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JAN VOGEL
EXECUTIVE DIRECTOR

DATE:	November 13, 2017
TO:	South Bay One-Stop Business & Career Centers, Youth Services, and Service Providers
SUBJECT:	Directive No. 17-03 WIOA Title 1 – Financially Assisted Funded Programs Policy and Procedures for Equal Opportunity/Nondiscrimination Obligations And Assurances Under South Bay Workforce Investment Board (SBWIB)

PURPOSE

This Directive establishes the South Bay Workforce Development Area (Local Area) policy on the nondiscrimination and equal opportunity procedures for the Workforce Innovation and Opportunity Act (WIOA) Title I-financially assisted programs or activities. It serves to ensure that all WIOA Title I contractors (One-Stop Centers/Affiliates and service and training providers) are responsible for complying with all provisions of Federal, State and Local Area's Equal Opportunity and Nondiscrimination regulations.

BACKGROUND

Section 188 of the Workforce Innovation and Opportunity Act (WIOA) contains the nondiscrimination and equal opportunity provisions that prohibit discrimination on the grounds of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including LEP); age, disability; political affiliation or belief; or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity. Title 29 CFR 38 implements the nondiscrimination and equal opportunity provisions.

STATE IMPOSED REGULATIONS

This policy contains some state-imposed procedural requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

EFFECTIVE DATE

The Directive is effective immediately.

REFERENCES

In administering all aspects of the WIOA and providing employment and training services under the Act, the Local Area and WIOA Title I contractors are responsible for complying with all provisions of Federal equal opportunity and nondiscrimination laws including, but not limited to, the following:

- Civil Rights Act of 1964 (Public Law 88-352) Titles VI and VII
- Education Amendments of 1972 (Public Law 92-318) Title IX
- Rehabilitation Act of 1973 (Rehab Act) (Public Law 93-112) Title V, Section 504
- Age Discrimination Act of 1975 (Public Law 94-135)
- Americans with Disability Act of 1990 (ADA) (Public Law 101-336)
- Workforce Innovation and Opportunity Act (WIOA) (Public Law 113-128) Sections 121(b), 183(c), and 188
- Title 20 CFR Section 658.400
- Title 28 CFR Part 35, Subpart A
- Title 29 CFR Parts 31, 32, 34, 38, and 1690-1691
- Title 41 CFR Part 101-19, Subpart 101-19.6

FILILNG INSTRUCTIONS

This directive supersedes South Bay SBWIB Directive 08-01 dated August 4, 2008.

POLICIES AND PROCEDURES

The South Bay Workforce Investment Board (SBWIB), South Bay One-Stop Business & Career Centers and its contractors (One-Stop Centers/Affiliates, Youth Services, and service providers) are required to implement and to maintain an effective mechanism for assuring equal opportunity and nondiscrimination in all programs and activities funded wholly or in part with WIOA monies.

To ensure compliance, it continues to be the Local Area's policy and practice that all terms and conditions or privileges of employment be administered without regard to race, color, religion, sex, national origin, age, disability, citizenship or participation in a WIOA Title I financially assisted program.

Additionally, no individual shall be excluded from participation in, denied benefits of, subjected to discrimination under, or denied employment in the administration of, or in connection with any SBWIB sponsored WIOA Title I-financially assisted program because of race, age, disability, citizenship or political affiliation or belief.

DEFINITIONS

"Complaint", for this directive only, means an allegation of a violation of the nondiscrimination and equal opportunity provisions.

"Recipient", taken from Title 29 CFR Part 38, means any entity to which financial assistance under the WIOA Title I is extended, either directly from the Department of Labor (DOL) or

through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I funded program or activity. One-Stop Center and partners, as defined in Section 121(b) of the WIOA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 38 to the extent that they participate in the One-Stop delivery system (29 CFR Section 38.4[zz]).

Nondiscrimination/EO Elements

Each governor must establish and implement a Nondiscrimination Plan for state programs (29 CFR 38.54(a)(1)). Previously known as the Methods of Administration (MOA) under the WIA, the WIOA Nondiscrimination Plan must, at a minimum, describe how the requirements outlined below have been satisfied.

The South Bay Workforce Investment Board (SBWIB) has identified nine (9) major Equal Opportunity (EO) elements, each which, when fully implemented, will ensure that the One-Stop Centers/Affiliates are satisfactorily complying with applicable nondiscrimination provisions.

The nine (9) major EO elements are:

1. Inclusion of Nondiscrimination Assurances in All Contracts, Plans, and Agreements
2. Appointment of EO Compliance Officer
3. Notice and Communication of EO and Nondiscrimination Policies and Procedures
4. Data and Information Collection and Maintenance
5. Limited English Proficiency (LEP) and Preferred Language Data
   A. Definitions
   B. Reasonable Steps to Ensure Meaningful Access for LEP Individuals
   C. Language Assistance Services
   D. Interpreter Services
   E. Concerning Vital Information
6. Affirmative Outreach/Universal Access
7. Discrimination Prohibited Based on Disability
   A. Prohibited Actions
   B. Accessibility Requirements
      (i) Physical Accessibility
      (ii) Program Accessibility
   C. Reasonable Accommodation and Reasonable Modifications
   D. Service Animals
   E. Mobile Aids and Devices
8. Complaint Process and Procedures
   A. Complaint Form and Filing Procedures
   B. Alternative Dispute Resolution
      (i) Mediation
      (ii) Conciliation
   C. Promptly Notify SBWIB EO Officer of Any Complaints
      (i) Response Timeline
      (ii) Non-Jurisdiction

(iii) Due Process
(iv) Corrective Action Sanctions
(v) Local Area Complaint Log

D. Local Area Complaint Log
E. Actions by the CRC
F. Complaint Determination
G. Intimidation and Retaliation Are Prohibited

9. Equal Opportunity and Self-Evaluation

1. Inclusion of Nondiscrimination Assurances in All Contracts, Plans, and Agreements.

The Local Area, which includes One-Stop Centers, affiliates, youth and service providers, must ensure that all contracts, cooperative agreements, job training plans, policies and procedures contain the nondiscrimination assurances as specified in 29 CFR 38.25 and 38.26. The nondiscrimination assurances must (i) state that the grant applicant, collaborators and subcontractors will "comply fully with the nondiscrimination and equal opportunity provisions of the WIOA" and (ii) acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance. The nondiscrimination assurances shall be discussed at collaborators'/subcontractors' meetings so that everyone has a firm understanding of the implications.

2. Appointment of Equal Opportunity Compliance Officer

Each Local Area, which includes One-Stop Centers, affiliates, and service providers, must designate an Equal Opportunity (EO) Officer who is responsible for coordinating its obligations under these regulations. The South Bay Workforce Investment Board has designated a centralized EO Officer.

Catherine Blaylock
EO Compliance Unit
South Bay Workforce Investment Board
11539 Hawthorne Blvd., Suite 500
Hawthorne, CA 90250

EO Officer's responsibilities include:

- Investigating and monitoring the Local Area's and it subrecipients' WIOA Title I funded activities and programs.
- Reviewing the Local Area's organizations' and its subrecipients' written policies.
- Developing, publishing, and enforcing the Local Area's discrimination complaint procedures.
- Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with 29 CFR Section 38.40, and how an individual may file a complaint consistent with 29 CFR Section 38.69.

