NONDISCRIMINATION AND EQUAL OPPORTUNITY POLICY

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EXECUTIVE SUMMARY:

Purpose:

This document establishes the Madera County Workforce Development Board's policy on nondiscrimination and equal opportunity procedures for local Workforce Innovation and Opportunity Act (WIOA) Title I-financially assisted programs or activities. It also issues a standard discrimination complaint form that is available for use by the workforce development community when processing a discrimination complaint. In addition, a procedure guide is provided for reference when processing reasonable accommodation requests.

Scope:

This policy and related procedures apply to the Madera County Local Workforce Development Area (LWDA) and all other WIOA Title I-funded or financially assisted service providers, vendors, and subrecipients.

Effective Date:

This policy is effective on the date of issuance of EDD Directive WSD17-01 on August 1, 2017.

REFERENCES:

- EDD Directive WSD17-01
- Workforce Innovation and Opportunity Act Sections 121(b), 188, and 183(c)
- Americans with Disabilities Act of 1990, as amended
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (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

- Title 45 CFR Part 90, Subpart D, Section 90.43(c)(3)
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency
- Fair Employment and Housing Act, Government Code Section 12900-12996
- WIA Directive WIAD04-20, Subject: Limited English Proficiency (May 12, 2005)

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by **bold**, ***italic*** type.

FILING INSTRUCTIONS:

This policy provides the guidance and established the procedures regarding nondiscrimination and equal opportunity requirements under the Workforce Innovation and Opportunity Act. This policy is effective on the date of issuance of EDD directive WSD17-01 dated August 1, 2017.

BACKGROUND:

The non-discrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit 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 status or participation in a WIOA Title I-financially assisted program or activity.

POLICY AND PROCEDURES:

Definitions:

For purposes of this policy and procedures, the following definitions apply:

Recipient- Any entity to which financial assistance under 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. In addition, One-Stop partners, as defined in Section 121 (b) of 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.

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

Complaint - An allegation of a violation of the nondiscrimination and equal opportunity provisions.

Nondiscrimination plan – A state-level document that reflects the Governor's commitment to nondiscrimination and equal opportunity provisions of WIOA. The Nondiscrimination Plan replaces the Methods of Administration (MOA) under the Workforce Investment Act (WIA) of 1998.

State Equal Opportunity (EO) Officer – The Employment Development Department's (EDD) EO Officer.

Provisions of the Nondiscrimination Plan:

In order to provide a reasonable guarantee of compliance with the nondiscrimination and equal opportunity provisions of Section 188 of WIOA and 29 CFR Part 38, the Governor must establish and implement a Nondiscrimination Plan for state programs as outlined in 29 CFR Section 38.54(a)(1). Previously known at the MOA under WIA, the WIOA Nondiscrimination Plan must, at a minimum, describe how the requirements outlined below have been satisfied.

___*EO Officers*

Each Local Area must designate an EO Officer who is responsible for coordinating its obligations under these regulations. ***The State requires that local areas notify the Equal Employment Opportunity (EEO) Office whenever the designation of the local EO Officer changes.***

The local area has designated the Deputy Director, Madera County Workforce Investment Corporation, as the local EO Officer and will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA in accordance with Title 29 CFR Part 38.

The EO Officer's responsibilities include:

- Serving as liaison with the EDD EEO Office.
- Investigating and monitoring the organization and its subrecipients' WIOA Title I funded activities and programs.
- Reviewing the organizations and its subrecipients' written policies.
- Developing, publishing, and enforcing the organization's discrimination complaint procedures.
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- 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 receive 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 system works.

Each Local Workforce Development Area is required to submit a copy of the local-level EO Officer's position description and organizational chart showing the relationship of the local-level EO Officer to their Local Area Executive Director. The required documents will be mailed annually to:

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.

The Local Area EO Officer's contact information such as name, position title, business address (including e-mail address) and telephone number (voice and Telecommunications Device for the Deaf [TDD], which is also known as a teletypewriter [TTY]) must be publicized at the local level through a variety of means including posters, handouts and listings in local directories. The EO Officer's identity and contact information should appear on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs.

Periodic training is recommended for the EO Officer and assigned staff to keep abreast of equal opportunity issues. Training on nondiscrimination and equal opportunity is available through the State EO Officer.
Small recipients and service providers, as defined in Title 29 CFR Section 38.4, need not designate an EO Officer with the full responsibilities as described above, but must designate an individual who will be responsible for developing and publishing complaint procedures and processing complaints as required by Sections 38.72 through 38.75.

