



**WORKFORCE DEVELOPMENT
BOARD OF MADERA COUNTY**

A G E N D A

**December 19, 2019
3:00 p.m.**

Meeting will be held at:

***Workforce Assistance Center
Executive Conference Room
2037 W. Cleveland Avenue
Madera, CA 93637
(559) 662-4589***

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY Pursuant to the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, any individual with a disability who requires reasonable accommodation to attend or participate in a meeting or function of the Workforce Development Board of Madera County, may request assistance by contacting the Executive Assistant at Madera County Workforce Investment Corporation office, 2037 W. Cleveland Avenue, Madera, CA 93637; Telephone 559/662-4589; CRS 711; Fax 559/673-1794.

If a quorum of the Workforce Development Board is not present at the time of the meeting BUT a quorum of the Workforce Development Board Executive Committee IS present, an Executive Committee board meeting will be conducted in place of the Workforce Development Board.

This agenda and supporting documents relating to the items on this agenda are available through the Workforce Development Board website at <http://www.maderaworkforce.org/workforce-board-meetings/>. These documents are also available at the Madera County Workforce Assistance Center – office of the Executive Director. The Workforce Development Board is an equal Opportunity Employer/Program. Auxiliary aids and services are available upon request.

1.0 Call to Order

1.1 Pledge of Allegiance

2.0 Additions to the Agenda

Items identified after preparation of the Agenda for which there is a need to take immediate action. Two-thirds vote required for consideration (Government Code Section 54954.2(b)(2))

3.0 Public Comment

This time is made available for comment from the public on matters within the Board's jurisdiction but not appearing on the agenda. The Board will not take action on any items presented under public comment. The comment period will be limited to 15 minutes.

4.0 Introductions and Recognitions

5.0 Adoption of Board Agenda

6.0 Consent Calendar

6.1 Consideration of ratification of the August 15, 2019 Executive Committee meeting minutes.

6.2 Consideration of approval of the October 17, 2019 Executive Committee meeting minutes.

6.3 Consideration of the ratification of the re-appointment of David Salter, Salter's Distributing, for an additional 3 year term – 11/26/19 to 11/26/22.

6.4 Consideration of ratification of the removal of Exchille Mendoza from the WDB due to non-participation on the WDB as she is no longer with SpringHill Suites.

6.5 Consideration of ratification of the application of Mark Choe, The Pines Resort, to the WDB and authorization to forward his application to the Madera County Board of Supervisors for a 3 year term.

- 6.6 Consideration of ratification of the application of Lanie Suderman, Visit Yosemite | Madera County, to the WDB and authorization to forward her application to the Madera County Board of Supervisors for a 3 year term.
- 6.7 Consideration of approval of the resignation of Susan Crosno as she is no longer with the Caglia Family of Companies and is no longer available to sit on the Workforce Development Board (WDB) of Madera County.
- 6.8 Consideration of approval of the resignation of Ivan Otamendi, Exclusive Wireless, as his schedule does not allow him to attend the WDB meetings on a regular basis.
- 6.9 Consideration of approval of the resignation of Gabriel Gil, PG&E, as his schedule does not allow him to attend the WDB meetings on a regular basis.
- 6.10 Consideration of approval of the re-appointment of Jorge DeNava, Central Valley Opportunity Center, for an addition 3 year term: 4/4/20 – 4/4/23
- 6.11 Consideration of ratification of the transfer of funds in the amount of \$284,912 from the Dislocated Worker funding stream to the Adult funding stream.
- 6.12 Consideration of ratification of the final program budget for the 2019-20 fiscal year.
- 6.13 Consideration of ratification of Central Learning Adult School Site as a new training provider which provides training programs to prepare students for the State Certified Nurse Assistance Competency Exam.
- 6.14 Consideration of ratification of the One Stop Operator Quarterly Report for the period of July 1, 2019 through September 30, 2019.
- 6.15 Consideration of ratification of the revised Veterans and Eligible Spouses Priority of Services Policy.
- 6.16 Consideration of ratification of the Use and Confidentiality of Participant Personally Identifiable Information (PII) policy.
- 6.17 Consideration of approval of the revised Incumbent Worker Training policy.

7.0 Action Items

- 7.1 Consideration of approval of the new Criminal Record Restrictions and Impact Based on Race and Nationality policy.
- 7.2 Consideration of approval of the new Services and Referrals to Victims of Human Trafficking policy.

8.0 Information Items

- 8.1 WDB Workshop: Identifying Criteria for Quality Jobs
- 8.2 MCWIC Update
- 8.3 WDB Program Year 2018-19 Performance
- 8.4 Program Update
- 8.5 Upcoming Grant Opportunities
- 8.6 Quarterly Program Financial Reports Period Ending 9/30/19

9.0 Written Communication

10.0 Open Discussion/Reports/Information

- 10.1 Board Members
- 10.2 Staff

11.0 Next Meeting

February 20, 2020

12.0 Adjournment



EXECUTIVE COMMITTEE

MINUTES

August 15, 2019

***Convened at Madera County Workforce Assistance Center - Conference Room
2037 W. Cleveland Avenue, Madera, CA 93637
(559) 662-4589***

PRESENT: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant
ABSENT: Pat Gordon, Robyn Smith
GUEST: Steven Gutierrez, Marie Harris, Linda Monreal, David Shinder
OTHERS: Sarahi Cuellar, Nicki Martin, Jessica Roche, Tracie Scott-Contreras, Maiknue Vang

1.0 Call to Order

A quorum of the Workforce Development Board (WDB) was not established, however a quorum of the Executive Committee was present. An Executive Committee meeting was convened at 3:08 p.m.

1.1 Pledge of Allegiance

2.0 Additions to the Agenda

Staff introduced Linda Monreal. Jesse Carrasco was reassigned and will no longer be available to participate in the WDB. Linda Monreal will take Jesse's place on the WDB.

Rob Poythress moved to add agenda item 6.13 to nominate Linda Monreal to the WDB in Jesse's place, seconded by Nichole Mosqueda.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

3.0 Public Comment

None.

4.0 Introductions and Recognitions

Roundtable introductions were done by everyone in attendance.

5.0 Adoption of Board Agenda

Wayne Rylant moved to adopt the agenda, seconded by Rob Poythress

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

6.0 Consent Calendar

- 6.1 Consideration of the ratification of the minutes for the April 18, 2019 Workforce Development Board (WDB) of Madera County meeting minutes.
- 6.2 Consideration of approval of the minutes for the July 25, 2019 Executive Committee meeting minutes.
- 6.3 Consideration of the ratification of the nomination and application of Santos Garcia, Labor Sector, to the WDB and authorization to forward his application to the Board of Supervisors for an appointment to the WDB for a 3 year term.
- 6.4 Consideration of the ratification of the re-appointment of Mike Fursman, UFCW 8, for an additional 3 year term – 8/23/19 to 8/23/22
- 6.5 Consideration of the ratification of the re-appointment of Michelle Brunetti, Valley Children’s Hospital, for an additional 3 year term – 8/23/19 to 8/23/22
- 6.6 Consideration of the ratification of the resignation of Claudia Habib, State Center Community College District, from the WDB.
- 6.7 Consideration of the ratification of the resignation of Bob Carlson, Community-member-at-large, from the WDB Executive Committee.
- 6.8 Consideration of the ratification of the revised application for subsequent local area designation and local board recertification for the 2019-21 program year.
- 6.9 Consideration of the ratification of the transfer of funds from the Dislocated Worker funding stream to the Adult funding stream in the amount of \$200,000.
- 6.10 Consideration of approval of the application of Marie Harris, State Center Community College District, to the WDB and authorization to forward her application to the Madera County Board of Supervisor for a 3 year term.
- 6.11 Consideration of approval of the AB1111 Grant Document and Grant Submission.
- 6.12 Consideration of approval of the One Stop Operator Quarterly Report for the period of April 1, 2019 through June 30, 2019.
- 6.13 Consideration of approval of the nomination of Linda Monreal to the WDB as the replacement for Jesse Carrasco.

Nichole Mosqueda moved to approve the Consent Calendar, seconded by Rob Poythress.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

7.0 Action Items

None.

8.0 Information Items

8.1 WDB Strategic Planning Workshop – David Shinder, Facilitator

David Shinder facilitated a workshop on opportunities and priorities for strengthening workforce development in Madera County. David also facilitated convenings for various workforce areas for the work that was done around the local and regional workforce plans including Madera. Many boards are taking time under the current legislation to establish priorities and are also establishing targets both on the demand and on the supply side. On the demand side, boards are identifying priority sectors. In Madera, labor market analysis were done to identify local sectors. On the supply side, boards must identify which population they want to prioritize. The Federal law mandates that boards and partners be collaborative. The work that the boards do is vital for the success of the local and regional economies because boards are charged with developing partnerships and implementing programs that make the workforce better prepared for employment. WIOA states that boards have the ability to make and approve contracts. The US Department of Labor has recently published some guidance that is very useful to boards – A Call to Action for Workforce Development Boards. The publication is provided within the agenda packet. The publication notes that as members of Workforce Boards, members are strategists, a conveners, managers and optimizers. One of the requirements boards have is seeking public

input when developing workforce plans – Madera is very good at getting the community involved and providing input. As a convener, the board can help develop non-traditional partnerships within the community. The Board is poised well to understand the business needs of the community and increasing the pool of available workers. Currently the local labor force participation rate is under 60% which causes a shortage of workers for businesses. The board must consider focusing on a population of workers who in the past may have been overlooked by businesses such as the formerly incarcerated or persons with disabilities due to the current very low unemployment rate. David lead a conversation with the WDB on identifying and developing the Board's priorities in order to develop a workforce with in-demand skills. David highlighted the 4 P's: People, Progress, Prosperity and Programs. David asked the Board to consider the 4 P's as a starting point for their input but welcomed input for any area the board felt would be important to include. The Board identified a list of 10 priorities/areas that they would like to look more closely at and gather information on.

- 1. Who is not participating in the labor force?*
- 2. How do we move under-skilled, under-employed people up the career ladder?*
- 3. (Need) to talk "careers" early and often within the K-12 system*
- 4. Better communication of career technical education (CTE) pathways to businesses*
- 5. How do we better prepare internal candidates to help them move up (incumbent worker training)?*
- 6. Better marketing of workforce services*
- 7. Use data more effectively*
- 8. Focus on "economic engines"/identify priority sectors*
- 9. Focus on second chance individuals (25 to 49 year-olds)*
- 10. Better career planning and information (apprenticeships; trades; AA degrees)*

9.0 Written Communication

None.

10.0 Open Discussion/Reports/Information

10.1 Board Members

Wayne Rylant shared information on a food drive that Pacific Ethanol is participating in that will benefit the Madera County Food Bank during the month of September.

10.2 Staff

Name badges and WDB director business cards were developed and provided to members. A one page informational flyer is also being developed.

11.0 Next Meeting

October 17, 2019

12.0 Adjournment

Meeting adjourned at 4:51 p.m.



Executive Committee

MINUTES

October 17, 2019

***Convened at Madera County Workforce Assistance Center - Conference Room
2037 W. Cleveland Avenue, Madera, CA 93637
(559) 662-4589***

PRESENT: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

ABSENT: Pat Gordon, Robyn Smith

GUEST: Debi Bray, Mark Choe, Jorge DeNava, Mike Fursman, Laura Gutile, Bobby Kahn, Daniel Patterson, Chuck Riojas, Rhonda Salisbury, Yvette Quevedo

STAFF: Nicki Martin, Jessica Roche, Tracie Scott-Contreras

1.0 Call to Order

An Executive Committee meeting was called to order by Chair Brett Frazier at 3:00 p.m. due to a lack of a quorum of the full Workforce Development Board (WDB).

1.1 Pledge of Allegiance

2.0 Additions to the Agenda

None.

3.0 Public Comment

None.

4.0 Introductions and Recognitions

Roundtable introductions were done by everyone in attendance.

5.0 Adoption of Board Agenda

Nichole Mosqueda moved to adopt the agenda, seconded by Wayne Rylant.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

6.0 Consent Calendar

6.1 Consideration of the ratification of the April 18, 2019 Workforce Development Board (WDB) of Madera County meeting minutes.

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- 6.12 Consideration of the ratification of the nomination of Linda Monreal, Madera Unified School district, to the WDB as the replacement for Jesse Carrasco.
- 6.13 Consideration of approval of the re-appointment of David Salter, Salter’s Distributing, for an additional 3 year term – 11/26/19 to 11/26/22.
- 6.14 Consideration of approval of the removal of Exchille Mendoza from the WDB due to non-participation on the WDB as she is no longer with SpringHill Suites.
- 6.15 Consideration of ratification of the One Stop Operator Quarterly Report for the period of April 1, 2019 through June 30, 2019.
- 6.16 Consideration of approval of the final program budget for the 2019-20 fiscal year.
- 6.17 Consideration of approval of the revised Veterans and Eligible Spouses Priority of Services policy.
- 6.18 Consideration of approval of a new training provider, Central Learning Adult School Site, which provides training programs to prepare students for the state Certified Nurse Assistant Competency Exam.