- Participating in continuing training and education, and ensuring that assigned staff receives the necessary training and support to maintain competency.
- Informing participants, employees, and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint process works.
- Submitting a copy of the Local Area's EO Officer's position description and organizational chart showing the relationship of the EO Officer to the Local Area Executive Director.

The Local Area EO Officer's contact information such as name, position title, business address, including email address, and telephone number (voice and TTY) must appear on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs and must be publicized at the local level through a variety of means, including posters, handouts, and listings in local directories.

3. <u>Notice and Communication of EO and Nondiscrimination Policies and Procedures</u>

A. <u>Notice</u>

The Local Area, which includes One-Stop Centers, affiliates, and service providers, must provide initial and continuing notice that it does not discriminate on any prohibited basis.

Attachment 1 of this directive contains the notice/poster entitled "Equal Opportunity is the Law" highlighting the right to file a complaint under the section "*What to do if You Believe You Have Experienced Discrimination*." This notice/poster must meet the following criteria:

- posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the Local Area's website pages;
- disseminated in internal memoranda and other written or electronic communications with staff;
- included in employee and participant handbooks, manuals, brochures, flyers and broadcasted program information, regardless of form, including electronic and paper form if both are available;
- provided to each staff, collaborator, subcontractor and participant;
- **included in each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.**

The notice shall be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments.

Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment and

employees with a visual impairment, a record that such notice has been given must be made part of the employee's or participant's file.

B. Communication

Publications, including brochures and other materials that are ordinarily distributed and communicated in written and/or oral form, electronically and/or on paper to staff, clients, or the public at large, which promote or describe WIOA programs/activities, must include the following taglines: **"This WIOA Title I-financially assisted program or activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities."**

Where such materials indicate that the One-Stop Centers/Affiliates may be reached by voice telephone, the telephone number of any Telecommunications Device for the Deaf (TDD), which is also known as teletypewriter (TTY) or California Relay Service (CRS) must be indicated.

If the One-Stop Centers/Affiliates does not have TDD/TTY, the California Relay Service (CRS) (711 or 1-800-735-2922 (English) or 1-800-855-3000 (Spanish) is an alternative. The CRS relays messages to hearing impaired persons via the telephone. A caller can contact the relay service by voice or TDD, and an operator will contact the party to be called using voice or TDD/TTY.

If the Local Area publishes or broadcasts program information in the news media, it must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted programs or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law) and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

The Local Area, which includes One-Stop Centers, affiliates, and service providers, must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis, except as such treatment is otherwise permitted under federal law or regulation.

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted programs or activity, whether this be in person or over the internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR Part 38, including the right to file a complaint of discrimination with the recipient or the Director of the CRC (*See* Section 8 for Complaint Process and Procedures). This information must be communicated in appropriate languages as required in 29 CFR Section 38.9 and in formats accessible for individuals with disabilities as required in 29 CFR Part 38 and specified in Section 38.15.

In California, the Dymally-Alatorre Bilingual Services Act (DABSA) requires that when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services in their clients' language. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

4. Data and Information Collection and Maintenance

Each Local Area, which includes One-Stop Centers, affiliates, and service providers, must collect and maintain nondiscrimination data. The system and format in which the records and data are kept must be designed to allow the Governor, the Department of Labor Civil Rights Center (CRC), and the SBWIB EO Compliance Unit to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of the WIOA and 29 CFR Part 38.

Nondiscrimination data must include, but is 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, participant, terminees, applicant for employment, and employee.

Such information must be kept for a period of not less than three years from the close of the applicable program year, stored in a manner that ensures confidentiality, and must be used only for the purposes of any of the following:

- Recordkeeping and reporting.
- Determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities.
- Determining the extent to which the One-Stop Centers/Affiliates are operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner.
- Other use authorized by law.

Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (e.g., through password protection).

5. Limited English Proficiency (LEP) and Preferred Language

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency." This Executive Order mandates that individuals with Limited English Proficiency (LEP) have equal access to federal funded programs and activities. Recipients of federal financial assistance must take reasonable steps to ensure that individuals having LEP receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by contractors.

National origin discrimination now includes LEP under 29 CFR Section 38.9 and specifically states that in providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including LEP. Additionally, 29 CFR Section 38.41 added "LEP and preferred language" to the list of categories of information that each recipient must record about each applicant, registrant, eligible applicant/registrant, participant, and terminee.

As mentioned in Section 3.B. above, in California, the Dymally-Alatorre Bilingual Services Act (DABSA) requires that when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services in their clients' language. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

A. Definitions

For the purposes of this Directive, the following definitions apply:

Babel Notice – a short notice included in a document or electronic medium (e.g. web site, ''app,'' email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages (29 CFR Section 38.4[i]).

Employment-related training – training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment (29 CFR Section 38.4[t]).

LEP individual – an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. An LEP individual may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing) (29 CFR Section 38.4[hh]).

LEP Plan – A written language access plan which assists in ensuring that LEP individuals have meaningful access to WIOA Title I-financially assisted programs and activities (29 CFR Section 38.9 Appendix).

Meaningful Access – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.

Primary language – An individual's primary language is the language in which an individual most effectively communicates, as identified by the individual.

B. Reasonable Steps to Ensure Meaningful Access for LEP Individuals

Local Areas are required to take reasonable steps to ensure that LEP individuals have meaningful access to their programs and activities. Reasonable steps may include, but are not limited to, the following:

- Conducting an assessment of an LEP individual to determine their language assistance needs.
- Providing oral interpretation or written translation of both hard-copy and electronic materials, in the appropriate non-English languages to LEP individuals.
- Conducting outreach to LEP communities to improve service delivery in needed languages. (29 CFR Section 38.9[b][1])

Reasonable steps for providing meaningful access to training programs may include, but are not limited to the following:

- Written training materials in appropriate non-English languages by written translation, or by oral interpretation, or summarization.
- Oral training content in appropriate non-English languages through in-person or telephone translation. (29 CFR Section 38.9[b][2][i][ii])

Furthermore, Local Areas should ensure that that every program delivery method, whether it be in person, electronic, or by phone, conveys in the appropriate language how an LEP individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training available to them. It should also be noted that as new methods for the delivery of information or assistance are developed, Local Areas are required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training available to them (29 CFR Section 38.9[c]).

C. Language Assistance Services

Language assistance generally comes in two forms: oral interpretation or written translation. Local Areas must ensure that above all, these services are free of charge and provided in a timely manner. An LEP individual must be given adequate notice about the existence of interpretation and translation services and that they are available free of charge. Language assistance will be considered timely when it is

provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training (29 CFR Section 38.9[d] and [e]).

D. Interpreter Services

Local Areas shall not require an LEP individual to provide their own interpreter. Furthermore, Local Areas shall not rely on an LEP individual's minor child or adult family or friend to interpret or facilitate communication, except for the following circumstances:

- In emergency situations while awaiting a qualified interpreter.
- When the information conveyed is of minimal importance to the services to be provided.
- When an LEP individual specifically requests that an accompanying adult provide language assistance and they agree to provide assistance to the individual. If a Local Area permits an accompanying adult to serve as an interpreter for an LEP individual, it must make and retain a record of the LEP individual's decision to use their own interpreter.