Additionally, the WIOA Title I Governor's Discretionary and Dislocated Worker Additional Assistance subrecipients (excluding Local Areas) are not required to designate an EO Officer, but must designate an individual who will be responsible for adopting and publishing the Employment Development Department (EDD) complaint procedures. Therefore, in lieu of a local complaint procedure, the WIOA Title I Governor's Discretionary and Dislocation Worker Additional Assistance subrecipients must adopt the EDD's nondiscrimination and equal opportunity complaint procedures. The complaint procedures must include the option to file a charge of discrimination directly with the CRC. For more information, contact the State EO Officer at the address listed below:

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.

Notice and Communication

A recipient must provide initial and continuing notice that it does not discriminate on any prohibited basis. Attachment 1 contains the notice/poster relating to *Equal Opportunity is the Law* along with language highlighting the right to file a complaint under *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 recipient's website pages;
- Disseminated in internal memoranda and other written or electronic communications with staff;
- Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available; Provided to each participant and employee, the notice must be made part of each employee and participants file. It must be a part of both paper and electronic files, if both are maintained.

The notice must be provided in appropriate formats to registrants, eligible applicants/registrants, and applicants for employment and employees and participants with visual impairments. When a 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. The notice must be provided in appropriate languages other than English.

As it concerns communication, recipients must indicate that the WIOA Title I-financially assisted program or activity in question in an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities". This must be included on recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically, and/or on paper to staff, clients, or the public at large, to describe programs financially assisted under WIOA Title I or the requirements for participation by such recipients and participants.

Where such materials indicate that the recipient may be reached by voice telephone, the materials must also provide the TTY number or equally effective communication system, such as a videophone, captioned telephone, or a relay service. The California Relay Service can be reached by dialing 711 or 1-800-735-2922.

Recipients that publish or broadcast program information in the news media 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.

A recipient 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 activities, 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. This information must be communication 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 specific 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 into their clients' languages. 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.

Assurances

Contracts, cooperative agreements, job training plans, and policies and procedures must contain the nondiscrimination assurance specified in 29 CFR Section 38.25 and 38.26. The nondiscrimination assurance must state that the grant applicant will "comply fully with the nondiscrimination and equal opportunity provisions of WIOA" (29 CFR Part 38 Preamble) and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance.

Also in accordance with 29 CFR Section 38.25, each application for federal financial assistance under WIOA Title I must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or DOL prior to, and as a condition of, receiving federal financial assistance under WIOA Title I (including both new and continuing assistance).

Accessibility Requirements

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. Recipients that are subject to Title II of 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, recipients that receive federal financial assistance must meet their accessibility

obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR Part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA that is not enforced by the CRC. As indicated in Section 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

All WIOA Title I-financially assisted programs and activities must be programmatically accessible. 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, communicating with persons with disabilities as effectively as with other, and providing appropriate auxiliary aides or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

Discrimination Prohibited Based on Disability

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, a recipient must not do any of the following:

- Deny a qualified individuals 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 WIOA, including those provisions that prioritize opportunities in competitive integrated employment.
- Deny a qualified individuals with a disability the opportunity to participate as a member of planning or advisory boards.
- Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.

Reasonable Accommodation and Reasonable Modifications for Individuals with Disabilities

With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. For more information on what would constitute undue hardship as it relates to a reasonable accommodation of individuals with disabilities, please see the definition of "undue burden or undue hardship" found in 29 CFR Section 39.4(rrr)(1).

With regard to any aid, benefit, service, training, and employment, a recipient must also 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 service, program, or activity, which would constitute a fundamental alteration. For more information, see the definition of "fundamental alteration" found in 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 applicant/registrants, participants, applicant for employment, employees, members of the public, and their companions are as effective as communications with others.

A Reasonable Accommodation Policy and Procedure Guide (Attachment 3) should be used when processing reasonable accommodation requests. This document contains two sections: (1) provide general guidance and definitions for use when processing reasonable accommodation requests, and (2) provide step-by-step instructions on how to process these requests.

Service Animals

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

Mobile Aids and Devices

A recipient must permit individuals with mobility disabilities to sue wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devised 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.

Data and Information Collection and Maintenance

Each recipient 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 and the CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of 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, terminee, applicant for employment, and employee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of 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 recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner; or
- 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 (for example, through password protection).

LEP and Preferred Language Data

As indicated in 29 CFR Section 38.41, "LEP and preferred language" has been added to the list of categories of information that each recipient must record about each applicant, registrant, eligible applicant/registrant, participant, and terminee. It should be noted that this data collection

obligation would not apply to applicants for employment and employees because the obligation to LEP individuals in 29 CFR Section 38.9 does not apply to those categories of individuals. A recipients' collection of information relates directly to serving (not employing) LEP individuals.

