

## CHAPTER FOUR: General Nondiscrimination Requirements

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Chapter Four is the first of four chapters that deal with specific areas that require nondiscrimination self-assessment. It begins with a review of the affirmative obligations for which recipients hold full or partial liability. It then presents a process for reviewing the policies, practices, and services of recipients, subrecipients, and service providers to ensure their adherence to nondiscriminatory practices.

### AFFIRMATIVE OBLIGATIONS

As mentioned in the previous chapter, 29 CFR §37 specifies basic nondiscrimination requirements in seven areas, the satisfaction for which must be specified in state Methods of Administration (MOAs). Governors and recipients share liability for these requirements unless the MOAs assign responsibility fully to the recipients. The seven areas represent actions or practices that recipients should employ from the outset of their operation of WIA Title I financially assisted programs. They are first steps that should be put into place immediately and their maintenance helps to ensure that the entities will continue to operate in a nondiscriminatory manner. The seven affirmative obligations are:

- Assurance of nondiscrimination and equal opportunity;
- Appointment of an Equal Opportunity (EO) Officer;
- Nondiscrimination and EO notice and communication
- Data and information collection and maintenance;
- Universal access to programs and activities;
- Governor's administrative oversight responsibilities; and
- Complaint processing procedures [29 CFR §37.54(d)(1)].

The process of appointing an EO Officer and the governor's administrative oversight responsibilities were discussed in the previous chapter. Ensuring the provision of the remaining obligations should be a first priority of the EO Officer and the access assessment team.

### Assurance of Nondiscrimination and Equal Opportunity

Prior even to receiving an award of WIA Title I financial assistance, applicant entities must assure that they will fully

#### 29 CFR §37.20

**What is a grant applicant's obligation to provide a written assurance?**

(a) (1) Each application for financial assistance under Title I of WIA, as defined in Sec. 37.4, must include the following assurance:

comply with the nondiscrimination and equal opportunity provisions of federal Civil Rights laws [29 CFR §37.20(a)(1)]. The regulations provide the following standard language in which this assurance must be given:

### **Required Nondiscrimination and EO Assurance**

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.

Applicants are required to include this assurance in their application materials; though the assurance is considered to be a part of any grant, cooperative agreement, contract, or other arrangement regarding federal financial assistance under Title I of WIA among the Department of Labor, governors, or recipients—whether or not it is physically incorporated into such document. [29 CFR §37.20(a)(2)]. Moreover, each Strategic Five-Year State Plan must provide the same assurance as a condition to its approval [29 CFR §37.20(b)]. The assurance of nondiscriminatory use applies even to property acquired or utilized in relation to WIA Title I financially assisted activities (see the particular requirements regarding assurances, nondiscrimination covenants, and real property acquired or improved through WIA Title I financial assistance at 29 CFR §37.21-22).

## **Nondiscrimination and EO Notice and Communication**

All recipients, regardless of size, must provide initial and continuing notice that they do not discriminate on any of the prohibited grounds [29 CFR §37.29]. This required notification must be provided to program applicants and employment applicants; registrants; eligible applicants and registrants; participants, employees, unions or professional organizations that hold collective bargaining or professional agreements with the recipient, subrecipients that receive WIA Title I funds; and members of the public, including those with impaired vision or hearing. [29 CFR §37.29(a)] Additionally, recipients are required to take appropriate steps to ensure that individuals with disabilities are provided with communications that are as effective as those with individuals without disabilities. [29 CFR §37.29(b).]

At a minimum, the required notice must be posted prominently, in reasonable numbers and places; disseminated in internal memoranda and other written or electronic communications; included in handbooks or manuals; made available to each participant; and made part of each participant's file [29 CFR §37.31(a)]. The notice must also be provided in appropriate formats to individuals with visual impairments. Examples of alternative formats include:

- radio reading services;
- large print (18-point or more);
- audio cassettes;
- bulletin boards;
- Braille; and
- captioning

Where the notice is given an alternate format to a participant with a visual impairment, the participant's file must include a copy of the notice [29 CFR §37.31(b)].

The governor shares responsibility to ensure that service providers within the state meet the notice requirement unless the state's MOA assigns this responsibility to the grant recipient [29 CFR §37.33]. In all cases, the required notices must be provided within 90 days of the date a recipient first becomes subject to these provisions [29 CFR §37.32].

### **29CFR § 37.29**

a) A recipient must provide initial and continuing notice that it does not discriminate on any prohibited ground. This notice must be provided to:

- (1) Registrants, applicants, and eligible applicants/registrants;
  - (2) Participants;
  - (3) Applicants for employment and employees;
  - (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
  - (5) Subrecipients that receive WIA Title I funds from the recipient; and
  - (6) Members of the public, including those with impaired vision or hearing.
- (b) As provided in Sec. 37.9, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.

Moreover, the regulations prescribe the exact language in which the nondiscrimination notice must be given [29 CFR §37.30]. A sample nondiscrimination notice appears below: Many

**Equal Opportunity Is the Law**

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIA 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.