Rob Poythress moved to approve the Consent Calendar, seconded by Nichole Mosqueda.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

7.0 Action Items

- 7.1 Consideration of approval of the application of Mark Choe, The Pines Resort, to the WDB and authorization to forward his application to the Madera County Board of Supervisors for a 3 year term.

Rob Poythress moved to approve, seconded by Wayne Rylant.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

7.2 Consideration of approval of the application of Lanie Suderman, Visit Yosemite | Madera County, to the WDB and authorization to forward her application to the Madera County Board of Supervisors for a 3 year term.

Items 7.1 and 7.2 were discussed as a group. Mark Choe and Lanie Suderman are new appointments to the WDB. They will bring representation from Eastern Madera County to the WDB. They will also provide input and representation for the tourism sector. Debi Bray thanked Tracie for becoming a member of the Visit Yosemite Board.

Wayne Rylant moved to approve, seconded by Nichole Mosqueda.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

7.3 Consideration of approval of the transfer of funds in the amount of \$284,912 from the Dislocated Worker funding stream to the Adult funding stream.

Staff has seen a significantly low number of Dislocated Worker participants compared to Adult participants. There have not been any major layoffs in the county. This transfer will be taken from the last fiscal year and placed into the current fiscal year funding.

Wayne Rylant moved to approve, seconded by Rob Poythress.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

7.4 Consideration of approval of the Use and Confidentiality of Participant Personally Identifiable Information (PII) policy.

Local areas, including Madera, collect much confidential information from customers. Staff want to follow the law and procedures and want to have a more fully developed process in place to be able to notify staff and the customers with. Much of the confidential information is uploaded to CalJOBS which is an online State system.

Wayne Rylant moved to approve, seconded by Nichole Mosqueda.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

7.5 Consideration of approval of the One Stop Operator Quarterly Report for the period of July 1, 2019 through September 30, 2019.

Daniel Patterson presented the quarterly report and thanked the Board. This is the second year for the One Stop Operator. Work with the partners is continuing to move forward and is making great progress.

Wayne Rylant moved to approve, seconded by Rob Poythress.

Vote: Approved – unanimous

Yes: Brett Frazier, Nichole Mosqueda, Robert Poythress, Wayne Rylant

8.0 Information Items

8.1 Program Impact Report

Tracie borrowed the concept for this report from another workforce area. The first part of the report focuses on information on the Workforce Assistance Center. There were 45,205 visits to the Center and 19,711 services provided to individuals for the 2018-2019 fiscal year. The second part contains information on job seeker demographics. These numbers only represent people enrolled as Title I

Adult, Dislocated Worker and Youth. Job Seeker Impacts information contains information for employment rates which are based on exits from the program. The Outcomes is the average wage at the point of exit. Brett Frazier suggested using percentages for some of the information. Staff follow up with past participants for job and wage information up to 1 year after they have exited the program. Information for Business Services is also included in the report. Staff would like to continue to bring this report to the WDB on a quarterly basis. Board members thought the report was easy to read. It was suggested that staff could provide yearly comparisons for the information on the report annually. Staff will try to include information on sectors in future reports. Recently, a Bill was signed that will give workforce areas access to EDD's earning information for participants. Tracie thanked Jessica, Gail and Jorge for their work on the report.

8.2 Labor Force Participation Rates

Previously, the Board discussed low labor force participation rates for Madera County. Staff provided information breaking down demographics for individuals in the labor force. At this time, 46% of 16 year-olds and older are not currently in the labor force. Staff will be strengthening outreach to the K12 system, the Madera Adult School and the Community College. Wayne Rylant took part in the interviews for the high school seniors.

8.3 Discussion on Quality Jobs and Economic Self-Sufficiency

Information provided within agenda packet.

8.4 Hallmarks of Excellence Continuous Improvement Plan Update

Information provided within agenda packet.

8.5 Madera County Workforce Investment Corporation (MCWIC) Update

Information provided within agenda packet.

9.0 Written Communication

9.1 Annual Job Fair Best Practices

Information provided within agenda packet.

9.2 Madera County Compact

Information provided within agenda packet.

10.0 Open Discussion/Reports/Information

10.1 Board Members

10.2 Staff

11.0 Next Meeting

December 19, 2019

12.0 Adjournment

Meeting adjourned at 3:40 p.m. after agenda item 8.2 due to loss of the quorum.



Director Nomination

To: Workforce Development Board of Madera County

From: The Madera District Chamber of Commerce

The Madera District Chamber of Commerce proudly submits the name of Mark Choe, to the Madera County Board of Supervisors for nomination to the Workforce Development Board of Madera County.

Signature

President/CEO

Title

October 17, 2019

Date



Director Application

NAME: Mark Choe	TITLE GM
EMPLOYER: The Pines Resort	
ADDRESS: 55432 Road 432, Bass Lake, CA 93604	
PHONE: [REDACTED]	FAX:
EMAIL: [REDACTED]	ALTERNATE EMAIL:

ORGANIZATIONS YOU BELONG TO:	HOW LONG?
1. Bass Lake Chamber	5 years
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

REFERENCES:	PHONE:
Tom Wheeler	559-[REDACTED]
Brett Fazier	559-[REDACTED]
Connie Beauregard	559-[REDACTED]
Bob Macualay	559-[REDACTED]
Yuli Gotsev	559-[REDACTED]

WHY DO YOU WANT TO BE A MEMBER OF THE WORKFORCE DEVELOPMENT BOARD OF MADERA COUNTY?

My family's business, The Pines Resort is one of the top employers in the county with over 210 employees during the summer. Being that we are one of the largest hospitality businesses in a county that derives much of it's revenue from tourism leads me to believe that I can offer some insight and value to the Madera County workforce.

Brett Fazier had originally suggested I join the board and after speaking with Tracie I think that I would be a good fit for the position. Hopefully I can help in mission of helping businesses and workers in Madera County.

**DO YOU HAVE ANY RELEVANT EXPERIENCE WITH WORKFORCE DEVELOPMENT, ECONOMIC DEVELOPMENT, EDUCATION, OR TRAINING PROGRAMS? YES NO
IF YES, PLEASE EXPLAIN:**

I've started, owned and operated 5 businesses in all different sectors over the last 21 years. Currently I conduct training with managers and staff on a regular basis. I am also involved with our very talented and skilled HR managers to create system for onboarding and training staff.

I have created new positions and systems as the business has grown such as an event coordinator, activity host and more.

I myself am a perennial student. I have a quarterly workshop I attend every quarter in Toronto. I also attend many seminars and conferences so that I am always learning new ways of doing things better.

PLEASE LIST ANY OTHER INFORMATION THAT YOU FEEL WOULD BE PERTINENT.

I also volunteer as a kickboxing instructor at Kihon Martial Arts in Oakhurst for the past 5 years.



SIGNATURE

9/21/2019

DATE



Director Nomination

To: Workforce Development Board of Madera County

From: The Madera District Chamber of Commerce

The Madera District Chamber of Commerce proudly submits the name of **Lanie Suderman**, to the Madera County Board of Supervisors for nomination to the Workforce Development Board of Madera County.

A handwritten signature in black ink that reads 'Gabe Bray'.

Signature

President/CEO

Title

October 17, 2019

Date



**WORKFORCE DEVELOPMENT
BOARD OF MADERA COUNTY**

Director Application

NAME: Lanie Suderman	TITLE: Director of Operations
EMPLOYER: Visit Yosemite Madera County	
ADDRESS: 40343 Highway 41, Oakhurst, CA 93644	
PHONE: 559- [REDACTED]	FAX:
EMAIL: [REDACTED]	ALTERNATE EMAIL:

ORGANIZATIONS YOU BELONG TO:	HOW LONG?
1. Rotary Club of Oakhurst Sierra	6 years
2. Eastern Madera County Chamber Alliance	4 years
3. CAL Travel	5 years
4. Eastern Madera County Emergency Taskforce	5 years
5. Gold Country Visitors Authority	2 years

REFERENCES:	PHONE:
Supervisor Tom Wheeler	559- [REDACTED]
Bobby Kahn	559- [REDACTED]
Rhonda Salisbury	559- [REDACTED]
Theresa Wilson	559- [REDACTED]
Michelle Miller	559- [REDACTED]

WHY DO YOU WANT TO BE A MEMBER OF THE WORKFORCE DEVELOPMENT BOARD OF MADERA COUNTY?

Tourism and Workforce Development go hand in hand. The tourism industry suffers for lack of qualified employees. I'd like to better understand the issues and advocate for our partners.

**DO YOU HAVE ANY RELEVANT EXPERIENCE WITH WORKFORCE DEVELOPMENT, ECONOMIC DEVELOPMENT, EDUCATION, OR TRAINING PROGRAMS? YES NO
IF YES, PLEASE EXPLAIN:**

Many years of management positions provided me first hand experience of the challenges Eastern Madera County tourism partners face when it comes to attracting and maintaining qualified employees.

PLEASE LIST ANY OTHER INFORMATION THAT YOU FEEL WOULD BE PERTINENT.

I want to be a part of the discussion our region faces, along with California, on the housing crisis.



SIGNATURE



DATE

America's **JobCenter**
of CaliforniaSM

Transfer of Funds Request

1. Local Area Madera County
 2. Subgrant Number K9110024 3. Request Date 10/1/2019
 4. Program Year 2018 5. Transfer Request No 02

6. Direction of Transfer (Check One):

Adult to Dislocated Worker	Dislocated Worker to Adult
<input type="checkbox"/> 201 → 299	<input type="checkbox"/> 501 → 499
<input type="checkbox"/> 202 → 200	<input checked="" type="checkbox"/> 502 → 500

7. Amount of Transfer \$284,912.00
 8. Contact Person Jessica Roche
 9. Contact Person's Telephone Number 559-662-4590

10. All transfer requests must be approved and signed off by the Local Board.

Date of Local Board meeting to discuss transfer 10/17/2019

Date of Local Board meeting to approve transfer 10/17/2019

11. By signing below, the Local Area Administrator/Designee requests a transfer of funds and certifies that this transfer request was approved at the Local Board Meeting on the date indicated above.

Signature _____
 Name Tracie Scott-Contreras
 Title Executive Director
 Date 10/17/19

12. Taking into account the factors described under the Transfer of Funds Procedures section on page 5 of the directive, describe the Local Board's reasoning to request a transfer of funds.

Continue to see a reduction of dislocated eligible customers, and increase in Adult eligible customers along with an increase in need for training for Adult customers.

Transfer of Funds Request Budget Plan

Local Area <u>MAD</u>	Date Prepared <u>10/1/2019</u>
------------------------------	---------------------------------------

Subgrant Number K9110024
Year of Appropriation 2018

Grant Code	Adult to DW	DW to Adult
	<input type="checkbox"/> 201 → 299 <input type="checkbox"/> 202 → 200	<input type="checkbox"/> 501 → 499 <input checked="" type="checkbox"/> 502 → 500

FUNDING IDENTIFICATION	ADULT	DW
1. Formula Allocation	752,228	599,412
2. Prior Adjustments - Plus or Minus	0	0
3. Previous Amounts Transferred	200,000	(200,000)
4. Current Amount to be Transferred	284,912	(284,912)
5. TOTAL FUNDS AVAILABLE (Lines 1 through 4)	1,237,140	114,500

TOTAL ALLOCATION COST CATEGORY PLAN		
6. Program Services (Lines 6a through 6c)	1,113,426	103,050
a. Career Services (WIA Core Services / Intensive Services)	822,173	86,192.88
b. Training Services	250,000	15,574.12
c. Other	41,253	1,283.00
7. Administration	123,714	11,450.00
8. TOTAL (Lines 6 plus 7)	1,237,140	114,500

QUARTERLY TOTAL EXPENDITURE PLAN (cumulative)		
9. September 2018	0	0
10. December 2018	0	0
11. March 2019	49,039	0
12. June 2019	530,603	57,694.00
13. September 2019	898,843	114,500
14. December 2019	1,237,140	114,500
15. March 2020	1,237,140	114,500
16. June 2020	1,237,140	114,500

COST COMPLIANCE PLAN (maximum 10%)		
21. % for Administration Expenditures (Line 7/Line 5)	10.00%	10.00%

<u>Jessica Roche, Controller</u>	<u>559-662-4590</u>
Contact Person, Title	Telephone Number

Comments

Transfer of Funds Request Participant Plan

Local Area: MADPrepared Date 10/1/2019

Enter the number of individuals in each category.