Finally, where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, Local Areas can still provide their own, independent interpreter, even if an LEP individual wants to use their own interpreter as well. This also applies in cases where the competency of the interpreter requested by the LEP individual is not established. (29 CFR Section 38.9[f])

E. Concerning Vital Information

For languages spoken by a significant portion of the population eligible to be served or likely to be encountered, Local Areas must translate vital information in written materials into these languages. These translations must in turn be readily available upon request in hard copy or electronically. Written training materials offered or used within employment-related training programs (*see* definitions section above) are excluded from these translation requirements. However, in all cases, Local Areas must take reasonable steps to ensure meaningful access for LEP individuals.

For languages not spoken by a significant portion of the population eligible to be served or likely to be encountered, Local Areas must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service or training that is available to them. Vital information may be conveyed orally if not translated.

Local Areas must also be sure to include a Babel Notice (*see* definitions section above), indicating that language assistance is available in all communications of vital information. This includes letters or decisions in hard-copy or electronic formats. (29 CFR Section 38.9[g]).

Finally, to the extent otherwise required by 29 CFR Part 38, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or

applicant for aid, benefit, service, or training, the recipient must convey vital information in that language. (29 CFR Section 38.9[h])

6. Affirmative Outreach/Universal Access

Local Areas, which include One-Stop Centers, affiliates, youth and service providers, must take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities (29 CFR Section 38.40).

These steps should involve reasonable efforts to include members of various protected groups protected including, but not limited to, persons of different sexes, various racial and ethnic/national origin groups, various religions, LEP individuals, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to, the following:

- Advertising the recipient's programs and/or activities in media such as newspapers or radio programs that specifically target various populations.
- Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations.
- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

7. Discrimination Prohibited Based on Disability

A. Prohibited Actions

The Local Area, including One-Stop Centers, affiliates, and service providers, must not do any of the following in providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, whether directly or through contractual, licensing, or other arrangements, on the basis of disability:

- deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings;
- afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;
- provide a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirements of the *Rehabilitation Act* as amended by the WIOA, including those provisions that prioritize opportunities in competitive integrated employment;

- deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
- otherwise limit a qualified individual with a disability of enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.

B. Accessibility Requirements

(i) *Physical Accessibility*

No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities.

The Local Area, which is subject to Title II of the ADA of 1990, must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, comply with the applicable federal accessible design standards, such as the *ADA Standards for Accessible Design* (1991 or 2010) or the *Uniform Federal Accessibility Standards*.

In addition, the Local Area, as a recipient of federal financial assistance, must meet its accessibility obligations under Section 504 of the *Rehabilitation Act* and the implementing regulations at 29 CFR Part 32.

(ii) *Program Accessibility*

All WIOA Title I-financially assisted programs and activities must be programmatically accessible to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity. This includes:

- providing reasonable accommodations for individuals with disabilities;
- making reasonable modifications to policies, practices, and procedures;
- administering programs in the most integrated setting appropriate, including employment tests or other selected criteria used by WIOA Tile I contractors;
- communicating with persons with disabilities as effectively as with others,
- providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary.

The One Stop Centers/Affiliates must also provide:

- designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g. steps, slopes low spots in ground or pavement, buckled concrete, gravel);

- signage at a primary entrance to each of their inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities;
- the international symbol for accessibility at each primary entrance of accessible facility;
- building entrance door that can be opened with one hand;
- accessible information/public counter areas;
- facility elevators that are accessible from the entrance meeting the above criteria;
- elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- at least one accessible public telephone;
- accessible meeting rooms with Braille symbols at an accessible height;
- restroom facilities that have at least one toilet stall with an accessible doorway--the stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, etc.); and
- alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

C. Reasonable Accommodation and Reasonable Modifications

With regard to aid, benefit, service, training and employment, a recipient must:

- provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause the recipient undue hardship on business operation (29 CFR Section 38.4(rrr)(1)), and
- make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIOA Title-I financially assisted service, program or activity (29 CFR Section 38.4(z)).

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration only after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a

copy of the statement of reasons to the individual(s) who requested the accommodation or modification.

If a requested accommodation would result in undue hardship or a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such hardship or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

In addition, a recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others.

The Reasonable Accommodation Policy and Procedure Guide (Attachment 3) should be used when processing reasonable accommodation requests. This document contains two sections:

(1) general guidance and definitions for use when processing reasonable accommodation requests

(2) step-by-step instructions on how to process reasonable accommodation requests.

D. Service Animals

Generally, a recipient shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

E. Mobile Aids and Devices

A recipient must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

A recipient must make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the recipient has adopted.

8. Complaint Process and Procedures

The SBWIB has established the WIOA complaint resolution procedures (including alternative dispute resolution) for resolving allegations within the Local Area for noncompliance with applicable nondiscrimination and equal opportunity provisions.

The SBWIB has established a logging system to record discrimination complaints (described in Section 8.G. below).

A. Complaint Form and Filing Procedures

Any person who believes that they or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIOA may file a written complaint or a representative may file the complaint on their behalf by using the Discrimination Complaint Form – Local Area (Attachment 2), which was developed to assist clients, participants, and service providers. This form is available for use in an effort to provide more consistent information when processing discrimination complaints from participants of WIOA and Wagner-Peyser funded programs and activities.

The One-Stop Centers/Affiliates EO Coordinator or SBWIB EO Officer is responsible for informing the complainants alleging violation of WIOA Section 188 or Title 29 CFR Part 38, that they have **180 days** from the date of the alleged violation to file a complaint and that they may file their complaint with either the SBWIB EO Compliance Unit, or directly with the U.S. Department of Labor, Civil Rights Center (CRC).

South Bay Workforce Investment Board
11539 Hawthorne Blvd., Suite 500
Hawthorne, CA 90250
EO Compliance Unit
Attn: Catherine Blaylock,
EO Compliance Officer
Telephone Number: (310) 970-7700
TDD/CRS 711 or 1-800-735-2922 (English) or 1-800-855-3000 (Spanish)
Fax (310) 970-7713
Email Address: cblaylock@sbwib.org

- or -

U.S. Department of Labor
Civil Rights Center
200 Constitution Avenue N.W., Room N-4123
Washington, D.C. 20210

The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the **180 day** time period elapsed. This time period for filing is for administrative convenience of the CRC and does not create a defense for the respondent.

Complaints must be filed in writing by completing the Discrimination Complaint Form (Attachment 2) and must include the following information:

- complainant's name, address, or other means of contacting them;
- identity of the respondent;
- description of the complainant's allegation(s) in sufficient detail to allow the CRC or the Local Area EO Officer, as applicable, to determine whether (1) the

CRC or the Local Area has jurisdiction over the complaint, (2) the complaint was filed timely, (3) the complaint has apparent merit, (i.e., whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA).

- signature of the complainant or their authorized representative.

Both the complainant and respondent have the right to be represented by an attorney or other individual of their choice.