**What to Do If You Believe You Have Experienced Discrimination**

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

organizations use graphic symbols such as those that appear at the side on the following page in notices and advertisements to call attention to the nature of the message.

It is ultimately the responsibility of the recipient to determine the most effective methods for making individuals aware of their rights and protections, a responsibility that is typically assigned to the EO Officer.

## Additional Notice and Communication Requirements

**Publications.** Recruitment brochures and other materials that describe WIA Title I financially assisted programs and requirements for participation; and that are ordinarily distributed or communicated in electronic or paper form, by written or oral means must state that the WIA Title-I financially assisted program of the recipient is “an equal opportunity employer/program” and that “auxiliary aids and services are available upon request to individuals with disabilities.” This requirement holds for materials and communication to staff, clients, or the public at large [29 CFR §37.34(a)]. Where the materials indicate a telephone number for contacting the recipient, the materials must state the telephone number of the TDD/TYY or relay service used by the recipient [29 CFR §§37.9(c) and 37.34(a)].



**Broadcast Information.** When Recipients publish or broadcast program information in the news media, they must ensure that such publications and broadcasts state that the WIA Title I-financially assisted program or activity in question is an equal opportunity employer/program and indicate that auxiliary aids and services are available upon request to individuals with disabilities [29 CFR §37.34(b)]. Alternative wording is acceptable, so long as the message indicates that discrimination in the WIA Title I financially assisted activity or program is prohibited by federal law.



**Unequal Treatment.** In addition, recipients are **not** permitted to communicate by any means that they treat beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground specified in §37.5 (see Chapter Two for the listing of prohibited grounds for discrimination), except as such treatment is otherwise permitted under federal law or 29 CFR §37.

**Orientation.** Whenever a recipient conducts an orientation to its program for new participants, new employees, or the general public, it is also required to include a discussion of rights under the WIA nondiscrimination and equal opportunity provisions, including the right to file a complaint of discrimination with the recipient or the Director of the Civil Rights Center [29 CFR §37.36].

## Data and information collection and maintenance

**Recording requirement.** Keeping track of recipients' compliance with the nondiscrimination and EO provisions of WIA is a critical monitoring function of the CRC. The 29 CFR §37 regulations require recipients to collect data and maintain records that will enable the CRC or the governor to conduct quantitative data analyses to verify compliance [29 CFR §37(b)(1)].

At a minimum, the data that is maintained must include records on:

- applicants
- registrants
- eligible applicants or registrants
- participants
- terminees
- employees
- applicants for employment

Each record that a recipient maintains on an individual from any of the specified groups must include the following data points:

- race/ethnicity
- sex
- age
- disability status, where known

This data collection is to be in addition to other program data collection requirements. However, if these data can be obtained by the CRC through other reporting requirements or sources known to the CRC Director, the recipient is not required to resubmit them [29 CFR §37(a)]. This is in keeping with one of the principles of the WIA, which seeks to consolidate record keeping and reporting.

The information that is maintained must be stored in a manner that ensures confidentiality, and can only be used for the specified purposes of:

- record keeping and reporting;
- determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; and
- determining the extent to which the recipient is operating its program or activity in compliance with the law [29 CFR §37.37(b)(2)].

### **29CFR § 37.37**

#### **What are a recipient's responsibilities to collect and maintain data and other information?**

(b)(2) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrator, participant, terminee, applicant for employment, and employee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

**Complaint log.** In addition, recipients must maintain a log of complaints filed with them that allege discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and or/participation in a WIA Title I financially assisted program or activity [29 CFR §37.37(c)]. The log, which must be submitted to the CRC upon request, must include for each complaint:

- name and address of complainant
- ground of the complaint
- description of the complaint
- date the complaint was filed
- disposition and date of disposition of the complaint
- other pertinent information

However, information that could lead to the identification of a particular individual as having filed a complaint must be kept confidential [29 CFR §37.37(c)].

Responsibility for collecting and maintaining these records and information at the service provider level within a One-Stop system may be assumed by the governor or the LWIA grant recipient, depending upon the state's MOA [29 CFR §37.37 (e)].

**Period of retention of records.** Each recipient must maintain all of the nondiscrimination and EO records, along with the log of complaints for a period of three years following the close of each program year [29 CFR §37.39].

**Required access by CRC Director.** Grant applicants and recipients must permit access by the CRC Director to their premises, employees, and participants during the course of the recipient's normal business hours. Such access may be for the purposes of monitoring activities associated with a state's MOA, nondiscrimination and EO compliance reviews, or investigating a complaint of nondiscrimination. The CRC Director shall have access to records, books, accounts, or other materials that may pertain to a complaint investigation or to ensuring compliance with nondiscrimination and EO provisions. Assertions of privacy or confidentiality are not a basis for a recipient's withholding information from the CRC and will not bar CRC from evaluating or seeking to enforce compliance with nondiscrimination and EO provisions [29 CFR §37.40]. In the event that information requested by the CRC is in the exclusive possession of another

## **29CFR § 37.37**

### **What are a recipient's responsibilities to collect and maintain data and other information?**

(c) Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with it that allege discrimination on the ground(s) of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIA Title I-financially assisted program or activity. The log must include: the name and address of the complainant; the ground of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

agency, the grant applicant or recipient must certify to CRC that it has made efforts to obtain the information, and that the agency, institution or person has failed or refused to provide it [29 CFR §37.40 (c)].

