religion, disability, political affiliation or belief. For beneficiaries only, the discrimination prohibition extends to citizenship and participation in WIA programs. 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 WIA Title I funds from the primary recipient, and to the public, including individuals with vision or hearing impairments and individuals with limited English proficiency.

### **Key Definitions:**

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 (TDDs/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.

TDD/TTY (telecommunications device for the deaf/text telephone): A text telephone that enables a person with a hearing or speech impairment to use the telephone.

Telephone Relay Service: The Alabama Telephone Relay Service (ATRS) allows customers who use Text Telephones (TTY) to communicate with others through special operators who translate TTY messages into speech for non-TTY users and vice versa. TTY users and hearing callers may reach the Alabama Relay Service by dialing **711**. There are also toll free access numbers to reach the ATRS. Those numbers are listed on local telephone directory customer guide pages.

### **Action Required:**

#### Initial and Continuing Notice

Recipients, including the ADECA WDD, local workforce investment areas, 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 with individuals with disabilities is as effective as communications with others (e.g., information in alternate formats, large print, audio, etc.). 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 ADECA WDD and LWIAs are responsible for meeting the notice requirements for their 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 ADECA WDD has published an *Equal Opportunity is the Law* ["EO Poster"] poster containing the notice prescribed by WIA nondiscrimination regulations at 29 CFR §37.30. The poster is available in English and Spanish and has been distributed previously to LWIAs, Career Centers and, as requested, to other recipients. Additional copies of the poster may be obtained from the WDD EO Officer. The *Equal Opportunity is the Law* notice is also available in English and Spanish on audio tape. You may request *Equal Opportunity is the Law* posters and/or audio tapes of the notice by contacting Lillian Patterson, EO Officer, by mail at Alabama Department of Economic and Community Affairs, Workforce Development Division, 401 Adams Avenue, PO Box 5690, Montgomery, Alabama 36103-5690; (334) 242-5861; by telephone at (334) 242-5861; or by e-mail at [lillian.patterson@adeca.alabama.gov](mailto:lillian.patterson@adeca.alabama.gov).

At a minimum, notice of the recipient's obligation to operate programs and activities in a nondiscriminatory manner must be:

- Posted prominently and in reasonable numbers and areas (e.g., EO Poster);
- Issued in internal memoranda and/or other forms of written or electronic communications;
- Included in handbooks and/or manuals;
- Provided to each participant and made a part of his/her file;
- Available in appropriate formats to individuals with vision impairments and/or limited English proficiency;
- Provided by recipients who provide WIA 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 informational materials that are distributed or made available in written, oral, electronic, or other forms to staff, customers, or the general public, describing WIA 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 TDD/TTY or relay service number 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 WIA program information published or broadcast in the news or other public 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 upon request to individuals with disabilities.

### WIA or Related 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 WIA Title I funding (potential recipients). Any such orientation should include an explanation of the right to file a complaint.

### Customers with Limited English Proficiency

When LWIAs or other recipients determine that a significant number of the population eligible to be served needs information or services in a language other than English, at a minimum, the recipient must:

- Consider (1) the scope of the program or activity, and (2) the size and concentration of the population needing information or services in another language.
- As a result of consideration given, take reasonable action to provide needed services and information in appropriate languages, including initial and continuing notices, published materials, and media publications.

Where there are not significant numbers of people who need services or information in other languages, recipients must make every effort to meet the needs of individuals with limited English proficiency as those needs arise or are identified.

### Monitoring

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 ADECA WDD EO Officer and LWIA EO Officers.

LWIAs are responsible for monitoring compliance the notice and communication obligations of their local programs, recipients, and service providers.

## **EO Requirement 3**

### **Review of Assurances, Job Training Plans, Contracts, Policies and Procedures**

**References:** 29 CFR §§37.20 – 37.22

**Summary:** Any application for WIA Title I financial assistance must include the prescribed nondiscrimination assurance at §37.20(a)(1). 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. Recipients are obligated by the assurance for time periods specified at §37.21. 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 or recipient before and as a condition of receiving WIA Title I financial assistance.