B. Alternative Dispute Resolution

The methods available to resolve the complaint must include Alternative Dispute Resolution (ADR) procedures. The complainant must be offered ADR immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant.

(i) *Mediation*

The preferred form of ADR is mediation. Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicates their concerns, and comes to an agreement about how to resolve a dispute. The mediator does not make decisions, rule as to who is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in 29 CFR Sections 38.69 through 38.72.

A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

- The non-breaching party may file a complaint with the CRC within **30 days** of the date on which the non-breaching party learns of the alleged breach.
- The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint.

(ii) *Conciliation*

At any point in the investigation of the complaint, the complainant, respondent, or the Local Area EO Officer may request that the parties attempt conciliation. The Local Area EO Officer shall facilitate such conciliation efforts.

Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.

If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legal binding contract and falls under contract law.

C. Promptly Notify SBWIB EO Officer of Any Complaints

Promptly notify the SBWIB EO Compliance Unit of any complaints, administrative enforcement actions or lawsuits filed against the SBWIB alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I-financially assisted program and activity. Provide a brief description of the findings that occurred from any civil rights compliance review.

The SBWIB EO Compliance Officer shall issue a written acknowledgment of receipt by the SBWIB of the complaint alleging discrimination by the WIOA Title I recipient and shall include a notice of the Complainant's right to representation in the complaint process.

The SBWIB EO Compliance Officer will forward one copy of the written complaint to the Equal Employment opportunity Office, Employment Development Department, 800 Capitol Mall, MIC 49, P.O Box 826880, Sacramento, CA 94280-000 or, email to EEOMAIL@edd.ca.gov.

If the complainant elects not to participate in the ADR process, the SBWIB EO Officer shall investigate the circumstances underlying the complaint.

(i) *Response Timeline*

The Local Area has **90 days** to issue a "Notice of Final Action." If, during the 90-day period, the SBWIB issues a decision that is not acceptable to the Complainant, the Complainant, or his/her representative may file a complaint with the CRC within **30 days** after the date on which the Complainant receives the "Notice of Final Action."

If the **90 days expire**, and the Complainant does not receive a "Notice of Final Action" from the SBWIB, or the SBWIB failed to issue a "Notice of Final Action," the Complainant or his/her representative may, within **30 days** of the expiration of the **90 day** period, file a complaint with the CRC. In other words, the complaint must

be filed with the CRC within **120 days** of the date on which the complaint was filed with the SBWIB.

The CRC may extend the **30-day** time limit if the Complainant is not notified, as provided in the Title 29 CFR Section 38.77, or for other good cause shown.

The SBWIB EO Compliance Officer will forward one copy of the issued Notice of Final Action to the Equal Employment opportunity Office, Employment Development Department, 800 Capitol Mall, MIC 49, P.O Box 826880, Sacramento, CA 94280-000 or, email to EEOMAIL@edd.ca.gov.

(ii) *Non-Jurisdiction*

The SBWIB will notify the Complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation if the nondiscrimination and equal opportunity provision of WIOA. The "Notice of Lack of Jurisdiction" will include the basis for the determination as well as a statement of the Complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.

(iii) *Due Process*

During the complaint resolution process, the SBWIB EO Compliance Officer shall assure that all parties involved are given due process. These due process elements include:

- notice to all parties of the specific charges;
- notice to all parties of the responses to the allegations;
- the right of both parties to representation;
- the right of each party to present evidence, and to question others who present evidence; and
- a decision made strictly on the evidence of the record.

(iv) *Corrective Actions Sanctions*

It is the responsibility of each One-Stop Center/Affiliate and service and training providers to comply with the EO Compliance Unit's request for compliance documentation. Failure to provide the necessary documents will result in corrective actions/sanctions.

D. Local Area Complaint Log

Each Local Area must promptly notify the state or CRC when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity.

Each Local Area must maintain a log of complaints filed with the recipient that allege discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity. The log must include the following:

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

Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

The EDD EEO Office requires a copy of the Local Area complaint log annually (each calendar year).

Please mail the complaint log to the following address:

Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001
Or, email to EEOMAIL@edd.ca.gov

E. Actions by the CRC

The CRC determines acceptance of a complaint filed pursuant to 29 CFR Section 38.78. When the CRC accepts a complaint for investigation, it shall do the following:

- notify the Local Area and the complainant of the acceptance of the complaint for investigation;
- advise the Local Area and complainant on the issues over which the CRC has accepted jurisdiction.

The Local Area, the complainant, or a representative may contact the CRC for information regarding the complaint filed. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file

may be closed without prejudice upon written notice sent to the complainant's last known address (29 CFR Section 38.79).

In accordance with WIOA Section 183(c), the CRC may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the U.S., at any designated time and place.

Where the CRC lacks jurisdiction over a complaint, the CRC shall do the following:

- notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of the WIOA or 29 CFR Part 38;
- refer the complainant to the appropriate federal, state, or local authority, when possible.

The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.

The CRC will refer complaints governed by the *Age Discrimination Act of 1975* to mediation as specified in 45 CFR Section 90.43(c)(3).

If the complainant alleges more than one kind of complaint, "joint complaint" (e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc.), the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the Local Area of the referral.

Under the AJCC delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in the AJCC delivery system, the following procedures apply:

- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of the WIOA and by a civil rights law enforced by the federal grant making agency, the CRC and the grant making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.
- If the complainant alleges discrimination on the basis that is prohibited by Section 188 of the WIOA, but not by any civil rights laws enforced by the federal grant making agency, the CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to 29 CFR Part 38. The CRC will advise the complainant and the Local Area of the referral.

The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

- Because mediation is voluntary, both parties must consent before the mediation process proceeds.
- The mediation will be conducted under the guidance issued by the CRC.
- If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under 29 CFR Sections 38.82 through 38.88.

After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the Local Area, in writing, of the following:

- the specific findings of the investigation;
- the proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- whether it will be necessary for the Local Area to enter into a written agreement;
- the opportunity to participate in voluntary compliance negotiations.

Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the Local Area. The Final Determination represents the DOL's final agency action on the complaint.

F. Complaint Determinations

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to 29 CFR Sections 38.86 or 38.87, 38.88 and 38.89, or 38.90, respectively, must include the steps and the specific time period it will take the Local Area to achieve voluntary compliance. *See* Section 38.90 for corrective action steps. Monetary corrective action may not be paid from federal funds.

If the Local Area receives a finding of noncompliance, the following sections of 29 CFR Part 38 may be referred to for detailed information:

- "Final Determinations," Sections 38.96 through 38.97
- "Breaches of Conciliation Agreements," Sections 38.98 through 38.100
- Subpart E – "Federal Procedures for Effecting Compliance," Sections 38.110 through 38.115.

G. Intimidation and Retaliation Are Prohibited

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following:

- a violation of the WIOA;
- opposition to a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA;
- or if the individual has furnished information to, assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by

the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

9. Equal Opportunity and Nondiscrimination Self-Evaluation

To ensure compliance with the State WIOA Nondiscrimination Plan, all One Stop Centers/Affiliates and service providers are required to complete and submit a Nondiscrimination and Equal Opportunity Self-Evaluation to the SBWIB EO Compliance Unit, when requested by EO Compliance Unit. The EO Compliance Unit will review the self-evaluations, compliance documents, and other equal opportunity-related data to ensure that all One Stop Centers/Affiliates are in compliance with the nondiscrimination and equal opportunity provisions.