**Required notification of lawsuits or enforcement.** In addition to collecting and maintaining the information described, and submitting data and reports to the CRC, as requested, recipients must also provide prompt notification to the Director of the CRC in the event that any administrative enforcement action or lawsuit is filed against the recipient alleging discrimination on any of the prohibited grounds. This notification must include:

- names of the parties to the action or lawsuit
- forum in which each case was filed
- relevant case numbers [29 CFR §37.38].

Similar information must be provided during compliance reviews or complaint investigations. Whenever an applicant or recipient is seeking a renewal of WIA Title I financial assistance, the applicant or recipient must furnish the same record of lawsuits or enforcement actions filed against the recipient or applicant during the previous two years [29 CFR §37.38].

**Confidentiality requirement.** Finally, whenever persons provide information that relates to or assists in a compliance review or investigation—including persons who file complaints—their identity must be kept confidential to the extent that this is possible, consistent with a fair determination of all of the issues involved. In the event that such a person’s identity must be disclosed, they must be protected from retaliation. This responsibility to maintain confidentiality extends to grant applicants, recipients, and the U.S. Department of Labor [29 CFR §37.41].

### Universal access to programs and activities

Recipients must ensure universal access to the aid, benefit, services, training, or employment opportunities that they offer under WIA Title I financially assisted programs and activities. Recipients should take proactive steps to reach out to all eligible populations and to use a variety of means to enhance

### 29CFR § 37.42

#### What are a recipient's responsibilities under this part to provide universal access to WIA Title I-financially assisted programs and activities?

Recipients must take appropriate steps to ensure that they are providing universal access to their WIA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. Such efforts may include, but are not limited to:

(a) Advertising the recipient's compliance review, including the programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;

(b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and

(c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.



community awareness of their programs and activities.

Strategies that are suggested included:

- advertising a recipient's programs in a variety of media and to various segments of the market;
- sending notices of programs, activities, or openings to schools or community service groups that serve a variety of populations; and
- consulting with community service groups to develop improved outreach and service to diverse populations [29CFR §37.42].

It is useful to note that the use of the term "universal access" in the context of the Section 188 regulations differs somewhat from the way that term is used within the disability community. In the disability community the term is often used synonymously with "universal design," the concept whereby environments, products, and systems are created to be usable by people with the widest range of abilities. It is useful to keep this distinction in mind when interacting with the members of the disability community. They will speak of "universal access" to environments and equipment, where the workforce investment community will speak of universal access to programs, activities, and opportunities.

### **Complaint processing procedures**

The final affirmative obligation for recipients is the adoption and publication of procedures for responding to complaints of discrimination that may be filed with them. Each recipient's procedures must provide that a written Notice of Final Action on discrimination complaints will be issued within 90 days of the date any complaint is filed; this must be specified in the recipient's published procedures [29 CFR §37.76(a)]. Beyond this assurance, a recipient's complaint processing procedures must provide for at least the following:

- An initial, written notice to the complainant that includes (1) an acknowledgment that the recipient has received the complaint, and (2) notice that the complainant has the right to be represented in the complaint process;
- A written statement of the issue(s), provided to the complainant, that includes (1) a list of the issues raised in the complaint, and (2) for each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;

- A period for fact-finding or investigation of the circumstances underlying the complaint;
- A period during which the recipient attempts to resolve the complaint. Alternative dispute resolution (ADR) must be included among the methods made available to resolve the complaint;
- A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that includes: (1) for each issue raised in the complaint, a statement of either the recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue; and (2) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint [29 CFR §37.76].

As indicated above, a recipient's procedures must include the option of alternative dispute resolution (ADR). The choice to elect this option rests with the complainant [20 CFR §37.76 (c)(1)].

## **IMPLEMENTING THE REVIEW OF NONDISCRIMINATORY POLICIES AND PRACTICES**

Local Workforce Investment Areas are required to review both written policies and actual operating procedures to ensure that people with disabilities are not subjected to discrimination. One-Stop Centers can use a self-evaluation checklist process to organize and review their written and unwritten policies for compliance with nondiscrimination regulations. Findings can then be analyzed to identify where changes are needed to permit people with disabilities to participate fully in the total range of programs, activities, and services offered by the Workforce Investment System and to enjoy their full benefits. LWIAs and other recipients will need to evaluate policies and procedures that affect individuals with disabilities separately from the general policies and practices pertinent to other audiences.