**Action Required:**

**Assurances**

Each recipient of WIA Title I financial assistance, including service providers, must assure that it will not discriminate and that it will comply with WIA equal opportunity and nondiscrimination laws. The ADECA WDD, LWIAs and other recipients must include the following assurance in any of their applications for WIA Title I financial assistance:

*As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:*  
*Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA 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 it will comply with 29 CFR, Part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA 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.*

**Length of Recipients' Obligation**

Recipients are obligated to comply with the assurance of nondiscrimination for the following periods:

- For personal property, real property, structures on real property, or interest in such property or structures, a recipient or transferee is obligated for the longer of (1) the period during which the property is used either (a) for a purpose for which the WIA assistance is extended; or (b) for another purpose involving similar services or benefits; or (2) the period during which either (a) the recipient retains ownership or possession of

- the property; or (b) the transferee retains ownership or possession without compensating the grantor for fair market value.
- In all other cases, the recipient is obligated for the period during which it receives WIA assistance.

#### 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. ADECA/WDD EO monitoring will include review of plans, contracts, policies and procedures.

## **EO Requirement 4**

### **Universal Access**

**References:** 29 CFR §37.42

**Summary:** Recipients must take appropriate and reasonable steps to ensure that WIA 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**

The ADECA/WDD, LWIAs, Career Centers, and other recipients must 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.

##### **Limited English Proficiency (LEP)**

LWIAs and other recipients should develop and implement policies and procedures to ensure that WIA programs and activities are accessible to individuals who have limited English proficiency. The following steps may be taken in developing plans, policies and procedures for serving eligible applicants, participants, and employees who are not proficient in English:

- Determine the extent of your obligation to provide LEP services by
  - 1) determining the number and proportion of LEP persons likely to be served or likely to be encountered by your programs;
  - 2) determining the frequency with which LEP persons come in contact with the program;
  - 3) determining the nature and importance of the program, activity, or service to LEP persons; and
  - 4) determining the resources available and the costs.
- Determine the use of the two predominant ways to provide language services – oral interpretation and written translation

LWIAs should develop plans, policies, and procedures based on the results of these considerations.

LWIAs 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.

Information and resources to assist in serving LEP populations are available at <http://www.lep.gov> .

The ADECA WDD EO Officer will monitor LWIAs' and other recipients' compliance with this obligation.

## **EO Requirement 5**

### **Compliance with Laws Regarding Individuals with Disabilities**

**References:** 29 CFR §§37.7 -37.9; Section 504 of the Rehabilitation Act of 1973; Titles I and II of the Americans with Disabilities Act of 1990 (as applicable)

**Summary:** Recipients must not take any discriminatory actions prohibited by §37.7 or other applicable discrimination laws 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 (TDDs/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 ADECA 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 (a) have the effect of discriminating on the basis of disability; (b) have the purpose or effect of substantially impairing the accomplishment of program objectives; or (c) 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.
- (5) Recipients must make auxiliary aids and services available to individuals with disabilities, upon request

#### Reasonable Accommodation

Recipients are obligated to provide reasonable accommodation to applicants, registrants, eligible applicants/registrants, participants, employees, and applicants for employment, unless doing so would cause an undue hardship. When reasonable accommodations are denied because of "undue burden," recipients must be able to prove the burden, and must maintain written documentation for the denial. According to 29 CFR 37.4, the term *undue hardship*, as it relates to reasonable accommodation, means significant difficulty or expense incurred by a recipient, when considered in light of the following factors:

- 1) The nature and net cost of the accommodation needed, taking into account the availability of tax credits and deductions, and/or outside funding;
- 2) The overall financial resources of the facilities involved in providing the accommodation, including (a) the number of persons aided, benefited, served, trained, or employed by or at the facility; and (b) the effect the accommodation would have on the expenses and resources of the facility;
- 3) The overall financial resources of the recipient;
- 4) The type of operation(s) of the recipient; and
- 5) The impact of the accommodation on the operation of the facility.

## **EO Requirement 6**

### **Data and Information Collection and Maintenance**

**References:** 29 CFR §§37.37 – 37.41

**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 WIA and 29 CFR Part 37.

**Action Required:**

(1) LWIAs 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. LWIAs and other recipients must ensure that the information regarding race/ethnicity, sex, age and disability status is (a) stored in such a manner as to ensure confidentiality; and (b) used only for the following purposes:

- Recordkeeping and reporting;
- Determining eligibility, where appropriate for WIA programs/activities;
- determining the extent to which a recipient is operating its programs and activities in a nondiscriminatory manner; or
- Other use authorized by WIA nondiscrimination and equal opportunity provisions or 29 CFR Part 37.