INQUIRIES:

Any change that deviates from the above policy must be approved by the SBWIB Executive Director on behalf of the SBWIB.

If you have any question on how to comply with equal opportunity and nondiscrimination policy provisions, please contact Catherine Blaylock, EO Compliance Officer, at (310) 970-7700, TDD/CRS 711 or 1-800-2922 (English) or 1-800-855-3000 (Spanish).

Jan Vogel
Executive Director

Attachments:

Attachment 1(A) - Equal Opportunity is the Law (English)
Attachment 1(B) – Equal Opportunity is the Law (Spanish)
Attachment 2 – Discrimination Complaint Form
Attachment 3 – Reasonable Accommodation Policy and Procedure Guide
Attachment 4 – Comments

Employment Development Department
State of California

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 (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act (WIOA), on the basis of the individual's citizenship status or participation in any WIOA Title I–financially assisted program or activity.

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

WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIOA Title I - financially assisted program or activity, you may file a complaint within 180 days of the event with either the recipient's Equal Opportunity Officer or the person designated by the recipient. Complaints may be mailed to the Employment Development Department or the Civil Rights Center of the Department of Labor at:

Equal Opportunity Officer
Employment Development Department (EDD)
PO Box 826880, MIC 83
Sacramento, CA 94280

Or

Director, Civil Rights Center (CRC), Department of Labor
200 Constitution Avenue NW, Room N–4123
Washington, DC 20210

Complaints also may be submitted to the EDD by email at **EEOmail@edd.ca.gov**, or as directed on the Department of Labor, CRC website at **www.dol.gov/crc**.

If you file your complaint with the recipient, you must wait until either the recipient issues a written *Notice of Final Action*, or 90 days have passed or whichever is sooner, before filing with the CRC (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 the 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 the CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 866-490-8879 (voice). TTY users, please call the California Relay Service at 711.

Employment Development Department
State of California

LA IGUALDAD A LA OPORTUNIDAD ES LA LEY

Es contra la ley para este programa, el cual es financiado por el gobierno federal, discriminar a un individuo que reside en los Estados Unidos con base a: su raza, color de piel, religión, sexo (que incluye embarazo, parto, o condición médica, estereotipos sexuales, estado transgénero, e identidad de género), origen nacional (que incluye personas con dominio limitado del idioma inglés), edad, discapacidad, afiliación política o creencia, o cualquier individuo que haya recibido pagos de beneficios, solicitado, o participado en programas que reciben financiamiento bajo el *Title 1* de la ley titulada en inglés *Workforce Innovation and Opportunity Act* (WIOA, por sus siglas en inglés), con base a su estado de ciudadanía o su participación en cualquiera de los programas o actividades financiados por la misma ley.

Los programas que reciben financiamiento por parte del gobierno federal deben tomar los pasos razonables para asegurar que su comunicación con cualquier persona con una discapacidad sea efectiva, igual que como lo haría con cualquier otra persona. Esto significa que cuando una persona con una discapacidad solicite ayuda, los programas que reciben financiamiento por parte del gobierno federal son requeridos de proporcionar la ayuda apropiada y proveer servicios a las personas con discapacidades que sean elegibles para obtener sus servicios sin costo adicional.

QUÉ HACER SI USTED CREE QUE HA SIDO DISCRIMINADO

Si usted cree que ha sido discriminado por el programa que recibe financiamiento por parte del gobierno federal bajo el *Title 1* de la ley titulada en inglés *Workforce Innovation and Opportunity Act* (WIOA), usted puede presentar una queja dentro de 180 días a partir de la fecha en que ocurrió el incidente. Su queja debe ser presentada por escrito al oficial de igualdad de oportunidad (*Equal Opportunity Officer*) o a la persona designada por el programa. También puede enviar su queja por correo postal al Departamento del Desarrollo del Empleo (EDD) o el Centro de Derechos Civiles (*Civil Rights Center*) del Departamento del Trabajo (*Department of Labor*) a:

Equal Opportunity Officer
Employment Development Department (EDD)
PO Box 826880, MIC 83
Sacramento, CA 94280

Ó

Director, Civil Rights Center (CRC), Department of Labor
200 Constitution Avenue NW, Room N–4123
Washington, DC 20210

También puede presentar su queja al Departamento (EDD) por correo electrónico en **EEOmail@edd.ca.gov**, o para obtener información sobre cómo presentar una queja con el Centro de Derechos Civiles (CRC) del Departamento del Trabajo, visite su página de Internet en **www.dol.gov/crc**.

Si usted primero presenta su queja con la persona designada del programa, usted debe esperar recibir una respuesta por escrito titulada en inglés *Notice of Final Action* por parte de la persona designada del programa o dejar pasar 90 días, lo que ocurra primero, antes de presentar su queja con el Centro de Derechos Civiles (CRC).

Si la persona designada del programa no le envía la notificación titulada en inglés *Notice of Final Action* dentro de 90 días después de la fecha en que usted presentó su queja, usted no tiene que esperar más tiempo para presentar su queja con el Centro de Derechos Civiles (CRC), pero asegúrese de presentar su queja con el Centro de Derechos Civiles (CRC) dentro de 30 días después de la fecha límite del período de 90 días (en otras palabras, usted debe presentar su queja dentro de 120 días después de haber presentado su queja con la persona designada del programa).

Si la persona designada del programa sí le envía la notificación titulada en inglés *Notice of Final Action*, pero no está satisfecho con la determinación hecha o la resolución propuesta para su caso, usted entonces puede presentar su queja con el Centro de Derechos Civiles (CRC). Usted tiene que presentar su queja con el Centro de Derechos Civiles (CRC) dentro de 30 días después de la fecha en que usted haya recibido la notificación titulada en inglés *Notice of Final Action*.

El Departamento del Desarrollo del Empleo (EDD) ofrece igualdad de oportunidad al empleo, acceso a sus programas y servicios. Servicios de asistencia para las personas con discapacidad están disponibles cuando se soliciten. Para pedir servicios, asistencia y/o formatos alternos, comuníquese al **1-800-490-8879** o por TTY (teletipo) al **711**.

DISCRIMINATION COMPLAINT FORM
SOUTH BAY WORKFORCE DEVELOPMENT AREA

This form should be used by anyone in the workforce development community system who wishes to file a discrimination complaint against any person(s)/entity. To file a discrimination complaint, complete this form, sign on page 4 and return to the One-Stop Career Center (currently branded as America's Job Center of California[SM]) Equal Opportunity Officer or Employment Development Department Field Office complaint representative.

1. Complainant Information

☐ Miss ☐ Ms. ☐ Mrs. ☐ Mr. ☐ Other

Home Phone: ( ) -

Work Phone: ( ) -

Name: _____ Cell: ( ) -

Street Address: _____

City: _____ Email: _____

State: Zip Code:

2. Complainant Contact Information

When is it a convenient time during business hours (8 a.m. to 5 p.m.) to contact you by phone about this complaint?