TOTALS FOR PY 20	ADULT	DW
1. Registered Participants Carried in from PY 2017	196	25
2. New Registered Participants for PY 2018	347	31
3. Total Registered Participants for PY 2018 (Line 1 plus 2)	543	56
4. Exiters for PY 2018	269	28
5. Registered Participants Carried Out to PY 2019 (Line 3 minus 4)	274	28

PROGRAM SERVICES		
6. Career Services	1,070	112
a. Basic Career Services (WIA Core Services)	536	56
b. Individualized Career Services (WIA Intensive Services)	534	56
7. Training Services	157	25

EXIT STATUS		
8. Entered Employment	50	10
9. Training-Related	10	3
10. Entered Military Service	0	0
11. Entered Apprenticeship Program	1	0
12. Exited for Exclusionary Reasons	15	0

Maiknue Vang, Deputy Director

Contact Person, Title

559-662-4503

Telephone Number

Comments:

Although the DW enrollment numbers did not drop very much, the number in training combined with the fact the training was expedited low cost, the staff time along with expensed training is considerably lower than estimated. However, there has been an increase in the Adult eligible individuals, of whom are harder to serve than in prior years and enrollment is longer than usual.



Budget FY 2019-2020

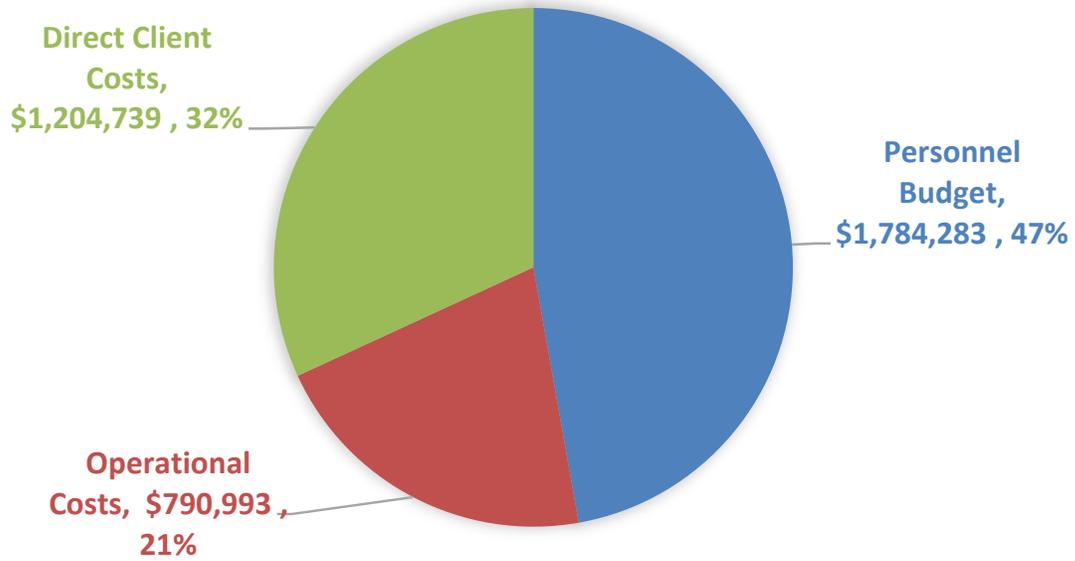
Revenue Source	Total	5910-Adult	5930-DW	5920-Youth	5932-Rapid Response	5933-RR Layoff Aversion	5973-MCDC - In Custody (Proposed)	5972-MCDC - Probation (Proposed)	WAF 6.0 ARIA	9906-DSS Job Fair	9914-Skills Trng Project	P2E IDS	P2E SSEL	P2E Planning	Frsn CPP ExO	9909-WF Veteran	9910-WF- Single Female Parent	9912-WF GED-HiSet	Corp - Unrestricted	9911-AJCC 519	9911-AJCC 512	9911-AJCC 517	9911-AJCC 521	9911-AJCC 522	9911-AJCC 523
REVENUES																									
<i>Prior Year Restrictions</i>	\$ -																								
WIOA 18-19 Carry-In	\$ 1,367,794	\$ 221,624	\$ 541,718	\$ 592,679					\$ 11,773																
Outstanding Obligations carrying into FY 2019-2020	\$ -																								
Local Contracts	\$ 25,432													\$ 12,932	\$ 12,500										
Foundation Grants	\$ 30,342															\$ 3,007	\$ 525	\$ 26,810							
Grants/Contracts																									
WIOA Allocations PY 19-20 WSIN18-32 4/24/19	\$ 2,306,921	\$ 805,437	\$ 564,468	\$ 808,437	\$ 102,662	\$ 25,917																			
WIOA Allocations May 22,19 Revisions (rec 7/19/19)	\$ (73,308)	\$ (53,209)	\$ 34,944	\$ (55,043)																					
State Contracts	\$ -																								
Local Contracts	\$ 369,223						\$ 56,627	\$ 34,762		\$ 22,898	\$ 98,398	\$ 56,249	\$ 100,289												
Transfer DW to Adult K9110024 YOA 2018 8/1/19	\$ -	\$ 200,000	\$ (200,000)																						
Transfer DW to Adult AA011014 YOA 2019	\$ -	\$ 455,000	\$ (455,000)																						
Other revenue																									
Subleases	\$ 272,995																								
Unrestricted	\$ 10,000																		\$ 10,000						
19-20 WIOA Formula Reserve 20%	\$ (432,015)	\$ (241,446)	\$ (28,882)	\$ (161,687)																					
Total Revenue by Program/Function	\$ 3,877,383	\$ 1,387,407	\$ 457,247	\$ 1,184,385	\$ 102,662	\$ 25,917	\$ 56,627	\$ 34,762	\$ 11,773	\$ 22,898	\$ 98,398	\$ 56,249	\$ 100,289	\$ 12,932	\$ 12,500	\$ 3,007	\$ 525	\$ 26,810	\$ 10,000	\$ 109,395	\$ 5,785	\$ 5,052	\$ 65,664	\$ 78,777	\$ 8,322
EXPENSES																									
<i>Personnel:</i>																									
Salaries/Wages	\$ 1,428,089	\$ 490,820	\$ 155,614	\$ 488,861	\$ 63,286	\$ 14,858	\$ 37,128	\$ 23,231	\$ 7,719	\$ 9,719	\$ 18,132	\$ 37,385	\$ 41,015	\$ 8,376	\$ 7,724	\$ -	\$ -	\$ -	\$ -	\$ 15,571	\$ 643	\$ 581	\$ 6,444	\$ -	\$ 980
Benefits	\$ 356,195	\$ 122,421	\$ 38,813	\$ 121,932	\$ 15,785	\$ 3,706	\$ 9,260	\$ 5,794	\$ 1,925	\$ 2,424	\$ 4,523	\$ 9,325	\$ 10,230	\$ 2,089	\$ 1,926	\$ -	\$ -	\$ -	\$ -	\$ 3,884	\$ 160	\$ 145	\$ 1,607	\$ -	\$ 245
Total Personnel	\$ 1,784,283	\$ 613,241	\$ 194,427	\$ 610,793	\$ 79,071	\$ 18,564	\$ 46,389	\$ 29,026	\$ 9,644	\$ 12,143	\$ 22,655	\$ 46,710	\$ 51,244	\$ 10,465	\$ 9,650	\$ -	\$ -	\$ -	\$ -	\$ 19,455	\$ 804	\$ 726	\$ 8,052	\$ -	\$ 1,225
<i>Other Than Personal Service (OTPS):</i>																									
<i>Direct Expenses</i>																									
Total Direct Expenses (OTPS)	\$ 1,527,346	\$ 529,703	\$ 213,056	\$ 400,542	\$ 2,862	\$ -	\$ 1,445	\$ 847	\$ 246	\$ 8,760	\$ 71,317	\$ 1,001	\$ 38,786	\$ 1,012	\$ 1,176	\$ -	\$ -	\$ 26,810	\$ 1,500	\$ 89,940	\$ 4,981	\$ 4,196	\$ 43,293	\$ 78,777	\$ 7,097
<i>Allocated Expenses</i>																									
Total Allocated Expenses (OTPS)	\$ 468,386	\$ 220,392	\$ 42,943	\$ 142,922	\$ 14,226	\$ 3,991	\$ 8,793	\$ 4,889	\$ 1,883	\$ 1,994	\$ 4,427	\$ 8,538	\$ 10,259	\$ 1,455	\$ 1,674	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<i>Leveraged by other grants</i>																									
Total Expenses by Program/Function	\$ 3,780,015	\$ 1,363,336	\$ 450,426	\$ 1,154,258	\$ 96,158	\$ 22,555	\$ 56,627	\$ 34,762	\$ 11,773	\$ 22,898	\$ 98,398	\$ 56,249	\$ 100,289	\$ 12,932	\$ 12,500	\$ -	\$ -	\$ 26,810	\$ 1,500	\$ 109,395	\$ 5,785	\$ 4,922	\$ 51,345	\$ 78,777	\$ 8,322
Revenues Less Expenses	\$ 97,368	\$ 24,071	\$ 6,821	\$ 30,128	\$ 6,504	\$ 3,362	\$ 0	\$ 0	\$ 0	\$ 0	\$ (0)	\$ 0	\$ (0)	\$ (0)	\$ (0)	\$ 3,007	\$ 525	\$ (0)	\$ 8,500	\$ (0)	\$ 0	\$ 130	\$ 14,319	\$ 0	\$ 0
Available Funds	\$ 70,887	\$	\$	\$ 61,020	\$	\$ 9,866	\$ 0	\$ 0	\$ 0	restricted	restricted	\$	\$ 0	\$ (0)	\$ (0)	restricted	restricted	restricted	restricted	restricted	restricted	restricted	restricted	restricted	restricted

Final Budget Notes:

Final Carry-In determined and adjusted: increased \$419,587 - combination 20% allowable carry-forward and unused training funds added back into budget (\$419,587 + \$948,207 = \$1,367,794)
 Final Allocations - initial estimate over \$19,732
 Local Contracts - initial estimate over \$19,519
 Salaries/wages increase \$50,645 (1 added position to program for eligibility)
 Direct Expenses increased \$302,804
 Training funds increased based on carry-in from prior year \$146,647
 Training Obligations (PO's) determined and funds set aside \$388,483
 Total Allocated Expenses reviewed and reduced by \$50,085
 AB1149 (Formerly SB734) Training funds direct funds budgeted is 30% due to uncertainty of leverage funds to meet the allowable 10%