***Resource 4-1, the Recipient Self-Assessment Survey presented in this chapter, may be used by a One-Stop Center to evaluate its nondiscrimination policies and practices, except in the area of employment, which is addressed in the next chapter.***

***Resource 4-2, the Affirmative Obligations Survey presented in this chapter, may be used by a One-Stop Center to evaluate its provision of the seven areas of basic nondiscrimination requirements.***

A three step process will enable access teams to complete the review of policies, practices, and affirmative obligations on the part of recipients, partners, and service providers in a One-Stop system.

#### Step 1. Preparing for the Review

- Gather the Access Team as described in chapter 3;
- Review the lists of partners and programs gathered with Resource 3-3 and the documents received by entities in response to Resource 3-4;
- Clarify the survey and review process;
- Make assignments.

#### Step 2. Conduct the Review

- Use Resource 4-1 to assess compliance with basic nondiscrimination and EO provisions of 29 CFR §37;
- Use Resource 4-2 to assess required affirmative obligations.

#### Step 3. Analyze Findings

- Document the changes needed;
- Communicate with partners, subrecipients, or service providers as appropriate;
- Obtain comments and other feedback;
- Preserve reports and other documents from the process.

### **Step 1: Preparing for the Review**

***Gather the Access Team as described in chapter 3.*** The previous chapter outlined a process for forming an access team composed of representatives from the organizations and agencies that partner under a One-Stop system, along with representatives from the disabilities community. That team, headed by the recipient's EO Officer or a separate Access Team Leader should conduct the review of policies, practices, and compliance with affirmative obligations.

***Review the lists of partners and programs gathered with Resource 3-3 and the documents received by entities in response to Resource 3-4.*** Section 188 emphasizes that **all** aid, benefits, services, training, and employment must be provided or made available without discrimination against

persons with disabilities. In completing the review of programs and activities that are conducted in conjunction with a One-Stop Center or system, it is important to review all of the programs and activities. Any aid, benefit, service, training, or employment opportunity must be reviewed for compliance.

Users of this guide that compiled complete listings of One-Stop programs and activities with Resource 3-3 in the previous chapter will already have the list of those whom they must survey. If this process has not already been completed, it becomes the first step now. In addition, Resource 3-4 provided a means for soliciting mission and policy statements from the collection of entities that offer aid, benefits, services, training, or employment opportunities under a One-Stop system. Documents that were received in response to Resource 3-4 will be an important source of information to access teams completing their self-assessment.

***Clarify the survey and review process.*** Resources 4-1 and 4-2 are provided in the pages that follow to assist access teams in checking compliance with all of the nondiscriminatory provisions of the Section 188 regulations and also ensuring the provision of required affirmative obligations on the part of each recipient.

The review process begins with examining the data provided by each entity and proceeding through the questions on the two survey resources. Access team members should become familiar with the entities that will be the focus of their assessment, along with their written material. After the review of submitted material, the access team member(s) assigned to individual entities should schedule a session with the entity's EO Officer, Director, or other individual who will be knowledgeable of the entity's policies and practices. With this representative of the entity, the access team members should work step by step to complete the two assessment surveys.

***Make assignments.*** The survey and review process will vary according to the size of the recipient, the number of subrecipients, programs, and activities that are assembled in any group of partners. If the access team includes representatives from all of the entities in a One-Stop system, team members may become the primary point of contact to their own organization. In many cases, team members will be required to participate in the review of several participating

entities. A practice that has proven helpful in other assessment processes is to assign team members in pairs. It is often easier to complete reports based on the memory and record of two persons who have spoken with representatives of the various entities.

Make certain to assign all recipients, entities, and sub-recipients to some member or members of the access team. Specify a schedule of dates for the completion of data gathering, contacts, and final reports.

## **Step 2. Conduct the Review**

***Use Resource 4-1 to assess compliance with basic nondiscrimination and EO provisions of 29 CFR §37.*** With a representative from the entity under review, work through the items of this resource. The resource includes all of the individual cases and conditions where a recipient must make certain not to discriminate. Many of the questions ask the recipient to conduct a mental survey of all of their programs. Be certain, for example, to consider all of the training programs that an individual entity might offer or all of the locations that might be utilized – even if only in a small part – in the conduct of an operation or activity. Be sure to make detailed notes or description of any situations that are found to be out of compliance.

***Use Resource 4-2 to assess required affirmative obligations.*** This second resource assesses the compliance with a recipient's affirmative obligations that were described in the first part of the present chapter. This resource is presented in the form of a checklist. A suggestion is to provide a copy to the entity's representative in advance of the meeting with the member(s) of the access team.

## **Step 3. Analyze Findings**

***Document the changes needed.*** Once team members have completed their reviews of all of the constituent entities in the One-Stop system, the team should report their findings to one another. In particular situations where any noncompliance was discovered should be presented to the entire team and recommendations for change should be prepared.

***Communicate with partners, subrecipients, or service providers as appropriate.*** Each entity that participated in the

survey and assessment process should receive a formal notice when the process has been completed and a confirmation that all of their programs, policies, and affirmations were found to be in compliance; or, a description of those situations that were found not to be in compliance and the access team's recommendations for change.