Day	Monday	Tuesday	Wednesday	Thursday	Friday
Time					
Phone					

3. Contact Information for the Person(s) Who You Claim Discriminated Against You

Provide the name of the entity where person(s) work(s):

Name of person(s) who discriminated against you:

Address of person(s)/entity:

City: _____ State: ZIP Code:

Phone: **( ) -**

Date of first occurrence: Date of most recent occurrence:

4. Tell Us About the Incident(s)

- Explain briefly what happened and how you were discriminated against.
- Provide the date(s) when the incident(s) occurred.
- Indicate who discriminated against you. Include names and titles if possible.
- If other people were treated differently than you, tell us how they were treated differently.
- Attach any documents that you think might help us better understand your complaint.

5. Please List Below Any Person(s) (Witnesses) That We May Contact for Additional Information to Support or Clarify the Complaint.

Name	Address	Phone

6. Basis for the Discrimination

Check the type of discrimination you experienced, such as age, race, color, national origin, disability, etc. If you believe more than one basis was involved, you may check more than one box.

☐ **Age**- *provide date of birth:*
☐ **Color**
☐ **National Origin** (Including limited English proficiency)
☐ **Retaliation**
☐ **Gender** - *Specify* ☐ F ☐ M
☐ **Race** - *indicate race:*
☐ **Political Affiliation or Belief**
☐ **Citizenship**
☐ **Disability**
☐ **Religion**
☐ **Harassment**
☐ **Sex (including including pregnancy, childbirth, or related medical conditions, gender identity, and transgender status**
☐ **Status as a program participant under the *Workforce Innovation Opportunity Act***
☐ **Other** *(Specify)*:

7. Have You Previously Filed a Complaint Against this Person(s)/Entity? ☐ **Yes** ☐ **No**

If **YES**, answer the questions below, if **NO** move to section 8.

a. Was your complaint in writing? ☐ **Yes** ☐ **No**

b. On what date did you file the complaint?

c. Name of office where you filed your complaint:

Address:

City: State: ZIP Code:

Phone number: ( ) -

Contact person *(if known)*:

d. Have you been provided a final decision or report? ☐ **Yes** ☐ **No**

If you marked "YES", please attach a copy of the complaint.

8. What Corrective Action or Remedy Do You Seek? Please Explain.

9. Choosing a Personal Representative

- You may choose to have someone else represent you in dealing with this complaint. It may be a relative, friend, union representative, an attorney, or someone else.
- If you choose to appoint someone to represent you, all of our communication to you will be routed through your representative.

Do you want to authorize a personal representative to handle this complaint? ☐ **Yes** ☐ **No**

If YES, complete the section below. **If NO**, go to Section 10.

AUTHORIZATION OF PERSONAL REPRESENTATIVE

I wish to authorize the individual identified below to act on my behalf as my personal representative, in matters such as mediation, settlement conferences, or investigations regarding this complaint.

Name:

☐ I am an attorney representing the complainant. ☐ I am not an attorney representing the complainant.

Mailing Address:

City: State: Zip Code:

Phone : ( ) - Fax: ( ) -

Email:

10. Alternate Dispute Resolution (ADR) Also Known as Mediation

Notice—You must indicate if you wish to mediate your case. The Local Area Workforce Development Area cannot begin to process your complaint until you have made a selection. Please check **YES** or **NO** in the spaces below.

- Mediation is an alternative to having your complaint investigated.
- Neither party loses anything by mediating.
- The parties to the complaint review the facts, discuss opinions about the facts, and strive for an agreement that is satisfactory for both.
    - Agreement to mediate is not an admission of guilt by the person(s)/entity that you claim discriminated against you.
    - Mediation is conducted by a trained, qualified and impartial mediator.
    - You (or your Personal Representative) have control to negotiate a satisfactory agreement.
    - **Terms of the agreement are signed by the complainant and the person(s)/entity that you claim discriminated against you.**
    - **Agreements are legally binding on both parties.**
    - If an agreement is not reached, a formal investigation will start.
    - Failure to keep an agreement will result in a formal investigation.
    - A formal investigation will be opened if retaliation is reported.

- **Do you wish to mediate your complaint?**
  (Please check only one box)

☐ **YES**, I want to mediate. ☐ **NO**, please investigate.

If you select "YES" you will be contacted within five business days with more information.

11. Complainant Signature

Your signature on this form will initiate the processing of this complaint. By signing this form, you are declaring under penalty of perjury that the information included is true and correct to the best of your knowledge of belief.

Signature: **Date:**

ATTACHMENT 3

REASONABLE ACCOMMODATION POLICY AND PROCEDURE GUIDE

I. Introduction

The purpose of this guide is to assist local entities who are funded with *Workforce Innovation and Opportunity Act* (WIOA) or *Wagner-Peyser* (W-P) *Act* funding, in processing reasonable accommodation requests. Each entity will ensure that reasonable accommodations are provided to qualified individuals with disabilities to enable them to do the following:

- Be considered for the aid, benefits, services, training or employment as desired.
- Perform the essential functions of their jobs, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities.
- Enjoy benefits and privileges of the aid, benefits, services, training, or employment equal to those that are enjoyed by other similarly situated individuals without disabilities, unless providing such accommodation would impose an undue hardship.

The requirement to provide reasonable accommodations applies to disabilities that are known to the local entity.

The reasonable accommodation process, including a description of key terms, is set forth below and should be implemented immediately.

II. Key Terms

A. *Reasonable accommodation* means any of the following:

1) Modifications or adjustments to an application/registration process that enables a qualified individual with a disability to be considered for the aid, benefits, services, training, or employment that the qualified individual desires.
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.
3) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

B. *Qualified individual with a disability* means any of the following:

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 such aid, benefits, services, or training.

C. *An applicant* is an individual seeking federally-assisted aid, benefits, services, or training. An individual is considered an "applicant" at the point in which they submit personal information in response to a request by the local entity for such information.

D. *A participant* is an individual who is receiving aid, benefits, services or training under a WIOA Title I or W-P funded program.

E. *A disability* means the following, with respect to an individual:

1) "Medical condition" includes the following:
    a) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.
    b) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:
        i. Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.
        ii. Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

2) "Mental disability" includes, but is not limited to, all of the following:
    a) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

i. “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
ii. A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
iii. “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.

Any other mental or psychological disorder or condition not described in paragraph (a) that requires special education or related services.

b) Having a record or history of a mental or psychological disorder or condition described in paragraph (a) or (b), which is known to the employer or other entity covered by this part.
c) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.
d) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (a) or (b).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

3) "Physical disability” includes the following:

a) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
i. Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

ii. Limits a major life activity. For purposes of this section:
- “Limits” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable

accommodations, unless the mitigating measure itself limits a major life activity.

- A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
- "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

b) Any other health impairment not described in paragraph (a) that requires special education or related services.

c) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (a) or (b) which is known to the employer or other entity covered by this part.

d) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

e) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (a) or (b).

f) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

F. *Essential eligibility requirements* are such criteria that can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

G. *Essential functions* means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:
    a) The function may be essential because the reason the position exists is to perform that function.
    b) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
    c) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

2) Evidence of whether a particular function is essential includes, but is not limited to the following:
    a) The employer's judgment as to which functions are essential.
    b) Written job descriptions prepared before advertising or interviewing applicants for the job.
    c) The amount of time spent on the job performing the function.
    d) The consequences of not requiring the incumbent to perform the function.
    e) The terms of a collective bargaining agreement.
    f) The work experiences of past incumbents in the job.
    g) The current work experience of incumbents in similar jobs.