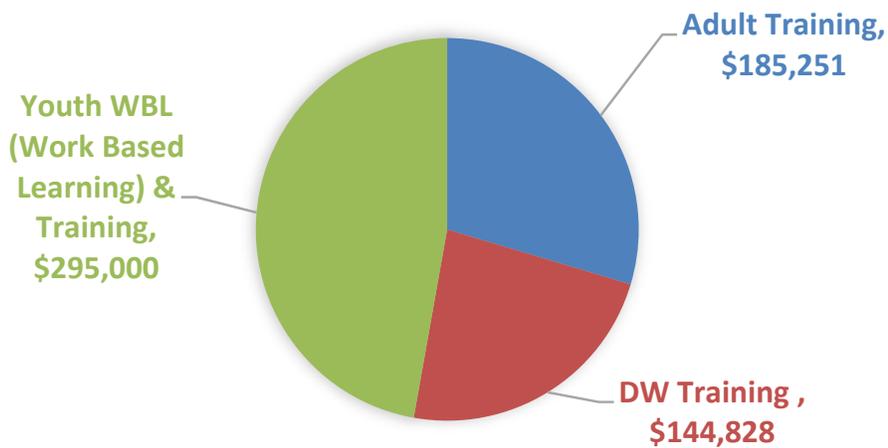
WORKFORCE INVESTMENT CORPORATION		E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	Z	AA	AB	AC	AD	AE	AF
Position or Expense Category		Total Budget	5910-Adult	5930-DW	5920-Youth	5932-Rapid Response	5933-RR Layoff Aversion	5973-MCDC - In Custody (Proposed)	5972-MCDC - Probation (Proposed)	WAF 6.0 ARIA	9906-DSS Job Fair	9914-Skills Trng Project	P2E IDS	P2E SSEL	P2E Planning	Frsn CPP Exo	9909-WF Veteran	9910-WF- Single Female Parent	9912-WF GED-HiSet	Corp - Unrestricted	9911-AJCC 519	9911-AJCC 512	9911-AJCC 517	9911-AJCC 521	9911-AJCC 522	9911-AJCC 523
44	TOTAL SALARIES/WAGES	\$ 1,428,089	\$ 490,820	\$ 155,614	\$ 488,861	63285.79	\$ 14,858	\$ 37,128	\$ 23,231	\$ 7,719	\$ 9,719	\$ 18,132	\$ 37,385	\$ 41,015	\$ 8,376	\$ 7,724	\$ -	\$ -	\$ -	\$ -	\$ 15,571	\$ 643	\$ 581	\$ 6,444	\$ -	\$ 980
45	TOTAL BENEFITS	\$ 356,195	\$ 122,421	\$ 38,813	\$ 121,932	15784.77	\$ 3,706	\$ 9,260	\$ 5,794	\$ 1,925	\$ 2,424	\$ 4,523	\$ 9,325	\$ 10,230	\$ 2,089	\$ 1,926	\$ -	\$ -	\$ -	\$ -	\$ 3,884	\$ 160	\$ 145	\$ 1,607	\$ -	\$ 245
46	TOTAL PERSONNEL COSTS	\$ 1,784,283	\$ 613,241	\$ 194,427	\$ 610,793	79070.56	\$ 18,564	\$ 46,389	\$ 29,026	\$ 9,644	\$ 12,143	\$ 22,655	\$ 46,710	\$ 51,244	\$ 10,465	\$ 9,650	\$ -	\$ -	\$ -	\$ -	\$ 19,455	\$ 804	\$ 726	\$ 8,052	\$ -	\$ 1,225
62	Non-Personnel Expenses																									
63	Direct Expenses																									
64	AJCC Partner Costs																									
65	Rent	\$ 89,907	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 53,654	\$ 2,468	\$ 2,600	\$ 28,852	\$ (2,057)	\$ 4,391
66	Alarm Monitoring	\$ 1,890	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 297	\$ 16	\$ 14	\$ 160	\$ 1,378	\$ 24
67	Mat Service	\$ 1,466	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 173	\$ 13	\$ 12	\$ 130	\$ 1,118	\$ 20
68	City Utilities	\$ 8,232	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,296	\$ 70	\$ 63	\$ 697	\$ 6,001	\$ 106
69	Copier, and Toner supplies	\$ 7,633	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,621	\$ 60	\$ 54	\$ 604	\$ 5,202	\$ 92
70	Gas & Elect	\$ 65,744	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,909	\$ 928	\$ 371	\$ 1,856	\$ 46,040	\$ 639
71	Facilities Maintenance	\$ 2,213	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 982	\$ 98	\$ 88	\$ 977	\$ -	\$ 69
72	Janitorial Services	\$ 24,960	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,874	\$ 411	\$ 164	\$ 821	\$ 20,362	\$ 328
73	Janitorial Supplies	\$ 968	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 560	\$ 30	\$ 27	\$ 303	\$ -	\$ 47
74	Managed Shredding Service	\$ 254	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 147	\$ 8	\$ 7	\$ 80	\$ -	\$ 12
75	Phone Service	\$ 6,833	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,956	\$ 213	\$ 193	\$ 2,138	\$ -	\$ 332
76	Postage Meter Rental	\$ 230	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17	\$ 15	\$ 171	\$ -	\$ 27
77	Pest Control	\$ 968	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 505	\$ 34	\$ 31	\$ 344	\$ -	\$ 53
78	Fire Extinguisher Maintenance	\$ 736	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 413	\$ 3	\$ 3	\$ 32	\$ 280	\$ 5
79	Zaks Alarm Response	\$ 561	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38	\$ 5	\$ 5	\$ 52	\$ 453	\$ 8
80	CAM Fees	\$ 10,849	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,762	\$ 303	\$ 274	\$ 3,038	\$ -	\$ 472
81	Creekside Building Insurance	\$ 4,838	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 751	\$ 303	\$ 274	\$ 3,038	\$ -	\$ 472
82	Direct Participant Costs																									
83	Client Training - ITA	\$ 301,810	\$ 96,652	\$ 45,157	\$ 75,000	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 70,000	\$ -	\$ 15,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
84	Client Training - PWEX	\$ 200,000	\$ -	\$ -	\$ 200,000	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
85	Client Training - TJT	\$ 56,745	\$ 24,163	\$ 16,934	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,648	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
86	Client Training - OJT	\$ 152,171	\$ 64,435	\$ 67,736	\$ 20,000	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
87	Client Training - IWT	\$ 15,000	\$ -	\$ 15,000	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
88	Client Supportive Services - Mileage	\$ 56,000	\$ 30,000	\$ 20,000	\$ 6,000	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
89	Client Materials and Supplies	\$ 34,530	\$ 15,000	\$ 10,000	\$ 3,400	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,130	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
90	Contract Ed	\$ -	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
91	Other Grant Direct Costs																									
92	Staff Travel	\$ 10,534	\$ -	\$ -	\$ -	1500.00	\$ -	\$ 1,445	\$ 847	\$ 246	\$ (18)	\$ 1,317	\$ 1,001	\$ 2,008	\$ 1,012	\$ 1,176	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
93	Business Journal & Reentry Central	\$ 115	\$ 35	\$ -	\$ -	80.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
94	Economic Summit	\$ 300	\$ -	\$ -	\$ -	300.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
95	AT&T Monthly Data Plan	\$ 982	\$ -	\$ -	\$ -	981.60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
96	Advertising	\$ 6,995	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ 6,995	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
97	Sponsorship	\$ 1,500	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500	\$ -	\$ -	\$ -	\$ -		
98	Facility Use Cost	\$ 1,500	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ 1,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
99	Printing	\$ 820	\$ 150	\$ 280	\$ 390	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
100	Staff Training	\$ 1,250	\$ 500	\$ 500	\$ 250	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
101	General Contracted Services	\$ 283	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ 283	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
102	ACT WorkKeys Assessments	\$ 1,450	\$ 850	\$ 250	\$ 350	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
103	CASAS	\$ 1,220	\$ 620	\$ 120	\$ 480	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
104	MAS Hi-Set Class Annual 19-20 Class	\$ 26,314	\$ 9,841	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 16,473	\$ -	\$ -	\$ -		
105	MAS Hi-Set Class Summer 2020 Class	\$ 7,457	\$ 7,457	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
106	MAS ESL Annual 19-20 Class	\$ 19,604	\$ 19,604	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
107	Computer Hardware (resource room)	\$ 5,000	\$ 5,000	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
108	Software (resource room)	\$ 5,000	\$ 5,000	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
109	Subrecipient Contract	\$ -	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
110	ELL Convenings (3 for 3 partners)	\$ -	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
111	ELL Staff Development	\$ -	\$ -	\$ -	\$ -	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
112	Youth Conference Travel	\$ 2,500	\$ -	\$ -	\$ 2,500	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
113	Youth Conference Registration	\$ 1,500	\$ -	\$ -	\$ 1,500	0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
114	Carry-in Obligations from 6.30.19	\$ 388,483	\$ 250,396	\$ 37,078																						

MCWIC PROGRAM BUDGET FY 19-20



WIOA PROGRAM

AB1149 ADULT/DW BUDGET 36% OF ALLOCATIONS
YOUTH WBL 30% OF ALLOCATIONS



Provider: Central Learning Adult School Site
 Program: Nurse Assistant

This program is eligible for financial assistance under the Workforce Innovation & Opportunity Act (WIOA)

[Learn more about the program scholarship information.](#)

Program Summary

Description: A training program to prepare students for the state Certified Nurse Assistant Competency Exam
 Credential Attained: An industry-recognized certificate or certification, A license recognized by the State involved or the Federal Government, Employment
 Grievance Procedure:
 Refund Policy:

Program / Service Locations

Location	Address	City	State	Zip
Central Learning Adult School Site - Primary	2698 N Brawley Ave	Fresno,	CA -	93722

Program Length

Duration: 183 Hours
 Class Frequency: Daily
 Class Time: 132 Hours
 Other Time, including lab: 126 Hours
 Total Time: 258 Hours
 Classes Offered: Day

Program Costs

Approved Costs

Tuition: \$170.00
 Other Costs, including tools, books, etc: \$590.00
 Total Program Costs: \$760.00

Most Recent Costs

Tuition: \$170.00
 Other Costs, including tools, books, etc: \$590.00
 Total Program Costs: \$760.00

The display of costs does not constitute a guarantee that the amounts will be fully paid by the WIOA program.

Class / Faculty Size

Minimum Class Size: 12
 Maximum Class Size: 30
 Number of Instructors: 2

Curriculum

Show Curriculum

Additional

Qualifications of Instructors: Not Available

Program Prerequisites: must have a 9th grade reading and math level, pass physical and background checks, current on immunizations.

Equipment Used in Program: standard healthcare worker medical equipment.

Target Occupations: Nurse Assistant
Nursing Assistants

Skills

Show Skills

Program / Service Performance

Select a Performance Year to view the associated performance data.

Performance Year: 2015

WIOA Performance Summary

Population	Completion Rate	Credential Rate	Employment Rate Q2 After Exit	Employment Rate Q4 After Exit	Employment Rate (Available for Work) Q2 After Exit	Employment Rate (Available for Work) Q4 After Exit	Employment Rate Related Occupation	Median Earnings
WIOA	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$0
Overall	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$0

ProPath, Inc
Workforce Management Consultants

Daniel X. Patterson
ProPath, Inc.
17891 Cartwright Road, Suite 100
Irvine, CA 92614

October 4, 2019

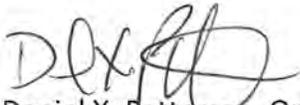
Workforce Development Board of Madera County
Attn: Brett Frazier, Chair
2037 W. Cleveland Avenue
Madera, CA 93637

One-Stop Operator Quarterly Report

Dear Chair Frazier,

Please find attached the One-Stop Operator Report for the period of July 1, 2019, through September 30, 2019. The partnership continues to make improvements in the areas identified in the Hallmark of Excellence Evaluation Report. The monthly partner and business committee meetings are forum for open and honest discussion and problem solving. I wanted to recognize their participation and on-going support and engagement.

If you have any questions please contact me at daniel@propathinc.com.



Daniel X. Patterson, OneStop Consultant
ProPath, Inc.

cc: Tracie Scott-Contreras, Executive Director
Madera County Workforce Investment Corporation

David Baquerizo, ProPath, Inc.

Attachment

**OneStop Operator Quarterly Report
July 1, 2019 through September 30, 2019**

Two partnership meetings are held each month. The first includes those programs that offer employment and training services to eligible clients. The second, includes representatives from those programs that conduct outreach and provide services to the business community. ProPath, Inc., (OneStop Operator) plans and facilitates these meetings.

The following is a summary of actions by the local partnership on the elements included in the Phase I Memorandum of Understanding (MOU) and/or Hallmark of Excellence Continuous Improvement Plan (Plan).

Integration and Alignment of Programs

The partnership has several initiatives under this category. The first involves coordinating and supporting mock interviews for clients and participants of Center programs. Several partners, as well as members of the local board, have volunteered their time and staff to support these mock interview panels. Their participation allows their agency to send their clients to have this experience and receive timely and critical experience and be referred to additional services in the Center. This consolidation should eliminate the duplication of effort by individual agencies.

The second initiative is the use of the Center logo as a source of connectivity between partner websites. For example, the Center home page has a comprehensive list of partners and a direct link to their websites. Partners have been asked to include this same information, or a copy of the Center logo to ensure the public is informed of the partnership that exists in the County between these agencies and the breadth of services that are available to them through the network. A number of partners have completed this work.

The third is a review of agency websites to ensure they meet accessibility standards and provide equal access to all members of the public. Additionally, they were asked to review the types of information and virtual access to programs offered by their agencies. Again, a number of partners have completed this work.

The fourth initiative completed during this period was to compile a list of the various workshops, and their schedules that are offered in the Center. This list has been placed in the CalJOBS system and is available to all partners to schedule their clients for these workshops.

The final initiative under this category is the development of a comprehensive listing of community-based organizations that provide a variety of supports for families and individuals in Madera County. This resource directory has been shared with partners to provide additional resources to their clients to ensure access to and awareness of these community services.

**OneStop Quarterly Report
Continued**

Other Efforts

The Employment Development Department continues to work towards establishing an Employer Advisory Council in Madera County. The Council is a forum for and supported by members of the business community and provides professional education and assistance to its members. Additional information will be provided as they begin outreach to members of the business community to establish leadership of the Council and plan for its first convening.

Customer Satisfaction Survey

The initial survey results were reviewed by the partnership. The use of the surveys on the public computers in the resource room has increased the numbers of responses received and staff are encouraging the clients to participate in the survey. The feedback received is favorable and supportive of staff efforts. All agreed this feedback could be expanded if partners sent the survey to their clients, as not all Center clients use the Resource Room. A copy of the survey link has been shared with all partners. The additional feedback should provide increased insight into the use of tools such as the Center's webpage, social media, Center accessibility, types of services offered and desired and identify opportunities for continued improvement. These results will be reviewed on a quarterly basis and responded to as warranted.

Community Outreach through Social Media

In an effort to increase community awareness of the services available, partners will share client success stories which will be posted to the Center's webpage and social media platform. This will provide a single location where all client successes can be accessed by the general public. The intent is to communicate the success of clients from a variety of backgrounds, share the breadth and type of assistance available from partners, and types of services received and outcomes achieved (e.g. educational achievement, pathways to higher education, the variety of pathways to employment, technical and soft skills gained that led to employment, etc.).