As it related to the collection of "LEP and preferred language" data, the CRC has decided to delay enforcement for two years from the effective date of 29 CFR Part 38, which is January 3, 2017, in order to allow recipients adequate time to update their data collection and maintenance systems. This means that full compliance is required by January 3, 2019, when the CRC will begin enforcing the collection of "LEP and preferred language" data.

Local Area Complaint Log

Each recipient 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 recipient 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:

- The name and address of the complainant;
- The basis of the complaint;
- A description of the complaint;
- The date the complaint was filed;
- The disposition and date of disposition of the complaint; and
- Other pertinent information.

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

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.

Affirmative Outreach

The guidelines found in 29 CFR Section 38.40 require recipients to take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by 29 CFR Part 38 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; and/or
- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Complaint Processing Procedures

The Local Area EO Officer must do the following:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the local area for noncompliance with applicable nondiscrimination and equal opportunity provisions;
- Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures. (NOTE: Although the local area does not have the same contractual jurisdiction with vendors as with service providers, ***the Local Area shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the local area should continue to utilize the services of the vendor.***); and
- Establish a logging system to record discrimination complaints.

The Madera County Workforce Development Board's complaint processing procedures specify the following:

- Any person who believes that he or she 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 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 by the Local Area in an effort to provide more consistent information when processing discrimination complaints from participants of WIOA and Wagner-Peyser funded programs and activities. The Local Area is encouraged to personalize the form with the name of the Local Area, logo and slogan information, and use the form for any and all discrimination complaints that may be received. Finally, it should be noted that a representative may also file a complaint on behalf of a person who believes that they have been subjected to discrimination.

- The complaint may be filed either with the Local Area's EO Officer (or the person designated for this purpose), or directly with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.

- A complaint filed pursuant to Title 29 CFR 38 must be filed within 180 days of the alleged discrimination. 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 CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of CRC and does not create a defense for the respondent.

- Complaints must be filed in writing by completing the *Discrimination Complaint Form – Local Area* or similar form developed by a Subrecipient for this purpose. Regardless of the form used, all complaints must capture the following information and shall:

    - Be signed by the complainant or his or her authorized representative;
    - Contain the complainant's name, address, or other means of contacting him or her;
    - Identify the respondent; and
    - Describe the complainant's allegation in sufficient detail to allow CRC or the local area EO Officer, as applicable, to determine whether (1) CRC or the local area has jurisdiction over the complaint; (2) the complaint was filed timely; and (3) the complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA.

- Each complainant and respondent has the right to be represented by an attorney or other individual of his or her choice.

- Alternative Dispute Resolution (ADR):

  The complainant must be offered alternative dispute resolution immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant.

  The preferred form of ADR is mediation. Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent) in communicating their concerns and come to an agreement about how to resolve a dispute.

  The mediator does not make decisions, rule as to who is right or wrong, 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 in any legal or administrative proceedings.

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

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

- The non-breaching party may file a complaint with 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.

Complaints Filed with the Local Area

The Local Area EO Officer shall issue a written acknowledgement of receipt by the local area of a complaint alleging discrimination by a WIOA Title I recipient and shall include a notice of the complainant's right to representation in the complaint process.

The EDD Equal Employment Opportunity Office requires the EO Officer to forward one copy of the alleged complaint and one copy of the issued Notice of Final Action 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.

If the complainant elects not to participate in the ADR process, the EO Officer shall investigate the circumstances underlying the alleged complaint. *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 legally binding contract and falls under contract law.

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

If the 90 days expire and the complainant does not receive a Notice of Final Action from the local area, or the local area 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 CRC. In other words, the complaint must be filed with CRC within 120 days of the date on which the complaint was filed with the local area.

The CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 38.81, or for other good cause shown.

The Local Area shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WOIA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with CRC within 30 days of receipt of the Notice.

During the resolution process, the EO 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 on the record.

Actions by the CRC

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

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

The Local Area, the complainant, or a representative may contact CRC for information regarding the complaint filed.

When a complaint contains insufficient information, 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.

The CRC, per WIOA Section 183(c), 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 United States, at any designated time and place.

Where CRC lacks jurisdiction over a complaint, CRC will:

- Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIOA or Title 29 CFR Part 38; and
- 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 the determination.

The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 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., CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in Title 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 a One-Stop delivery system, the following procedures apply:

- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIOA and by a civil rights law enforced by the federal grant making agency, 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 any basis that is prohibited by Section 188 of 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 Title 29 CFR Part 38. The CRC will advise the complainant and the local area of the retention of the complaint.