H. *Fundamental alteration* means a change in the essential nature of a program or activity, or a cost that the local entity can demonstrate would result in an undue burden. Factors to be considered in determining whether a requested modification would result in a fundamental alteration are referenced in Step 3 of this process (described later in the Step by Step Process section of this guide.)

I. *Major life activities* mean functions such as the following:

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working

J. *Undue hardship* means an action requiring significant difficulty or expense, when considered in light of the following factors:

1) The nature and cost of the accommodation needed.
2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.

4) The type of operations, including the composition, structure, and functions of the workforce of the entity.
5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

III. Effective Communication and Other Assistance

Each local entity shall be responsible for ensuring effective communication between the qualified individual with a disability and entity staff throughout the reasonable accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. In addition, the local entity shall also be responsible for providing such other reasonable assistance as is requested throughout the reasonable accommodation process, as well as through the process of any necessary appeals.

IV. Confidentiality

A. **Local entity must maintain confidentiality**. All documentation and information concerning the medical condition or history of an individual with a disability requesting an accommodation must be collected on forms separate from other forms related to that individual, and must be maintained by the local entity in separate medical files. The information shall be treated as confidential medical records, and access to the records must be limited, except to the extent of the following:
    1) The local entity management must be informed about work restrictions or reasonable accommodations.
    2) The first-aid and safety personnel need to be informed if the disability may require emergency treatment.
    3) Government officials investigating compliance with law are required to be provided with relevant information upon request.

What Accommodations Are Reasonable?

The reasonableness of an accommodation will depend upon the circumstances of each case. For additional clarification as to what are reasonable accommodations in the employment context, refer to 29 CFR Part 32. Reasonable accommodations include, but are not limited to the following:

- Making facilities that are not otherwise required to comply with Federal accessibility standards physically accessible to and usable by people with disabilities (e.g., providing ramps, restroom grab bars, signage, etc.).

- Restructuring of job or training tasks (e.g., reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks, etc.).
- Modifying schedules (e.g., permitting alternative starting and ending times to avoid standing and jostling on subways).
- Providing or modifying equipment, devices or materials (e.g., raising a desk on boards for a person who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTYs], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print, etc.).
- Providing qualified readers, interpreters, or other support services for all aspects of programs and activities including the application, interview, and testing processes, and during training and employment-related activities.

Reasonable accommodation may also include permitting the individual with a disability to use aids or services that the local entity is not otherwise required to provide. For example, although a local entity generally would not be required to provide a motorized scooter to an individual with mobility impairment, reasonable accommodation may include providing an area to stow such a mobility aid, if necessary.

The local entity is not required to provide personal items to individuals with disabilities. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet needs that are related to the program or activity in which the person is participating, or the job the person is performing. For example, eyeglasses designed to enable the individual to view a computer monitor, but which are not otherwise needed outside of the program or activity in which the person is participating, or the job the person is performing, may constitute a reasonable accommodation.

Where more than one possible reasonable accommodation exists, the local entity should give primary consideration to the individual's preference in determining what accommodation it will provide.

As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the individual identifies any requested accommodation with specificity. For example, an employee who is deaf and routinely uses a text telephone (TTY) can readily identify a job-related limitation, as well as the accommodation needed. Where it is obvious that providing the TTY will enable the individual to meet the job's essential functions, the TTY can be ordered, provided and documented without the more

comprehensive analysis provided for in Steps 2 and 3 (described later in the Step by Step Process section of this guide.) In these cases, the reasonable accommodation process is merely compressed; it is not eliminated.

Accommodations may be considered "unreasonable" only if they impose an undue hardship for the specific local entity in question. For example, shifting tasks among clerical employees to accommodate an employee with a disability may be reasonable where a sufficient number of employees exist among whom the tasks can be distributed; however, such an accommodation may be unreasonable in a very small office with few employees. The factors listed in the definition of "undue hardship" in 29 CFR Section 38.4(rrr) must be considered in making this determination.

If a requested accommodation would result in undue hardship, the recipient must, after consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient.

REASONABLE ACCOMMODATION POLICY AND PROCEDURE

Step by Step Process

Step 1 – Individual with a Disability Requests Reasonable Accommodation

Initial Consultation

The individual with a disability should submit a reasonable accommodation request to designated staff. If a request for reasonable accommodation is made to facilitate the application process, the local entity manager supervising the application process should assist where requested and, in conjunction with the local entity staff, process the request for accommodation. The local entity manager receiving the request shall acknowledge each request in writing. The current request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual with a disability to inform the local entity of the need for an accommodation. Reasonable accommodation must be provided for disabilities that are known. Nevertheless, once the local entity is aware of an individual's disability, it may have the responsibility to initiate discussions about reasonable accommodation and set these procedures in motion.

Where the need for a requested accommodation is not apparent, the local entity manager supervising the application process may ask the individual to provide documentation in support of the request. For example, if the individual with dyslexia requests additional time within which to complete a timed, written entrance qualifying examination, that individual may be asked to provide documentation in support of that request.

Similarly, if an individual with a mental disability requests a flexible schedule to attend psychotherapy during the work day, the individual may be asked to provide documentation from the treating professional in support of that request.

After acknowledging a request for accommodation, the local entity manager should do one of the following:

1) Provide or implement the request and document the accommodation
2) Proceed to Step 2 of this procedure.

Step 2 – Consult with the Individual Requesting a Reasonable Accommodation

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the individual's limitations and the local entity's resources, as in the example provided above, where an individual's desk is elevated on blocks to permit access from a wheelchair. Other situations are more complex, however, and require structured analysis. In these instances, upon receipt of a request for reasonable accommodation, the local entity should consult with the individual requesting the accommodation to assess the limitations of the disability and how the individual may best be involved in the accommodation process.

Using a collaborative, open and flexible approach, the local entity should consider how any limitations can be overcome, discuss possible reasonable accommodations, and assess the effectiveness of each. Other possible resources to consult with throughout this process include, but are not limited to, the following:

- The Job Accommodation Network, which can be reached at 1-800-JAN-7234 or by accessing their website at: www.Jan.wvu.edu.
- The California Committee on Employment of People with Disabilities at the Department of Rehabilitation. They can be reached at: (855) 894-3436 or via email at: CCEPD@dor.ca.gov.

The local entity must consider the individual's preferences, along with what is reasonable and does not impose an undue hardship.

The circumstances, in which documentation can be requested, as well as the procedure for requesting such documentation, are as follows:

A. When the disability and/or the need for accommodation are not obvious, the local entity may ask the individual for reasonable documentation about his/her disability and functional limitations.

Reasonable documentation means that the local entity may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation. However, the local entity, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.