Business Committee

This group continues to work together to integrate common efforts to more effectively serve the business community. The partnership agreed to brand and market itself as the Workforce Business Division. We are in the final stages of developing common outreach materials and webpage content that provides a single message to the business community. It will also help us promote the partnership to business and access to all partners and services through a single web portal. The Committee received presentations from the Madera County Economic Development Commission, Small Business Development Center, and the California Manufacturing and Technology Consulting. These efforts will help program staff leverage the expertise and business

OneStop Operator Report Continued

services available through these partners and help provide a seamless outreach and message to the business community.

Going Forward

Work Employability Certificate

The partners desire to develop a Work Employability Certificate. With the various definitions used by each program has for work-readiness, it is important that we are all working towards the same goal. The conclusion being that a quality referral from a single partner reflected well on the entire partnership, and the inverse is also true. We reviewed feedback from the Workforce Board members on the topic of work-readiness skills, which reflected a greater importance on the development of soft skills versus technical competencies. To ensure the programs offered by Center partners are responsive to this input, workshop curriculum will be evaluated and updated/added to as necessary. Coordination with the Chambers, Madera County COMPACT, and other forums will be used to ensure the earning of the Certificate by clients is valued by the business community at large.

Partner Supplemental Survey

The partnership approved the use of a survey tool designed to obtain feedback from partner staff and leadership that interact with the Center partnership. The questions deal with customer flow, staffing, responsiveness to referrals, access and facility, equity in services, quality of training services, and awareness of programs and services available. The feedback will be used to identify areas for training and enhanced information sharing among partners and their staff.

Incident Reporting and Coordination

A conversation among partners in the Center will be used to develop a communications policy to ensure all partners are advised of any event that involves security or first responders. This will also ensure the clients' access to services are not unduly affected without due process and input from partners.

Thank you to the partner leadership and staff for their continued support and engagement in this work.

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PRIORITY OF SERVICE FOR VETERANS AND ELIGIBLE SPOUSES

EDD Issuance Date: 9/11/19

WDB Review Date: 10/17/19

EXECUTIVE SUMMARY:

This document establishes the Workforce Development Board of Madera County's policy and procedures regarding the priority of service requirement for veterans and their eligible spouses for U.S. Department of Labor (DOL) funded programs and services. This policy applies to all recipients and subrecipients of Workforce Innovation and Opportunity Act (WIOA) Title I funds in Madera County.

This policy finalizes the guidance provided in Workforce Services Draft Directive WSDD-191, issued by the State for comment on November 30, 2018, and supersedes previous guidance issued in WSD 08-10, dated June 29, 2009.

Effective Date:

This policy is retroactively effective on the date of issuance of Directive WSD19-04 by EDD, upon approval by the Workforce Development Board.

References:

- WIOA (Public Law 113-128) Sections 3(5), 3(36), and 3(50), and 134
- *Veterans Benefits, Health Care, and Information Technology Act of 2006* (Public Law 109-461)
- *Jobs for Veterans Act (JVA) of 2002* (Public Law 107-288)
- Title 38 *United States Code* (U.S.C.) Sections 101(2), 4213, and 4215(a), and Chapters 11, 13, 15, 30-31, 33, and 35-36.
- Title 20 *Code of Federal Regulations* (CFR) Part 1010: "Priority of Service for Covered Persons"
- Title 20 CFR Sections 680.600, 680.650, and 683.230
- Training and Employment Guidance Letter (TEGL) 19-16, Subject: *Guidance on Services provided through the Adult and Dislocated Worker Programs under the WIOA and the Wagner-Peyser Act Employment Services, as amended by Title III of WIOA, and for implementation of the WIOA Final Rules* (March 1, 2017)
- TEGL 26-13, Subject: *Impact of the U.S. Supreme Court's Decision in United States v. Windsor on Eligibility and Services Provided Under Workforce Grants Administered by the Employment and Training Administration* (June, 18, 2014)
- TEGL 10-09, Subject: *Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or part by DOL*

(November 10, 2009)

- Workforce Services Directive [WSD15-14 \(PDF\)](#), Subject: *WIOA Adult Program Priority of Service* (January 22, 2016)

State-Imposed Requirements:

This policy contains no state-imposed requirements.

Background:

On November 7, 2002, President Bush signed the JVA into law to revise and improve employment, training, and job placement services furnished to veterans. Section 2(a) of the Act mandates priority of service for veterans and eligible spouses “who otherwise meet the eligibility requirements for participation” in DOL programs.

The JVA, and the priority of service it requires, acknowledges the sacrifices of the men and women who have served in the U.S. Armed Forces. Priority of service honors veterans and eligible spouses as our “heroes at home” and provides clear entry points into high-growth, high-wage civilian jobs, and easily accessible post-secondary education and training to support their advancement along career pathways. Veterans and eligible spouses possess unique attributes and contribute greatly in the workplace. They are an important source of highly skilled and experienced talent and play an important role in regional workforce development strategies.

Policy and Procedures:

Definitions

The definitions listed below are for the purposes of implementing priority of service only. The definitions of “veteran” and “eligible spouse” applicable to the priority of service requirement are different from, and broader than, than the definitions of “veteran” and “other eligible persons” applicable to services provided by the Disabled Veterans’ Outreach Program Specialist and Local Veterans’ Employment Representative staff.

Covered Person – a veteran or eligible spouse.

Eligible Spouse – the spouse (including the same-sex spouse) of any of the following:

- a. Any veteran who died of a service-connected disability.
- b. Any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
 - i. Missing in action.
 - ii. Captured in the line of duty by a hostile force.
 - iii. Forcibly detained or interned in the line of duty by a foreign government or power.
- c. Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the U.S. Department of Veterans Affairs (VA).
- d. Any veteran who died while a disability, as indicated in category c. of this definition, was in existence.

A spouse whose eligibility is derived from a living veteran or service member (i.e., categories b. or c. above) would lose his or her eligibility if the veteran or service member were to lose the status that is the basis for the eligibility (e.g., if a veteran with a total service-connected disability were to receive a revised disability rating at a lower level), or upon divorce from the veteran or service member.

Note: A surviving spouse who is a widow or widower AND remarries on or after December 16, 2003, AND on or after attaining age 57, is entitled to continue to receive Dependency and Indemnity Compensation.

Non-covered Person – any individual who neither meets the definition of veteran nor the definition of eligible spouse.

Point of Entry – the point at which a veteran or eligible spouse expresses an interest in receiving employment, training, and placement services. It may be in-person or online, and can include physical locations such as reception areas, resource areas, and self-service kiosks in an America's Job Center of CaliforniaSM (AJCC), as well as websites such as CalJOBSSM, and other virtual service delivery resources.

Priority of Service – with respect to any qualified job training program, a covered person shall be given priority over a non-covered person for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of the law. Such priority includes giving access to such services to a covered person before a non-covered person or, if resources are limited, giving access to such services to a covered person instead on a non-covered person.

Program Operator – a recipient or subrecipient of DOL funds for a qualified job training program.

Qualified Job Training Program – any program or service for workforce preparation, development, or delivery that is directly funded, in whole or in part by the DOL.

Recipient – an entity that is awarded federal financial assistance, in whole or in part, directly from the DOL or through a subaward for any qualified job training program.

Subrecipient – an entity that is awarded federal financial assistance through a subaward funded by the DOL for any qualified job training program.

Veteran – a person who served at least one day in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable. Active service includes full-time duty in the National Guard or a Reserve component, other than full-time duty for training purposes. Active service does not include full-time active duty performed by National Guard personnel who are mobilized by state rather than federal authorities.

Priority of Service

Program operators are required to provide priority of service to veterans and eligible spouses for all WIOA funded activities, including technology–assisted activities.

Priority of service means that veterans and eligible spouses are entitled to take precedence over non-covered persons in obtaining employment, training, and placement services. More specifically, a veteran or an eligible spouse either receives access to a service earlier in time than a non-covered person or, if the resource is limited, the veteran or eligible spouse receives access to the service instead of or before the non-covered person.

In implementing priority of service, program operators must ensure veterans and eligible spouses receive basic career services and individualized career services before other non-covered individuals. Additionally, they must ensure veterans and eligible spouses receive first priority on waiting lists for training slots and are enrolled in training prior to non-covered persons. However, once a non-covered participant is enrolled in a workshop or training class, priority of service is not intended to allow a veteran or eligible spouse to bump the non-covered participant from that class or service.

Program operators must ensure that priority of service is applied by all subrecipients of DOL funds. Pertinent language should be included in contracts, subgrants, solicitations for proposals, memorandums of understanding, and other service provision agreements.

Applying Priority of Service

The application of priority of service varies depending on the eligibility requirements of the particular program. There are four basic categories of DOL-funded programs: universal access programs, programs that require participants to meet specified eligibility criteria, programs with statutory priorities, and programs with discretionary priorities. The following describes how priority of service applies to these basic types of programs.

Universal Access Programs

For workforce programs that operate or deliver services to the public as a whole without targeting specific groups (e.g., WIOA basic career services), veterans and eligible spouses receive priority of service over all other program participants.

Programs with Eligibility Criteria

Eligibility criteria identify basic conditions that each participant in a specific program is required to meet. For example, for the WIOA Adult, Dislocated Worker, and Youth programs, every participant is required to meet program eligibility requirements (e.g., age, selective service registration, etc.). A veteran or eligible spouse must first meet all of the eligibility criteria in order to be considered eligible for participation in the program. Once determined eligible for participation, the veteran or eligible spouse receives priority for participation in the program and receipt of services.

Programs with Statutory Priorities

In addition to the eligibility criteria that all participants are required to meet, some programs have priorities that target certain populations and establish a rank order for enrolling or serving participants (e.g., the WIOA priority for Adult funds to serve recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient). While veterans' priority is

required under federal law and cannot be waived, it is not intended to displace existing eligibility requirements and statutory priorities. Therefore, in these instances, veterans and eligible spouses must first meet both the program's eligibility and statutory priority criteria to receive priority for participation in the program and receipt of services. Program operators must determine the status of each individual veteran or eligible spouse and apply priority of service in the following order:

1. Veterans and eligible spouses who meet the program's statutory priority requirement (e.g., veterans and eligible spouses who are also recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient).
2. Non-covered persons who meet the program's statutory priority requirement (e.g., non-covered persons who are recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient).
3. Veterans and eligible spouses who do not meet the program's statutory priority requirement.
4. Priority populations established by the Governor and/or Local Workforce Development Board.
5. Non-covered persons outside the program's statutory priority requirement.

Programs with Discretionary Priorities

Programs with discretionary priorities may make an effort to provide a certain level of service to a particular group. However, the law does not mandate that the target group be served before other eligible individuals. With respect to priority of service, the only feature that distinguishes discretionary targeting programs from universal access programs is the additional application of the discretionary targeting criterion to non-covered persons. Therefore, program operators must apply priority of service in the order below:

1. Veterans and eligible spouses.
2. Non-covered persons within the discretionary targeting group.
3. Non-covered persons outside the discretionary targeting group.

Income Eligibility Requirements

When determining eligibility for programs that have a statutory requirement to serve low-income individuals, many types of military service-related income are exempt. Specifically, the following pay, financial allowances, and financial benefits must be disregarded for veterans, transitioning service members, or any other individuals for whom these amounts would normally be applied in making an eligibility determination.

- Military pay or allowances paid while on active duty.
- Military pay or allowances paid by the VA for vocational rehabilitation, disability payments, or related VA-funded programs (including the VA work study allowance), and including any financial benefits received under the following chapters of Title 38 U.S.C.:
 - Chapter 11 - Compensation for service-connected disability or death.
 - Chapter 13 - Dependency and indemnity compensation for service-connected deaths.
 - Chapter 30 - All-volunteer force educational assistance program.

- Chapter 31 - Training and rehabilitation for veterans with service-connected disabilities.
 - Chapter 33 – Post-9/11 educational assistance.
 - Chapter 35 - Survivors' and dependents' educational assistance.
 - Chapter 36 - Administration of educational benefits.
- Any benefits received under Title 10 U.S.C. Chapter 106 - Educational assistance for members of the selected reserve.

In contrast, the following types of military-related income are included in low-income calculations:

- Pension payments authorized by Title 10 U.S.C., such as those received by military retirees, whether or not their retirement was based on disability.
- Pension benefits paid under Title 38 U.S.C. Chapter 15 – Pensions for low-income, wartime veterans who are disabled for reasons not connected or related to their military service.

It is also important to note that VA benefits for education and training services do not constitute “other grant assistance” under WIOA’s eligibility requirements. Therefore, veterans or eligible spouses who are eligible for the GI Bill or other forms of VA-funded education or training are not required to coordinate their entitlement to those benefits with their eligibility for WIOA-funded training, as stipulated under 20 CFR Section 680.230. Specifically, program operators may not require veterans or eligible spouses to exhaust their entitlement to VA-funded training prior to enrolling them in WIOA-funded training.