***Obtain comments and other feedback.*** In situations where an aid, benefit, service, training, or employment opportunity is found to include some form of discrimination or where one or more of the required affirmations are found to be insufficient, access teams should take every effort to make certain that the recipient involved understands the area(s) where they have not fully complied. Given the composition of the access team, its members may be excellent resources to assist recipients with action plans for making the necessary changes to come into full compliance.

In particular, newer recipients may benefit from the experience and counsel of access team members. It should be remembered that the access team is conducting a self-assessment for the benefit of the recipient; it is not a monitoring entity with any type of enforcement or reporting requirements. It may be a less threatening "friend" to assist newer entities with understanding and complying with nondiscrimination requirements. Offering assistance may be a means of gaining a new ally in preserving the rights and opportunities of persons with disabilities.

More experienced recipients and operators should be familiar with all of the obligations that were confirmed in the review process, since they are similar to obligations under other federal grant programs and follow closely the requirements under JTPA, which preceded the WIA. If more experienced recipients are found to be out of compliance, they should be notified of the area(s) where illegal discrimination is occurring and encouraged to swiftly return their program or operation to compliance.

***Preserve reports and other documents from the process.*** When the entire assessment process is completed, survey findings returned to entities that were included, and feedback received, the access team should ensure that its records are assembled and stored in a secure fashion so that they may assist the recipient to responding to inquiries from the CRC or to respond in the event that a complaint of discrimination is filed

against the recipient. It should be the responsibility of the Access Team Leader to make certain that these records are collected and preserved.

## Resource 4-1: Recipient Self-Assessment Survey

### Review of Policies and Practices that Govern Programs, Activities, and Services of WIA Title I Recipients

#### I. Basic Nondiscrimination and EO Requirements

The survey that follows leads a recipient to examine each of the areas that must remain free of discrimination against persons with disabilities. Chapter Two previously described the specific types of discrimination that are prohibited under the WIA Section 188, along with the requirement to make reasonable modifications to accommodate the requests of persons with disabilities – so long as the requested accommodations do not cause an undue hardship to the recipient. The areas that are reviewed in this survey and the particular requirements of nondiscrimination are enumerated at 29 CFR §37.7. Access teams using this survey will benefit from a review of Chapter Two and having a copy of §37.7 at hand.

#### **A. Denial of Opportunity to Participate or Benefit.**

29CFR § 37.7 (a)(1)

People with disabilities who are otherwise qualified to participate in the programs, activities, and services of a One-Stop Center cannot be barred from participation. One-Stops are prohibited from excluding not only people with disabilities, but also friends or family members associated with them.

1. Identify any circumstances in which a person with a disability or anyone associated with the person would, because of the person's disability, be restricted from or denied participation in a program, activity, service, or benefit offered by one of the entities of the One-Stop.
2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

#### **B. Provision of Unequal Opportunity to Benefit**

29CFR § 37.7 (a)(2)

**Prohibited.** Section 188 requires that people with disabilities receive the same opportunity as people without disabilities to participate in and benefit from the programs, activities, and services of a One-Stop or LWIA.

1. Identify any circumstances in which there is greater opportunity for people without disabilities than for a person



#### Resource 4-1: Recipient Self-Assessment Survey

with a disability to participate in a program, activity, service, or benefit that is generally available to both.

2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**C. Provision of Benefit or Service that is Not Equally Effective Prohibited.** In providing general services and benefits, a Title I recipient must ensure that services provided to qualified individuals with disabilities are effective enough to afford them equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as individuals without disabilities.

29CFR § 37.7 (a)(3)

1. Describe procedures used to ensure that each One-Stop entity provides its general services and benefits to qualified individuals with disabilities in a manner that is effective enough to afford them an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as individuals without disabilities.

2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**D. Provision of Separate or Different Benefits Prohibited.** A One-Stop Center may not provide separate or different programs, services, or benefits for individuals with disabilities, unless necessary to provide them with equally effective participation as afforded to nondisabled persons. Even when separate or different programs are permitted, the local workforce investment system must consider the following requirements:

29CFR §§ 37.7 (a)(4); (c); (d)

- First, each qualified person with a disability must be given the same opportunity as nondisabled persons to participate in the regular offerings of the One-Stop entities.
- Second, each qualified person with a disability must be given the opportunity to participate in and benefit from the offerings of the One-Stop in the most integrated setting appropriate to the needs of that individual.

#### Resource 4-1: Recipient Self-Assessment Survey

- Third, the provision of separate or different services is permitted only when necessary to provide an equal opportunity to qualified persons with disabilities.
  1. Identify any separate program, activity, service, or benefit offered by the entities of the One-Stop that contributes to affording people with disabilities an equal opportunity.
  2. Describe any circumstances in which a person with a disability would be prohibited from participating in regular (non-separate) activities because of the provision of separate activities.
  3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**E. Surcharges Prohibited.** A One-Stop system is required to make its programs, activities, services, and benefits available to qualified individuals with disabilities to the extent that they are available to other participants in the program. Surcharges may not be imposed on individuals with disabilities to cover the cost of measures necessary to provide nondiscriminatory treatment.