The local entity may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of function limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation the local entity should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. For example, the person can be asked to sign a limited release allowing the local entity to submit a list of specific questions to the health care or vocational professional. **The local entity must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from.**

1) It is unlawful except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.
3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the

commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

4) It is unlawful except as provided in paragraph (5), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make an inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
5) Notwithstanding paragraph (4), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

B. If a person provides insufficient documentation of a disability in response to the local entity's initial request, the local entity may require the person to go to a health care professional of the local entity's choice. However, the local entity should explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

Please note that under the federal disability nondiscrimination law, the local entity cannot ask for documentation under the following circumstances:

1) Both the disability and the need for reasonable accommodation are obvious, or
2) The person has already provided sufficient information to substantiate they have an actual, current disability and needs the reasonable accommodation requested.

If the individual's disability or need for reasonable accommodation is not obvious, and they refuse to provide the reasonable documentation requested by the local entity, then they are not entitled to reasonable accommodation. On the other hand, failure by the local entity to initiate or participate in an interactive process with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

Step 3 – Local Entity Management and/or Designated Staff Analyzes the Request for Reasonable Accommodation

After consulting with the individual with a disability, the entity should examine the request and determine if the requested accommodation is feasible and does not create an undue hardship or result in a fundamental alteration. Please note, if a requested accommodation would result

in undue hardship, the recipient must, after consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient (29 CFR Section 38.14[a][3]).

It is unlawful for an employer or other entity covered by the WIOA, Section 188, 29 CFR part 38, W-P, the Americans with Disabilities Act (ADA), and the Fair Employment and Housing Act (FEHA), to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

The factors to be considered in determining whether an accommodation would impose an undue hardship or in determining whether the cost of a modification would result in a fundamental alteration includes the following:

A. The nature and net cost of the accommodation/modifications needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation/modification.
B. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation/modification, including the following:
    1) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities.
    2) The effect the accommodation/modification would have on the expenses and resources of the facility or facilities.
C. The overall financial resources of the local entity, including the following:
    1) The overall size of the local entity.
    2) The number of persons aided, benefited, served, trained, or employed by the local entity.
    3) The number, type and location of the local entity's facilities.
D. The type of operation or operations of the local entity, including the following:
    1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the local entity.
    2) Where the individual is seeking an employment related accommodation/modification, the composition, structure and functions of the local entity's workforce.

E. The impact of the accommodation/modification upon the operation of the facility or facilities, including the following:
    1) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties.
    2) The impact on the facility's ability to carry out its mission.

It is unlawful for an employer or other entity covered by the WIOA, Section 188, 29 CFR part 38, W-P, ADA, and the FEHA, to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this document shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

Step 4 – Select and Implement an Appropriate Reasonable Accommodation

Within 10 business days of receipt of a request for reasonable accommodation, the local entity to where it was submitted shall either grant or deny the request in writing. Provisions of this accommodation should commence immediately. If a requested accommodation would result in undue hardship, the recipient must, after consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient (29 CFR Section 38.14[a][3]).

Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the individual requesting a reasonable accommodation. In all instances, however, the local entity shall act as expeditiously as possible to provide reasonable accommodations.

Where further supporting documentation has been sought from the individual requesting a reasonable accommodation, the grant or denial of a request for reasonable accommodation shall be rendered as noted below:

A. For those cases in which medical documentation is necessary in order to understand the individual's limitations and what accommodations are possible, the grant or denial shall be issued within 10 business days of receipt of the requested documentation.
B. For those cases in which the documentation is being requested merely to verify the information provided by the individual with a disability, the grant or denial shall be issued within 5 business days of receipt of the requested documentation.

C. For those cases in which the individual refuses to provide reasonable requested documentation, the grant or denial shall be issued within 5 business days of the notification of refusal.

Where the local entity determines to deny a request for accommodation, or to provide an accommodation other than the individual's expressed preference, the local entity shall first consult with the individual requesting the reasonable accommodation. The local entity will document the determination in writing. Where the determination is to deny the request on the basis of undue hardship or fundamental alteration, the proposed alternative accommodation or modification will also be documented.

What if an Appropriate Reasonable Accommodation cannot be identified?

Sometimes, the local entity, or the individual requesting the reasonable accommodation, cannot identify possible reasonable accommodations. In those instances, the local entity should consult with appropriate resources e.g., those listed in Step 2 of these instructions. The local entity will seek to facilitate effective communication between the parties with the goal of identifying and implementing appropriate reasonable accommodation and, where a reasonable accommodation has been selected, shall monitor its implementation.

Throughout the Step 2 consultation process, the individual, and the local entity may seek technical assistance or clarification of each component of the reasonable accommodation process from appropriate resources.

Summary of Comments

Draft Directive: Equal Opportunity / Nondiscrimination Obligations and Assurances

(11/13/17)

Comment 1: Page 15 – Change "TTY (310) 970-7774" to "TDD/CRS 711 or 1-800-735-2922 (English) or 1-800-855-3000 (Spanish)"
Action Taken: Accepted.

Comment 2: Page 18 – Change section C(i) header from "Filing Deadlines" to "Response Timeline" to better reflect contents of section.
Action Taken: Accepted.

Comment 3: Page 18 – Move the second to last paragraph beginning with "The SBWIB EO Compliance Office will forward…" to the end of section C(ii) to keep complaint process steps in a more chronological order.
Action Taken: Accepted

Comment 4: Page 19 – Move Section D "Intimidation and Retaliation Are Prohibited" to the end after current section G in order to keep complaint information together, and & the retaliation section is a new thought that is better placed after all complaint information is conveyed.
Action Taken: Accepted.

Comment 5: Page 23 – Change "TTY (310) 970-7714" to "TDD/CRS 711 or 1-800-735-2922 (English) or 1-800-855-3000 (Spanish)"
Action Taken: Accepted

Other Administrative & Formatting Changes:
Action Taken: Accepted.
Page 2 – In the last paragraph add a space between "Part" and "38"
Page 3 – In the last sentence of the second paragraph under the header "Nondiscrimination/EO Elements" add an "s" to the end of the word "provision."
Page 6 – In paragraph 4, change "requests" to "request" in last sentence.
Page 10 - Underline & italicize header E "Concerning Vital Information" for consistency
Page 11 – Citation can be moved up to be at end of last sentence
Page 11 – Change "must" to "must not" and underline
Page 14 – delete the word "provide" to streamline in Section A(1) and A(2)
Page 14 – in the last paragraph, last sentence, change "8.G" to correct reference after the below noted section changes are made
Page 15 – In paragraph 1, sentence 1, add the word "a" before "representative may file…"
Page 15 – Create a paragraph break in Section A beginning with the sentence that begins, "The One-Stop Centers/Affiliates EO Coordinator or SBWIB EO Officer is responsible…" to make less dense.
Page 15 – In the paragraph after the addresses, change "180 days" to "180 day"
Page 15 – In the last paragraph, delete the hyphen before the word "must"
Page 17 – Delete paragraphs 3-7 (duplicate of text in Section C below)
Page 19 – in the last bulleted list, change "Opposed" to "Opposition to" to maintain consistency of tense
Page 19 – in the last bulleted list, change "Furnished" to "or if the individual has furnished" to improve reading ease
Page 20 – in the first bulleted list, remove "the" and "a" at the beginning of each bullet to make easier to read and more streamlined