Identifying Veterans and Eligible Spouses

Program operators must put processes into place to ensure that veteran and eligible spouses are identified at the point of entry and given an opportunity to take full advantage of priority of service. The point of entry includes physical locations such as AJCCs, as well as websites such as CalJOBSSM, and other virtual service delivery resources. These processes should ensure that veterans and eligible spouses are aware of their entitlement to priority of service, the full array of employment, training, and placement services available under priority of service, any applicable eligibility requirements for those programs and services, and in cases of online points of entry, how to access assistance via the nearest America’s Job Center of CaliforniaSM.

Documenting Eligibility for Priority of Service

It is not necessary for staff to verify the status of a veteran or eligible spouse until the individual undergoes eligibility determination and is enrolled in a WIOA individualized career service or training service. Until the point at which the participant receives an individualized career service or training service, an individual who states they meet the veterans’ priority eligibility criteria must be accorded veterans’ priority of service on the basis of self-attestation.

In those instances in which eligibility determination and enrollment in a WIOA individualized career service occur at the point of entry, a covered person must be enrolled, provided immediate priority,

and permitted to follow-up subsequently with any required verification of his or her status as a covered person.

Local Policy and Procedures

Program Operators will implement priority of service for veterans and eligible spouses within existing service delivery strategies. Local processes and procedures ensure that veterans and eligible spouses are identified at the point of entry and given an opportunity to take full advantage of priority of service. The processes and procedures ensure that veterans and eligible spouses are aware of their entitlement to priority of service, the full array of employment, training, and placement services available under priority of service, and any applicable eligibility requirements for those programs and/or services. Additionally, program operators will ensure that written copies of local priority of service policies are maintained at all service delivery points and, to the extent practicable, posted in a way that makes it possible for members of the general public to easily access them.

ACTION:

Please bring this policy to the attention of all relevant parties.

INQUIRIES:

Questions regarding this policy should be directed to the Executive Director or designee at (559) 662-4500.



USE AND CONFIDENTIALITY OF PARTICIPANT PERSONALLY IDENTIFIABLE INFORMATION (PII)

EDD Revision Date: N/A
WDB Review Date: 10/17/19

EXECUTIVE SUMMARY

PURPOSE:

This document establishes the Workforce Development Board of Madera County's policy on the use and confidentiality of Participant Personally Identifiable Information (PII)

REFERENCES:

Law

- Workforce Innovation and Opportunity Act of 2014 (WIOA)
- Privacy Act of 1974, Section 7
- California SB168, Title 1.81.1 – Confidentiality of Social Security Numbers
- California AB763 – Privacy: Social Security Numbers
- Federal Information Security Management Act (FISMA)

Federal Guidance

- Training and Employment Guidance Letter (TEGL) 05-08 – Policy for collection and Use of Workforce System Participants' Social Security Numbers
- TEGL 39-11 – Guidance on the Handling and Protection of Personally Identifiable Information (PII)
- OMB Memorandum M-07-16 – Safeguarding Against and Responding to the Breach of Personally Identifiable Information
- NIST SP 800-122 – Guide to Protecting the Confidentiality of PII

ATTACHMENTS:

- Attachment A: Staff/Representative Confidentiality Agreement
- Attachment B: Participant Confidentiality Rights
- Attachment C: Definitions of Key Terms

POLICY:

Employees, contractors, consultants, and volunteers of the WDB (herein "staff and representatives") may be exposed to participant information that is confidential and/or

privileged and proprietary in nature. As part of grant activities, staff and representatives may have access to large quantities of personally identifiable information (PII) relating to individual program participants. This information could be found in participant files and data sets, performance reports, program evaluations, grant and contract files, and other sources.

The WDB expects all staff and representatives to respect the privacy of clients and to maintain their personal and financial information as confidential. Access to any PII must be restricted to only those staff and representatives who need it in their official capacity to perform duties pertaining to the scope of work in the grant or contract agreement. No information may be released without appropriate authorization.

Customer Awareness

Individuals must be informed in writing how their information will be used and that their information will be protected and that their personal and confidential information:

- May be shared among federal and state agencies, partner staff and contractors;
- Is used only for delivering services and that further disclosure of their confidential information is prohibited; and that
- PII will be used for grant and eligibility purposes only.

Every individual receiving WIOA or other WDB services must read, sign and date a Release of Information to share their information with partner agencies. Individuals must be informed that they can request that their information not be shared among partner agencies and that this does not affect their eligibility for services.

Staff and representatives should engage in practical ways to reduce potential security breaches and protect sensitive information and PII by:

- Reducing the volume of collected and retained information to the minimum necessary;
- Limiting access to only those individuals who must have such access; and
- Using encryption, strong authentication procedures, and other security controls to make information unusable by unauthorized individuals.

Protecting Information

PII and confidentiality require special precautions to protect them from unauthorized use, access, disclosure, modification, and destruction. Confidentiality means that data, reports, and other outputs are safeguarded against unauthorized access. Staff will exercise extreme care and caution when working with confidential information to ensure the privacy of the applicant or customer.

Physical Data Protection Requirements

All sensitive or PII data obtained should be stored in an area that is always physically safe from access by unauthorized persons. Staff and representatives must not leave personal and confidential information left open and unattended.

When a staff or representative's desk is unattended, it is the staff or representative's

responsibility to ensure that personal and confidential information, including PII, is secured in closed containers such as locked drawers or offices when not in use. This means that all documents containing personal and confidential information must not be left on desks, fax machines, printers, or photocopiers unattended. Desktops and computers will be kept clear of papers and/or files containing confidential information that are not being used. Desktops and computers will be kept clear of confidential information during non-business hours.

Any papers containing PII and/or confidential information are to remain in the office. All discarded paper containing confidential information shall be placed in a locked shredder bin or shredded.

Any participant files stored for performance or archiving purposes must be clearly marked as containing personal and confidential information. Staff and representatives should retain participant PII only for the period required for assessment or performance purposes. Thereafter, all data must be destroyed by a qualified company to minimize risk of breach.

Electronic Data Protection Requirements

To safeguard WDB's electronically stored data, each user will receive a designated and authorized log-on(s) and password(s) that restrict users to the applications or functions commensurate with their assigned responsibilities, supporting an appropriate segregation of duties. This is such that unauthorized persons cannot reasonably retrieve the information by means of a computer.

The WDB expects all staff to secure mobile equipment, such as laptop computers and other devices that may have PII stored on them. Devices should be password protected and safeguarded when not in use. Accessing and storing data containing PII on personally owned equipment at off-site locations, such as the employee's home, and on non-managed IT services, such as Google or Yahoo, is prohibited.

Transmission of Confidential Information

Staff and representatives should avoid communicating sensitive information or PII about an applicant or participant to partner agencies or other staff via email. If it is necessary, staff and representatives must ensure that the intended recipient is the only individual that has access to the information and that the recipient understands they must also protect the information. Staff and representatives must only communicate sensitive information or PII through WDB emails and not through third party or personal email addresses.

PII and other sensitive data transmitted via email or stored on mobile data storage (such as thumb drives) must be encrypted. Staff and representatives must not e-mail unencrypted sensitive PII to any entity, including the Department of Labor, WDB staff, or contractors. Staff and representatives should discourage participants from emailing personal and confidential information to their case managers.

Any information posted to social media sites is considered public record and is subject to public disclosure. No sensitive information or PII should be posted to social media sites.

Care shall also be taken to ensure that unauthorized individuals do not overhear any discussion of confidential information.

Social Security Numbers

Social security numbers are protected as high-risk information. When requesting a participant's social security number, staff and representatives should explain how the social security number will be used and how the participant's privacy will be ensured.

Staff must request a participant's social security number when offering the following services:

- Staff-assisted service related to eligibility determination, job search activity, and employment;
- All training and educational services; and
- Self-services through CalJOBS.

However, an individual is not required to provide their social security number to receive WIOA services, and services cannot be denied to an individual due to their refusal to disclose their social security number.

Whenever possible, staff and representatives should use unique identifiers for participant tracking instead of social security numbers. While social security numbers may be needed for initial eligibility or performance purposes, a unique identifier should be linked to each individual record and used thereafter. This includes such records as training or contract documents. If social security numbers are to be used for specific tracking purposes, they must be stored or used in such a way that it is not attributable to the individual. For example, a training document should not include the participant name and social security number, rather the participant name and a truncated social security number.

Social Security numbers may not be listed on anything mailed to a client or to another agency unless required by law, or the document is a form or application. Social Security numbers may not be left on a voice mail message.

Medical and Disability Records

Medical and disability records are additionally protected as confidential information. To ensure the information is protected, any medical or disability records must be kept separately from working participant files and kept in a secured physical and/or electronic location. Only the portion of the participant's information that reveals the presence of a disability or other data elements should be included in the participant's file to minimize staff and representative access to medical files.

Once collected, access to the medical file should be limited and only accessed:

- With the approval of program management and only when necessary for WIOA service delivery;
- By first aid and safety personnel in the event of an emergency; or

- By local, state, or federal monitors.

Participant medical and confidential information will remain in the secured location until file is shredded.

Security Breaches

Any staff or representative who becomes aware of any actual or attempted PII security breach resulting from the inadvertent or intentional leak of release of confidential information, including PII, shall immediately inform their direct supervisor. PII security incidents include, but are not limited to, any event (intentional or unintentional) that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets. The system or device affected by a PII security incident shall be immediately removed from operation. It shall remain removed from operation until correction and mitigation measures are applied.

Supervisors should assess the likely risk of harm caused by the breach and then assess the level of breach. Supervisors should bear in mind that notification when there is little or no risk of harm might create unnecessary concern and confusion.

Four factors should be considered to assess the likely risk of harm:

- Nature of the Data Elements Breached
- Number of Individuals Affected
- Likelihood the Information is Accessible and Usable
- Likelihood the Breach May Lead to Harm

WDB will inform the California Employment Development Department of breaches believed to cause harm. Breaches subject to notification requirements include both electronic systems as well as paper documents.

Individuals assessing the likely risk of harm due to a security breach should exercise the objectivity principle, which requires individuals to show the highest professional objectivity level in collecting, assessing, and communicating information about the breach examined. Further, assessors are expected to perform a balanced assessment of every relevant situation and they must not be influenced by their own or other people's interest while forming judgments.

Staff Compliance

All employees must sign an acknowledgement that they have read the policy, understand the confidential nature of participant data and the potential sanctions for improper disclosure, and agree to abide by all other requirements and terms contained therein.

Unauthorized disclosure of confidential or privileged information is a serious violation of this policy. Any failure to comply with confidentiality requirements identified in this policy may result in termination or suspension of contract or employment, or the imposition of special conditions or restrictions to protect the privacy of participants or the integrity of PII data. Misuse or noncompliance with PII data safeguards could lead to civil and criminal

sanctions per federal and state laws.

Staff and representatives are expected to return materials containing privileged or confidential information at the time of separation from employment or expiration of service.

Disclaimer

This policy is based on WDB's interpretation of the statute, along with the Workforce Innovation and Opportunity Act; Final Rule released by the U.S. Department of Labor, and federal and state policies relating to WIOA implementation. This policy will be reviewed and updated based on any additional federal or state guidance.

INQUIRIES:

If you have questions, please contact the Executive Director or designee at (559) 662-4500.



MADERA COUNTY WORKFORCE INVESTMENT CORPORATION

STAFF/REPRESENTATIVE CONFIDENTIALITY AGREEMENT

I, _____ [print name] certify that I have read and understand the Workforce Development Board of Madera County's (WDB) policy on **USE AND CONFIDENTIALITY OF PARTICIPANTS' PERSONALLY IDENTIFIABLE INFORMATION (PII)**. I understand that I may have access to customer and employer confidential records as part of my employment, contracting, or volunteer work with the WDB. Confidential information provided to our agency by any participant or by any federal, state, or county entity is protected by law, regulation, and policy.

I understand that it is my responsibility as part of the workforce development system in Madera County to protect the confidentiality of all Workforce Innovation and Opportunity Act (WIOA) applicants and participants, as well as customers utilizing the Workforce Assistance Center, an affiliate of the America's Job Centers of California (AJCC) system. I understand that in the workforce system's collection, usage, storage and transmission of customer information, the tenets of confidentiality are to be strictly enforced.

I understand that I have the responsibility to know whether information is protected. If I have any questions regarding whether particular information is confidential, I understand it is my responsibility to check with my supervisor.

I understand that unauthorized access, use modification, or disclosure of confidential information is a crime under state and federal laws, including but not limited to California Information Privacy Act §1798.53-§1798.57, CA Penal Code §502, §2111 of the Unemployment Insurance Code, and §10850 of the Welfare and Institutions Code. I understand that violation of this policy could result in:

- Disciplinary action
- Criminal action (including incarceration)
- Termination of employment
- Civil action

By signing below, I agree to follow and be bound by the terms and conditions regarding confidentiality of personal information contained therein. WDB staff or their designee have answered any questions I may have had regarding this policy.