29CFR § 37.7 (k)

1. List each program, activity, service, or benefit for which any One-Stop entity charges a fee.
2. Identify any circumstances in which a person with a disability would be asked to pay a fee or meet any other requirements not imposed on other program participants.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**F. Exclusion from Membership of Planning or Advisory Boards Prohibited.** Participation in programs and activities extends also to board membership and participation. One-Stop systems have an array of boards, ranging from the LWIB to planning groups and committees for activities and programs of the various entities that partner or participate in the provision of

29CFR § 37.7 (a)(5)

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aid, benefits, services, training, or employment under WIA Title I financial assistance. All of these must be open to membership and participation by persons with disabilities.

1. Describe procedures used to ensure that each One-Stop entity, in its ongoing or periodic establishment of planning or advisory boards, affords qualified individuals with disabilities the opportunities of membership and participation.
2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**G. Limitation of the enjoyment of any right, privilege, advantage, or opportunity prohibited.** Persons with disabilities are to be afforded the same degree of enjoyment of advantages and opportunities, rights and privileges that others in the public may enjoy through the aid, benefits, services, or training that are offered through a One-Stop Center.

29CFR § 37.7 (a)(6)

1. Identify any rights, privileges, advantages, or opportunities that may be enjoyed through participation in the aid, benefits, services, or training that are offered to the public by a One-Stop entity.
2. Describe any circumstances in which a person with a disability would be limited from enjoying the full benefit that others receive from the aid, benefits, services, or training.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**H. Reasonable Modifications in Policies, Practices, and Procedures.** One-Stop Centers are required to review their policies, practices, and procedures to determine the effect of each one on participation by individuals with disabilities. If a One-Stop identifies any policy, practice, or procedure that has a discriminatory effect on individuals with disabilities, the Center is required to modify it unless the modification would result in a

29CFR § 37.8

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fundamental alteration of the nature of the program, service, or activity.

1. Describe the procedures used to inform the public that the program is prepared to make reasonable modifications to accommodate any qualified individual with a disability and to respond to requests for modifications.
2. Identify procedures used to inform appropriate One-Stop personnel of the need to make reasonable and effective modifications to provide otherwise qualified individuals with disabilities equal opportunity to participate in the programs, services, and activities operated by the One-Stop entities.
3. Identify the procedure used by the One-Stop or constituent entity to determine whether a policy or practice modification would fundamentally alter the nature of the program. If any, please describe.
4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**I. Eligibility Criteria.** A Title I recipient may not use eligibility criteria for participation in its programs or receipt of its benefits and services that screen out or deny individuals with disabilities full and equal participation in programs, services or benefits, unless the eligibility criteria are necessary for and relevant to the aid, benefit, service, or training being offered.

29CFR § 37.7 (i)

1. List the aid, benefits, services, and training offered by the One-Stop entities and the *essential* eligibility requirements of each.
2. Identify any criteria that may limit or screen out individuals with disabilities from participation in the programs, activities, services, and benefits offered by the One-Stop entities. Provide details.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

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**J. Criteria or Methods of Administration.** One-Stop Centers may not maintain policies or actual practices that exclude qualified individuals with disabilities on the basis of their disabilities.

**29CFR § 37.7 (e)**

1. List each aid, benefit, service, or training offered by the One-Stop and identify relevant criteria or methods of administration.
2. Determine whether adherence to any standard, procedure, criterion, or method of administration excludes or segregates individuals with disabilities on the basis of their disability from full participation in each aid, benefit, service, or training offered by the One-Stop. Provide details..
3. Determine whether adherence to any standard, procedure, criterion, or method of administration perpetuates discrimination against any individual with a disability by another public entity that is under common administrative control or is in the same state as the One-Stop Center. If any, please explain.
4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**K. Selecting Sites and Locations.** Title I recipients may not select sites or locations for facilities that have the effect of excluding or denying individuals with disabilities the benefits of or participation in the aid, benefits, services, or training opportunities of the Workforce Development System, or otherwise subjecting qualified individuals with disabilities to discrimination.

**29CFR § 37.7 (f)**

1. Determine whether the terrain or any other feature of a site or location under consideration would have any adverse effect on participation by a qualified individual with a disability.
2. Describe criteria utilized in the selection of sites or locations for facilities that are designed to ensure that qualified individuals with disabilities are not subjected to discrimination. Are these criteria utilized every time sites or locations are being selected for facilities? Provide details.

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3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**L. Significant Assistance.** One-Stop entities that provide significant assistance to another agency, organization, or individual retain responsibility for ensuring that the other entity or individual does not discriminate on the basis of disability. In determining whether assistance to another entity or individual is significant, a One-Stop should consider the substantiality of the relationship (e.g., financial support) and whether the activities of the other entity or individual relate so closely to the One-Stop's programs that these activities could fairly be considered activities of the One-Stop Center.