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

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

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

- The specific findings of the investigation;
- The proposed corrective action or remedial action and the time by which the corrective action or remedial action must be completed;
- Whether it will be necessary for the local area to enter into a written agreement; and
- The opportunity to participant 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.

. *Complaint Determinations*

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 38.86or 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 Title 29 CFR Part 38 may be referred to for detailed information:

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

Intimidation and Retaliation Prohibited

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging a violation of WIOA; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA; furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, or exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity provisions of WOIA or Title 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.

Governor's Oversight and Monitoring Responsibilities for State Programs

The EDD is responsible for the oversight and monitoring of all WIOA Title I-financially assisted state programs. Consequently, the EDD EEO Office will conduct ANNUAL onsite monitoring reviews of Local Areas. The annual onsite monitoring reviews will ensure that the Local Areas are in compliance with the nondiscrimination and equal opportunity provisions of WIOA. The EDD EEO Office will determine whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way.

Additional Components of the Nondiscrimination Plan

The Nondiscrimination Plan must also include the following:

- A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of WIOA, is likely to conduct its Title I-financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in 29 CFR Part 38.
- A review of recipient policy issuances to ensure that they are nondiscriminatory.
- A system for reviewing recipient' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.
- Procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of 29 CFR Section 38.5 regarding race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, political affiliation or belief, citizenship, or participation in any WIOA Title I-financially assisted program or activity.
- Procedures for ensuring that recipients comply with the requirements of applicable Federal disability nondiscrimination law, including Section 504; Title II of the ADA of 1990, as amended, if applicable; WIOA Section 188, with regard to individuals with disabilities.
- A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38 are aware of and can effectively carry out these responsibilities.
- Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.
- Supporting documentation to show that the commitments made in the Nondiscrimination Plan have been and/or are being carried out. This supporting documentation includes, but is not limited to, the following:
    - Policy and procedural issuances concerning required elements of the Nondiscrimination Plan;
    - Copies of monitoring instruments and instructions;
    - Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by 29 CFR Part 38;

- Information reflecting the extent to which equal opportunity training, including training called for by 29 CFR Section 38.29(f) and 38.31(f), is planned and/or has been carried out;
- Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and
- Copies of any notices made under 29 CFR 38.34 through 38.40.

INQUIRIES:

Please direct inquiries about this policy to Nuvia Moreno, Deputy Director/EO Officer, Madera County Workforce Investment Corporation, at (559) 662-4587, or TDD/TTY at (559) 674-7497.

Attachments: Equal Opportunity is the Law
What To Do If You Believe You Have Experienced Discrimination
Discrimination Complaint Form
Reasonable Accommodation Policy and Procedure Guide

ATTACHMENT 1

MADERA COUNTY WORKFORCE Development Board

EQUAL OPPORTUNITY IS THE LAW

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

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, political affiliation or belief; and

Against any beneficiary of, or applicant to, or participation in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act (WIOA), on the basis of the beneficiary's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

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

Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration of, or in connection with, such a program or activity.

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 from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210, or electronically as directed on the CRC website at www.dol.gov/crc..

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

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

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

MADERA COUNTY WORKFORCE Development Board

ATTACHMENT 3

DISCRIMINATION COMPLAINT FORM
LOCAL WORKFORCE DEVELOPMENT AREA

This form should be used by anyone 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) Equal Opportunity Officer or EDD field office complaint representative.

1. Complainant Information

☐ Miss ☐ Ms. ☐ Mrs. ☐Mr. ☐ Other Home Phone: ( ) -
Work Phone: ( ) -
Name: _____ Cell : ( ) -
Street Address: _____
City: _____ E-mail:
State: Zip Code:

2. Complainant Contact Information

When is it a convenient time during business hours (8am to 5pm) 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)
☐ Political Affiliation or Belief
☐ Retaliation
☐ Gender - *Specify* ☐ F ☐ M
☐ Race - *indicate race:*
☐ Citizenship
☐ Disability
☐ Religion
☐ Harassment
☐ Sex(including pregnancy, childbirth, or related medical conditions, gender identity, and transgender status)
☐ Status as a program participant under the Workforce Innovation and 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: ( ) -

E-mail: ( ) -

10. Alternate Dispute Resolution (ADR) also known as mediation.

Notice: You must indicate if you wish to mediate your case. The Local Area EO Officer 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's signature:

You must sign this form for your complaint to be processed!

- Faxed or otherwise electronically delivered complaints will be logged into our system; however, an official investigation cannot begin until the original, signed copy is received.

Signature: **Date:**

MADERA COUNTY WORKFORCE Development Board

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.