Signature: _____

Name (Please Print): _____

Date: _____

MADERA COUNTY WORKFORCE INVESTMENT CORPORATION

PARTICIPANT CONFIDENTIALITY RIGHTS

Your privacy is one of our primary concerns. The Madera County Workforce Investment Corporation (MCWIC) makes every effort to provide you with a safe and private environment. The information below explains what information we gather and how we use it. It applies to all MCWIC uses of information and is intended to protect the confidentiality of all customer information.

Access to Data

Program staff must collect data in order to document eligibility and provide services per federal regulation under the Workforce Innovation and Opportunity Act (WIOA). MCWIC and subcontractors will make every effort to collect and store data in a secure manner. Access to any personal customer information is restricted to only those staff and representatives who need it in their official capacity to perform duties pertaining to service delivery.

For auditing and monitoring purposes, individuals' personal and confidential information may be shared among federal and state agencies, partner staff and contractors under the MCWIC umbrella. Access is for the purpose of determining compliance with, and ensuring enforcement of the provisions of WIOA. (Initial: _____)

Use of Release of Data

We may ask you to provide personal information when you:

- Use the CalJOBS website;
- Request services, support or information to validate eligibility;
- Share WDB content through social media;
- Subscribe to newsletters, or other materials; or
- Contact us for information on services available.

Information we may request includes your email address, name, address, telephone number, proof of U.S. residence, proof of age, selective service verification, and other data elements depending on program eligibility criteria. Data will only be used for the purposes of verifying eligibility, delivering services, and verifying performance measures. Upon request, data can be released to the subject of the information.

You may decide whether or not to provide your social security number. If you do not wish to provide this number, you can still receive services. The authority for the solicitation of social security numbers is from the California Unemployment Insurance Code, Section 15026. If you choose to provide your number, these are the ways it may be used by the WDB or the State of Studies and evaluation of training and employment programs in which you may participate:

- Getting information for future program and budget planning;
- Checking for possible participation by you in another state or federal programs;
- Studying long-term effects on all participants in this program;
- Finding ways to make this program more effective; or
- Sharing information with other employment and training programs. (Initial: _____)

How We Protect Your Data

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards, secured files, and secured buildings. All sensitive individual data is stored in an area that is physically safe from access by unauthorized persons at all times and data transmitted electronically is encrypted.

Medical and disability records are additionally protected as confidential information. Any medical or disability records are kept separately in a secured physical and/or electronic location. Social security numbers are also protected as high-risk information. Whenever possible, staff and representatives will use unique identifiers to track individual data rather than personally identifiable information. (Initial: ____)

Disclosing Personal Information

The WDB may share your Personal Information with California Employment Development Department and U.S. Department of Labor monitors for the purpose of assessing programmatic and fiscal compliance. In addition, we may disclose your personal information when legally required or to protect our rights. Any other use of individual data will require written consent from the customer or customer’s parent/legal guardian. (Initial: ____)

Notification of Privacy Changes

The MCWIC privacy rights are outlined in the Use and Confidentiality of Participants’ Personally Identifiable Information (PII) policy which can be found on the MCWIC’s website at: <http://www.maderaworkforce.org/policy-documents/>. MCWIC reserves the right to make changes to this policy at any time. When changes are made they will be posted and available immediately with a revised effective date. We encourage you to periodically review the privacy policy. (Initial: ____)

Acknowledgement of Receipt

By signing below, I acknowledge that I have explained this agreement to the WDB-Affiliated customer.

Staff Printed Name: _____

Staff Signature: _____ Date: _____

By signing below, I acknowledge that I have read and understand this agreement. WDB staff have explained this agreement and answered any questions I may have had.

Individual Printed Name: _____

Individual Signature: _____ Date: _____

Definitions of Key Terms

Personally Identifiable Information (PII) as defined by OMB Memorandum M-07-16 is any information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal information that is linked or linkable to a specific individual.

There are two types of PII as defined by the U.S. Department of Labor in TEGL 39- 11 that are based on the "risk of harm" that could result from the release of the PII:

- **Protected PII** – is any information that if disclosed could result in harm to the individual whose name or identify is linked to that information. Examples include, but are not limited to, social security numbers, credit card numbers, bank account numbers, personal telephone numbers, ages, birthdates, marital status, spouse names, educational history, biometrics identifiers, medical history, financial information, and computer passwords.
- **Non-Sensitive PII** – is information that if disclosed, by itself, could not reasonably be expected to result in personal harm as it is not linked or closely associated with any protected or unprotected PII. Examples include first and last names, e-mail addresses, business addresses, business telephone numbers, general education credentials, gender, or race.

A combination of non-sensitive PII could potentially be categorized as protected PII. As example, a name and business e-mail address will not result in a high degree of harm to an individual. A name linked to a social security number and date of birth could result in identity theft.

A **Security Breach** as defined by TEGL 39-11 is used to include the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.

Sensitive Information as defined by TEGL 39-11 is any unclassified information whose loss, misuse or unauthorized access to or modification of could adversely affect the interest of the conduct of Federal programs, or the privacy to which individuals are entitled under the Privacy Act.



INCUMBENT WORKER TRAINING POLICY

EDD Revision Date: 10/9/2019

WDB Review Date: 4/23/09; 12/17/15; 12/15/16; 11/9/17; 12/19/19

EXECUTIVE SUMMARY

PURPOSE:

This policy provides guidance and establishes the procedures regarding Incumbent Worker Training (IWT) as part of comprehensive regional sector pathway programs and strategies for developing a skilled workforce and income mobility.

REFERENCES

- *Workforce Innovation and Opportunity Act (WIOA)* (Public Law) Sections, 122(h)(i), 134(d)(4), 134(G)(ii), 134(c)(3)(H), and 194(4)
- Title 20 Code of Federal Regulations (CFR) Sections 680.780 – 680.820
- Training and Employment Guidance Letter (TEGL) 10-16, Change 1, Subject: *Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs* (August 23, 2017)
- TEGL 19-16: *Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Services (ES) as amended by title III of WIOA, and for Implementation of the WIOA Final Rules* (March 1, 2017)
- *California Unemployment Insurance Code (CUIC)* Section 14000-14530
- Workforce Services Directive WSD18-10 (PDF), *WIOA Training Expenditure Requirement*, (January 31, 2019)
- WSD18-03 (PDF), Subject: *Pathway to Services, Referral, and Enrollment* (August 29, 2018)
- WSD17-08 (PDF), Subject: *Procurement of Equipment and Related Services* (March 14, 2018)
- WSD16-18 (PDF), Subject: *Selective Service Registration* (April 10, 2017)
- WSD16-16 (PDF), Subject: *Allowable Costs and Prior Written Approval* (February 21, 2017)

- WSD16-15 (PDF), Subject: *Dislocated Worker Additional Assistance Projects* (December 28, 2016)
- WSD16-13 (PDF), Subject: *Monthly and Quarterly Financial Reporting Requirements* (November 28, 2016)
- WSD16-04 (PDF), Subject: *Rapid Response and Layoff Aversion Activities* (July 22, 2016)
- WSD15-23 (PDF), Subject: *Transfer of Funds – WIOA Adult/Dislocated Worker Programs* (March 29, 2016)
- Workforce Services Information Notice WSIN12-31 (PDF), Subject: *Assisting Employers in the New CalJOBSSM* (February 15, 2013)

BACKGROUND

Under WIOA, IWT provides both workers and employers with the opportunity to build and maintain a quality workforce, and increase both participants' and employers' competitiveness. IWT is a type of work-based training and upskilling designed to ensure California workers can acquire and develop the skills necessary to avert layoff or increase the skill levels of employees so they can be promoted within the company and create backfill opportunities for employers.

POLICY AND PROCEDURES

Definitions

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

Business and Employer – A private sector, local government, for profit or not-for profit place of business. Business and Employer are used interchangeably in this directive.

California Employer Account Number – An eight-digit payroll tax number issued to a registered employer by the Employment Development Department, also known as the Employer Payroll Tax Account Number, State Employer Identification Number, or state ID.

Eligible Employer – For an employer to be eligible for IWT services, the Local Board must consider the following:

- Whether the employer can provide a valid California Employer Account Number.
- The characteristics of the individuals in the program (see the IWT definition below).
- The relationship of the training to the competitiveness of an individual and the employer.

- Other factors the Local Board determines appropriate, such as the number of employees trained, wages and benefits including post training increases, and the existence of other training opportunities provided by the employer.

[Reference: WIOA Section 134(d)(4)(A)(ii)]

Employer Share – Employers are required to pay for a significant cost of the training for those individuals in IWT. The minimum amount of employer share in IWT depends on the size of the employer.

Follow-up – Shall be performed six months after reported completion of IWT to determine outcomes (retained employment, advancement, and increased wages).

Incumbent Worker – To qualify as an Incumbent Worker, the employee must meet the following:

- Be a current employee of an eligible employer and have an established employment history with the employer for six months or more. An individual is not held to the six month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history requirement as long as a majority of the employees being trained do meet the requirement.
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship.
- Meet the Selective Service requirements.

[Reference: Title 20 CFR Section 680.780]

IWT – The following characteristics define IWT:

- Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce, avert the need to lay-off employees by assisting the workers in obtaining the skills necessary to retain employment, and/or provide training that will result in progression on a career pathway and income mobility.
- Conducted with a commitment by the employer to retain employees, avert the layoff(s) of the incumbent worker(s) trained for a period of six months following completion of the training, or promote incumbent workers to higher paying positions.
- Increases the competitiveness of the employer or employee.
- Gives employees the opportunity to progress on their career pathway by providing opportunities to obtain certificates or credentials based on the employers need.
(Reference 20 CFR 680.790)

IWT Allowable Costs – The Local Boards’ share of the cost of training (teacher, books, materials) for the delivery of IWT. This amount excludes the cost of individual wages paid by the employer while the employee is attending/participating in the training. [Reference: WIOA Section 134(d)(4)(C)-(D)]

Qualified Trainer – Qualified training can be provided in-house, by a training agency, or by a third party. Training providers should be California-based, unless the training is so unique that a training provider cannot be found in California. The choice and method of training are determined by the employer. [Reference: WIOA Section 134(d)(4)(C)-(D)]

Training Method – The following are types of training methods allowable for IWT:

- Classroom training is instruction in a classroom setting that is provided to a group of trainees and conducted by a qualified instructor.
- Laboratory training is hands-on instruction or skill acquisition under the constant and direct guidance of a qualified trainer. Laboratory training may require the use of specialized equipment or facilities. Laboratory training may be conducted in a simulated work setting, or at a productive work setting, also known as Productive Laboratory.
- Computer-based training is delivered through a computer program at a pace set by the trainee. There is no requirement for delivery by a live trainer and training does not have to be interactive.
- Video Conference training is live, interactive instruction provided by a trainer through a video communications session.
- E-Learning instruction is delivered through a web-based system, conducted in a virtual environment utilizing a web meeting/webinar.

[Reference: WIOA Section 134(d)(4)(C)-(D)]

Eligibility for IWT

WIOA requires Local Boards to determine an employer’s eligibility for participating in IWT in order to evaluate whether training would increase the competitiveness of the employees and/or employers. Eligibility for participation in IWT is based on the following factors:

- The characteristics of the individuals in the program (e.g. individuals with barriers to employment).
- The relationship of the training to the competitiveness of the individual and employer.
- Other factors Local Boards determine appropriate, which may include, but are not limited to, the following:
 - The number of employees participating in the training.

- The employees' advancement opportunities, along with wages and benefits (both pre-and post-training earnings).
- The existence of other training and advancement opportunities provided by the employer.
- Credentials and skills gained as a result of the training.
- Layoffs averted as a result of the training.
- Utilization as part of a larger sector and/or career pathway strategy.
- Employer size.

[Reference: WIOA Section 134(d)(4)(A)(ii) and TEGL 19-16]

For an employer to receive IWT funds, the individual(s) participating in the IWT must meet the following:

- Be employed.
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship.
- Have an established employment history with the employer for six months or more. This may include time spent as a temporary or contract worker performing work for the employer. It should be noted that an individual is not held to the six month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history requirement as long as a majority of the employees being trained do meet the requirement.

[Reference: Title 20 CFR Section 680.780]

An eligible individual participating in IWT is not required to meet the eligibility requirements for the Adult or Dislocated Worker program, unless they are also co-enrolled as a participant in the WIOA Adult or Dislocated Worker program and will receive WIOA funded services in addition to the IWT.