**29CFR § 37.7 (b)**

1. List any organization, program, or individual that receives significant assistance from the Local Workforce Investment Area or One-Stop Center.
2. Describe the policies, procedures, and practices used by the Workforce Investment System to ensure that agencies, organizations, and individuals that receive significant assistance do not discriminate against individuals with disabilities.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**M. Procurement Contracts.** One-Stop Centers may not discriminate on the basis of disability in selecting procurement contractors.

**29CFR § 37.7 (g)**

1. List any organizations, programs, or individuals with which the One-Stop contracts services.
2. Identify the policies and actual operating practices that govern contract relations to determine whether provisions are included to ensure that programs, activities, services, and benefits provided by contractors on behalf of the One-Stop Center are free of discrimination. If none, please explain.

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3. List any circumstances in which a consideration related to disability would influence the choice of a procurement contractor. Please explain.
4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**N. Licenses or Certification.** A One-Stop Center may not deny a license or certification to any person with a disability who meets the essential eligibility requirements for the license or certification. Eligibility requirements cannot include criteria that directly or indirectly screen out people with disabilities unless the criteria are necessary to the performance of the activity which is the object of the license or certificate.

**29CFR § 37.7 (h)**

1. List any licenses or certifications issued by the One-Stop Center or any of its constituent entities.
2. List any eligibility criteria for licenses and certificates that may tend to screen out people with disabilities. For each potentially exclusionary criterion, identify why the criterion is necessary to the performance of the activity to which the license or certificate applies.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

## Resource 4-2: Recipient Affirmative Obligation Survey

### Review of Affirmative Obligations of WIA Title I Recipients

#### 2. Affirmative Obligations

The checklist that follows leads a recipient to examine each of the required areas of affirmative obligation specified in WIA Section 188. The obligations were mentioned in Chapter Three and explained at the beginning of the present chapter. These are the obligations for which governors and recipients may share liability and which must be specified in state Methods of Administration. Entities completing the checklist will learn if they are complying with all of the affirmative obligations required to ensure access of people with disabilities to Title I financially assisted programs.

#### 1. Assurance of nondiscrimination and equal opportunity

" Applications, grants, cooperative agreements, contracts, or similar documents specify the recipient's assurance of nondiscrimination, using the language reprinted from 29 CFR §37.20 (a)(1) at the beginning of the present chapter. | **29CFR §37.20 (a)(1)** |

" Instruments that effect or record the transfer of real property, structures, or improvements on real property or structures used in conjunction with WIA Title I activities include a covenant assuring nondiscrimination and equal opportunity. | **29CFR §37.22** |

#### 2. Appointment of an Equal Opportunity (EO) Officer

" Recipient, larger than a "small recipient" has appointed an EO Officer. | **29CFR §37.23** |

" Small recipient has designated and charged an individual to develop and publish complaint procedures and process complaints alleging discrimination against persons with disabilities. | **29CFR §37.27** |

" EO Officer is a senior-level employee. | **29CFR §37.24** |



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- |   |                        |
|---|------------------------|
| " EO Officer does not have other responsibilities that are or appear to be in conflict with responsibilities of an EO Officer.                                    | 29CFR §37.24           |
| " EO Officer serves as liaison with CRC.  | 29CFR §37.25 (a)       |
| " EO Officer is charged with monitoring recipient's activities and reviewing recipient's written policies to ensure nondiscrimination.                            | 29CFR §§37.25 (b); (c) |
| " EO Officer has developed and published recipient's procedures for processing discrimination complaints.   | 29CFR §37.25 (d)       |
| " EO Officer reports directly to agency director regarding equal opportunity matters.   | 29CFR §37.25 (e)       |
| " EO Officer has received sufficient training to exercise the position.   | 29CFR §37.25 (f)       |
| " Notice of the EO Officer's name and contact information are readily available to the public.  | 29CFR §37.26 (a)       |
| " Notice of the EO Officer's name and contact information appear on internal and external communications about the recipient's nondiscrimination and EO programs. | 29CFR §37.26 (b)       |
| " EO Officer has sufficient staff and resources.  | 29CFR §37.26 (c)       |
| " EO Officer has explicit support of top management.  | 29CFR §37.26 (c)       |
| " EO staff have received sufficient training to maintain competency.  | 29CFR §37.26 (d)       |

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**3. Nondiscrimination and EO notice and communication**