(2) Data must be collected and maintained according to instructions contained in the Alabama Career Center System *Forms Preparation and Data Validation Requirement Handbook*. The required data for employees and applicants for employment should be collected and maintained according to the recipient's personnel procedures. Race/ethnicity designations must comply with Office of Management and Budget (OMB) guidelines.

(3) LWIAs 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 WIA. 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 logs of discrimination complaints. Any information related to discrimination complaints maintained at the local level must be kept in a manner that ensures confidentiality and privacy.

(5) The ADECA WDD, LWIAs and other recipients, as appropriate, must maintain complaint information and other records required to be retained by 29 CFR Part 37 for not less than three (3) years from the close of the program year in which the complaint is filed, or three (3) years from the date of resolution, whichever is later.

(6) The ADECA WDD, LWIAs, and other recipients are responsible for collecting and maintaining data necessary for EO purposes for their service providers.

(7) The ADECA WDD, LWIAs, and other recipients must permit access by WDD staff and the DOL Civil Rights Center 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 WIA and 29 CFR Part 37.

(8) 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 §37.11.

Medical and disability-related information on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment must be kept in a manner that ensures confidentiality. Medical and disability-related information must only be used for the purposes of record keeping and reporting; determining eligibility, where appropriate; determining the extent to which recipients are operating WIA programs in a nondiscriminatory manner; or other use authorized by law. The information should be kept separate from other information about the individual.

## **EO Requirement 7**

### **Monitoring for Compliance**

**References:** 29 CFR §37.54(d)(2)(ii)

**Summary:** Nondiscrimination regulations require the establishment of a system to periodically monitor the compliance of recipients with WIA Section 188 and 29 CFR Part 37 to determine if recipients are conducting programs and activities in a nondiscriminatory manner.

**Action Required:**

The Equal Opportunity (EO) Officer, Workforce Development Division is responsible for conducting compliance monitoring reviews of LWIAs and other WIA recipients, including service providers. LWIAs and other recipients will be monitored for compliance with 29 CFR Part 37, WIA Section 188, and any additional nondiscrimination obligations assigned by the ADECA WDD. LWIAs will be monitored on-site at least once per program year. Other recipients will be scheduled as possible and as necessary.

Desk reviews of LWIA programs may include:

- Analysis of applicant, registrant, participant, and terminnee 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 in this Directive;
- Exit conference, including discussion of preliminary findings.

The ADECA 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.

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

## **EO Requirement 8**

### **Processing Discrimination Complaints**

**References:** 29 CFR §§37.70 – 37.80; Governor's Workforce Development Directives (GWDDs) No. PY 2000-20 and PY 2000-20, Change 1.

**Summary:** Any person who believes he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or 29 CFR Part 37, may file a written complaint, either by him/herself or through a representative.

**Action Required:**

Refer to GWDD No. PY 2000-20 and PY 2000-20, Change I for procedures and responsibilities.

## **EO Requirement 9**

### **Corrective Actions/Sanctions**

**References:** 29 CFR § 37.54(d)(2)(vii)

**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 ADECA WDD finds, as a result of a complaint investigation, compliance review, or other monitoring activity, that there is reasonable cause to believe that a LWIA or other recipient is in violation of 29 CFR Part 37 or WIA Section 188, the ADECA 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 ADECA WDD Division Director to achieve and ensure equal opportunity;
- Notice of opportunity to propose alternative corrective/ remedial action instead of that proposed by the ADECA WDD. Any alternative proposals must be approved by the ADECA 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 WDD. 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 ADECA WDD may impose sanctions against LWIAs or other recipients found to be in violation of nondiscrimination and equal opportunity requirements of the WIA. 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**

LWIAs and recipients that extend WIA funds to other recipients (subrecipients) must have policies/procedures for taking remedial and corrective actions and imposing sanctions when they find noncompliance with WIA nondiscrimination obligations.