- |   |                                |
|---|--------------------------------|
| " Initial and continuing nondiscrimination and EO notice is provided to all registrants, applicants, eligible applicants/registrants; participants; applicants for employment and employees; unions or professional organizations that hold collective bargaining or professional agreements with the recipient; subrecipients, and to members of the public using the wording of 29 CFR §37.30 that is reprinted earlier in the present chapter. | <b>29CFR §§37.29 (a) (1-5)</b> |
| " Initial and continuing notice of EO and nondiscrimination is provided to those with impaired vision or hearing.   | <b>29CFR §37.29 (a)(6)</b>     |
| " Recipient ensures that communications with individuals with disabilities are as effective as communication with others.   | <b>29CFR §37.26 (b)</b>        |
| " EO and nondiscrimination notice is posted prominently in reasonable numbers and places.   | <b>29CFR §37.31 (a)(1)</b>     |
| " EO and nondiscrimination notice is disseminated in internal memoranda and other written and electronic communications.  | <b>29CFR §37.31 (a)(2)</b>     |
| " EO and nondiscrimination notice is included in handbooks and manuals.   | <b>29CFR §37.31 (a)(3)</b>     |
| " EO and nondiscrimination notice is made available to each participant and included in his/her file.   | <b>29CFR §37.31 (a)(4)</b>     |
| " EO and nondiscrimination notice is provided in appropriate alternate formats to persons with visual impairments and record of such provision is recorded in participants' files.  | <b>29CFR §37.31 (b)</b>        |
| " Recruitment brochures and other materials that describe a recipient's programs to the public indicate that the WIA Title I-financially assisted program or activity is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities."  | <b>29CFR §37.34 (a)</b>        |

#### Resource 4-2: Recipient Affirmative Obligation Survey

" Materials that are made available to the public that include a recipient's telephone number also include the telephone number of the TDD/TTY or relay service used by the recipient.

29CFR §37.34 (a)

" Recipient's program information that is published or broadcast in the news media include the notice that any Title I financially assisted program is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities."

29CFR §37.34 (b)

" Recipient employs no communications in any form or media that suggest that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground, except where legally permissible.

29CFR §37.34 (c)

" Each orientation presentation for new participants, new employees, or the general public includes a discussion of rights under the nondiscrimination and EO provisions of WIA, including the right to file a complaint with the recipient or the CRC.

29CFR §37.36

#### 4. Data and information collection and maintenance

Recipient maintains nondiscrimination and EO records that include race/ethnicity, sex, age, and disability status, where known, for:

29CFR §37.37 (b)(2)

" applicants

" registrants

" eligible applicants or registrants

" participants

" terminees

" employees

**Resource 4-2: Recipient Affirmative Obligation Survey**

- " applicants for employment
- " The system and format in which the records are kept allows the governor or CRC to conduct quantitative data analyses from the data. | **29CFR §37.37 (b)(1)** |
- " Recipient maintains adequate procedures to guard the confidentiality of all data and information pertaining to EO and nondiscrimination. | **29CFR §37.37 (b)(2)** |
- " Recipient maintains adequate procedures to guard the confidentiality of all data and information that relates to compliance reviews or investigation of a complaint, including the identity of any person who files a complaint of discrimination. | **29CFR §37.41** |
- " Recipient maintains a log of complaints filed with them that allege EO or disability discrimination; the log includes: name and address of complainant; ground of the complaint; description of the complaint; date the complaint was filed; disposition and date of disposition of the complaint; other pertinent information. | **29CFR §37.37 (c)** |
- " Recipient retains EO and nondiscrimination records for at least three years following the close of each program year. | **29CFR §37.39** |
- " Recipient grants access upon request of the CRC Director for monitoring or complaint investigation. | **29CFR §37.40** |
- " Recipient has provided prompt notification to CRC of any lawsuits or enforcement actions filed against the recipient, including: the names of parties to the action or lawsuit, the forum in which each case was filed, and relevant case numbers. | **29CFR §37.38 (a)** |

**5. Universal access to programs and activities**

- " Recipient has taken appropriate steps to ensure provision of universal access to their programs and activities. | **29CFR §37.42** |

#### Resource 4-2: Recipient Affirmative Obligation Survey

" Steps have incorporated reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals from differing age groups.

29CFR §37.42

" Recipients that use advertisements, have placed advertisements in various newspapers or radio programs that target diverse segments of the population.

29CFR §37.42 (a)

" Recipients that send notices to schools or community service groups have included those schools and groups that serve a variety of populations.

29CFR §37.42 (b)

" Recipients have consulted with appropriate community service groups regarding ways to improve recipient's outreach and service to various populations.

29CFR §37.42 (c)

#### 6. Governor's administrative oversight responsibilities

" Where applicable, recipient understands and is fulfilling its obligations and liabilities as assigned under the state's Methods of Administration.

29CFR §37.52

#### 7. Complaint processing procedures

" Recipient has adopted and published procedures for responding to complaints of discrimination that may be filed with them in accord with 29 CFR §§37.70-76.

29CFR §37.52

" Recipient's procedures provide assurance that a written Notice of Final Action on discrimination complaints will be issued within 90 days of the date any complaint is filed.

29CFR §37.76 (a)

" Recipient's procedures for responding to complaints of discrimination include the option of alternative dispute resolution (ADR), that may be elected by any complainant.

29CFR §37.76 (c)

" Recipient's procedures for responding to complaints include notifying complainant that they have the right to be represented by an attorney or other individual.

29CFR §§37.76; 76 (b)(1)(i)

**Resource 4-2: Recipient Affirmative Obligation Survey**

” Recipient’s EO Officer has copies of CRC’s Complaint Information and Privacy Act Consent Form in his/her file.

**29CFR §37.74**

CHAPTER FOUR: General Nondiscrimination Requirements

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