Funding

IWT is part of a comprehensive business engagement strategy designed to meet the special requirements of an employer (including a group of employers) to upskill current employees. To implement this strategy, Local Boards can use up to 20 percent of their Adult and Dislocated Worker formula allocations for IWT activities. This 20 percent can only be used for programmatic activities, and cannot be used for administrative functions.

Generally, IWT should be provided to private sector employers, but there may be instances where non-profit and local government entities may receive IWT funds. For example, IWT funds may be used in the health care industry where nursing upskilling opportunities are available in a hospital operated by a non-profit organization.

Under WIOA, layoff aversion is now a required Rapid Response activity (Title 20 CFR Section 682.330). Local Boards can leverage Rapid Response funds by including IWT as part of a robust layoff aversion strategy for the Local Workforce Development Area (Local Area). Local Boards have flexibility to determine which strategies and activities are applicable in a given situation, based upon the specific needs, policies, and procedures within the state and Local Areas.

The WIOA defines IWT as a business service, therefore, the delivery of IWT does not require the use of an Individual Training Account or that the training program be listed on the Eligible Training Provider List.

Employer Share

Employers are required to pay for a significant cost of the training for those individuals in IWT. This can be done through cash payments and fairly evaluated in-kind contributions. The wages paid to individuals while in training may be included in the employer's share of the cost of the IWT.

The Local Board must consider the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of the training), the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities. The minimum amount of employer share in IWT depends on the size of the employer and are as follows:

- At least 10 percent of the cost for employers with 50 or fewer employees.
- At least 25 percent of the cost for employers with 51 to 100 employees.
- At least 50 percent of the cost for employers with more than 100 employees.

[Reference: WIOA Section 134(d)(4)(C)-(D)]

All requests for incumbent worker training must be submitted by the employer requesting the training and must include justification for the training need and substantiation that the above criteria will be met through the provision of the training. Requests from employers will be submitted to the Executive Director or designee using the established Incumbent Worker Training Request form. The maximum allowable amount for each Training Agreement is \$2,500. The maximum may be exceeded on a case by case basis, if adequate justification for the increased cost is provided by the requesting employer, as determined by the Executive Director.

Tracking IWT Expenditures

The EDD Workforce Services Branch's Financial Management Unit (FMU) is tasked with keeping track of IWT expenditures to ensure Local Boards do not exceed the 20% allowance for IWT. FMU has updated the expenditure reports the sub-recipients use to include a line item for IWT. Each quarter, FMU compiles a report for the Local Boards that details where they stand in regards to these expenditure levels. An example of the updated expenditure reports can be found as attachments to WSD16-13 (PDF).

Note – IWT expenditures can be counted toward the training expenditure requirement in WSD18-10. The employer contributions for IWT can be counted as leveraged dollars.

Documentation

Employers who are awarded incumbent worker training funds by the Workforce Development Board of Madera County will submit a report to the Board following the completion of the training program that outlines the results of the training, including at minimum:

- Number of individuals successfully trained;
- Number of lay-offs averted;
- Percentage of wage increases for trained individuals;
- Anticipated promotional opportunities for trained individuals.

The report shall be submitted to the Executive Director or designee no later than 30 days following the completion of the training program.

IWT Performance and Reporting Requirements

Since eligibility for IWT is determined at the employer level (not the individual level), the Department of Labor (DOL) does not consider individuals in IWT to be a participant in the Adult and/or Dislocated Worker program. Individuals who only receive IWT are not included in the WIOA Adult or Dislocated Worker program performance calculations. However, the DOL requires Local Boards and the State to report certain participant and performance data on all individuals participating in IWT. The required information for these individuals is limited to demographic information, and information necessary to calculate employment in the 2nd and 4th quarters after exit, median earnings in the 2nd quarter after exit, measurable skill gains, and credential attainment. For the purpose of calculating these metrics for IWT-only individuals, the exit date is the last date of training, as indicated in the training contract.

To reduce the reporting burden on employers and the Local Boards, the DOL encourages the collection of Social Security Numbers (SSNs) as part of the training contract with the employer. For all individuals where an SSN is collected, the EDD will conduct a base wage match to obtain their employment and earnings. For those individuals that have a pseudo SSN, it is the Local Board's responsibility to provide supplemental data. Additionally, it is the Local Board's responsibility to capture and enter credential information into CalJOBSSM for each IWT individual.

CalJOBSSM

All recipients of IWT must be reported to DOL, regardless of whether they become a participant in one of the other WIOA programs. Individuals who participate in IWT must be registered in CalJOBSSM, and do the following:

- Title I – Workforce Development application with an Incumbent Worker eligibility date entered. The application and eligibility requirements for the IWT eligibility is truncated and requires minimal information.
- On the Eligibility Summary tab of the Title I application:
 - Set “Incumbent Worker Eligibility” to yes.
 - Add the appropriate IWT grant code, then select [Finish] to save the application.
- CalJOBSSM Activity Code 308 – IWT should be added to the application and associated to the appropriate funding stream for the duration of the IWT. If utilizing WIOA formula funds, staff must associate grant code 2284 – Incumbent Worker Training Formula to the 308 – IWT activity code.

Employers

Local Area staff must ensure that the employer participating in IWT is registered as a preferred employer (recruiting employer) in CalJOBSSM, and the CalJOBSSM Activity Code E68 – IWT is added to the employer's account. For more information about registering an employer into CalJOBSSM, please see WSIN12-31 (PDF).

ACTION

This policy will be disseminated in the Local Workforce Development Area to the One-Stop Career Centers and WIOA Title I-funded subrecipients.

INQUIRIES

If you have any questions, please contact the Executive Director or designee at (559) 662-4500.



CRIMINAL RECORD RESTRICTIONS AND IMPACT BASED ON RACE AND NATIONALITY POLICY

EDD Date: 09/14/2012

WDB Review Date:12/19/19

EXECUTIVE SUMMARY

Purpose:

This policy is intended to help the public workforce system and other entities, including covered entities (see the definition under the Policy and Procedures section of this policy) that receive federal financial assistance, comply with their nondiscrimination obligations when serving individuals with criminal records. It is also intended to ensure that exclusionary policies do not conflict with efforts to promote employment opportunities for such individuals. This policy applies to all jobs available through a covered entity's job bank without regard to whether the job is in government or the private sector, including federal contractors and subcontractors. This policy also reiterates relevant information located in **WIOA Section 188(a)(1)** which prohibits discrimination on the basis of age, disability, sex, race, color, or national origin for programs and activities receiving federal financial assistance.

Scope:

This policy applies to all entities receiving federal financial assistance.

REFERENCES:

- Workforce Investment Act (WIOA) Section 188(a)(1)
- Title VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (CFR) Sections 652.8(j)(1) and 652.8(j)(2)
- Title 29 CFR Parts 31.3(b)(2), 31.3(c)(1), 31.3(d)(1), 37.2(a)(2), and 37.6(d)(1)

- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 31-11, Update on Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Disparate Impact Based on Race and National Origin (May 25, 2012)
- California Fair Employment and Housing Act (FEHA) Section 12926(d)
- U.S. Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND:

In recent decades, the number of Americans who have had contact with the criminal justice system has drastically increased. In California, it is estimated that about one in four adults now has a criminal history record which often consists of an arrest that did not lead to conviction, a conviction without incarceration, or a conviction for a non-violent crime. Because of this increase, racial and ethnic disparities have arisen, which may be reflected in incarceration rates, as well as in other criminal history records. Federal and state programs have devoted significant resources to reducing barriers to employment of people with criminal records in an effort to also increase public safety.

POLICY AND PROCEDURES:

For the purposes of this policy, “covered entities” include One-Stop Career Centers, State Workforce Agencies, State Workforce Administrators, State Workforce Liaisons, State and Local Workforce Board Chairs and Directors, State and Locals Equal Opportunities Officers, State Labor Commissioners, WIOA Section 166 Indian and Native American Grantees, WIOA Section 167 Migrant and National Farmworker Jobs Program Grantees, Senior Community Service Employment Program Grantees, Employment and Training Administrative Regional Administrators, Job Corps Contractors, Sub-Recipients of Department of Labor Financial Assistance.

Employers and agencies within the public workforce system should be aware of federal antidiscrimination laws if they choose to rely on job applicants' criminal history records to help assess potential risk to employees, customers, and business assets. Hiring policies and practices that exclude individuals with criminal records may conflict with laws which prohibit intentional discrimination on the basis of race, national origin, or other protected groups, and policies or practices that have a disparate impact on these protected groups and cannot be justified as job related and consistent with business necessity. Policies that exclude individuals from employment or other services based on the existence of a criminal history record, and do not take into account the age and nature of an offense, or the relationship of the record to the specific job duties, are likely to unjustifiably restrict the employment opportunities of individuals with conviction histories and, due to racial and ethnic disparities in the criminal justice system, are likely to violate federal antidiscrimination law. Accordingly, employers and agencies should carefully consider their legal obligations before adopting such policies. Covered entities may also wish to direct employers to the Equal Employment Opportunity Commission (EEOC) Reentry Myth Buster (Attachment 1) which clarifies that an arrest or conviction record will not automatically bar individuals from employment.

The nondiscrimination provisions that apply to the federally-assisted workforce system prohibit:

- Disparate treatment - intentionally treating members of protected groups differently based on their protected status.
- Disparate impact - the use of policies or practices that are neutral on their face, but have a disproportionate impact on members of protected groups, and are not job related and consistent with business necessity.

Title VII of the Civil Rights Act of 1964, as amended applies to employers with 15 or more employees, and prohibits employment discrimination based on race, color, religion, sex, or national origin. Title VII also contains provisions that specifically address employment agency activities. Entities within the public workforce system like One-Stop Career Centers, may be regarded as "employment agencies" under the law and are not permitted to:

- Print, publish, or cause to be printed, any job announcement that discriminates based on race, color, religion, sex, or national origin unless there is a bona fide occupational qualification for a preference based on religion, sex, or national origin.
- Refuse to refer an individual for employment or otherwise to discriminate against any individual based on race, color, religion, sex, or national origin.

The EEOC, the federal agency that administers and enforces Title VII, has issued guidance on the use of arrest and conviction records in employment decisions (Attachment 2). Based on this guidance:

- An employer's neutral policy (e.g., excluding applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected

under Title VII, and may violate the law if not job related and consistent with business necessity (disparate impact liability).

- National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.

California's parallel law to Title VII of the Civil Rights Act of 1964 is the FEHA. It is important to note that California law is more restrictive than federal law. Section 12926(d) of the FEHA applies to employers with 5 more employees rather than the 15 or more employees described above in Title VII.

Title VI of the Civil Rights Act of 1964 applies to all programs or activities receiving federal financial assistance under WIOA and the Wagner-Peyser Act (WP). Title VI and its implementing regulations prohibit any program or activity from subjecting anyone to discrimination on the grounds of race, color, or national origin.

WIOA Section 188(a)(1) further reiterates that no individual may be discriminated against based on age, disability, sex, race, color, or national origin. As a condition of initiating or continuing federal financial assistance, recipients must provide assurances that "the program will be conducted or the facility operated in compliance with all requirements imposed by" the nondiscrimination provision in Title VI.

In light of the legal obligations, all entities should conduct their activities using safeguards to prevent discrimination and promote employment opportunities for formerly-incarcerated and other individuals with criminal records via the following methods:

Posting job announcements in job banks

When soliciting or posting job vacancies from employers, business services representatives, or other sources, policies and procedures should be in place to ensure that the following steps are taken:

- Covered entities should provide employers with Attachment 3, titled Notice #1 for Employers Regarding Job Bank Nondiscrimination and Criminal Record Exclusions when registering to use a job bank with a One-Stop or other covered entity. First, the notice explains that the covered entity must comply with federal civil rights laws which, due to the likely disparate impact of excluding protected groups with criminal records generally prohibit rejecting individuals based solely on an arrest or conviction history. Second, the notice also provides information for employers about their obligations under the federal Fair Credit Reporting Act, which require employers to obtain applicants' permission before asking a background screening company for a criminal history report. Employers must also provide applicants with a copy of the report and a summary of their rights before taking any negative employment action (e.g. not hiring or firing). Third, the notice also provides information for employers about their obligations under the California Investigative

Consumer Reporting Agencies Act, which limits reporting by consumer reporting agencies of criminal convictions that are older than seven years, and California Labor Code § 432.7 and California Code of Regulations, Title 2, § 7287.4(d)(1), which prevents employers from asking about arrests that did not lead to conviction and about misdemeanor convictions that have been dismissed pursuant to California Penal Code § 1203.4. Finally, the notice describes the Work Opportunity Tax Credit and the Federal Bonding Program, two incentives that support employers' hiring of individuals with conviction histories.

- Covered entities should use a system, automated or otherwise, for identifying vacancy announcements that include hiring restrictions based on arrest and/or conviction records. This system may be the same one already in use to identify other discriminatory language in job postings.
- Covered entities should provide employers the notice that appears as Attachment 4 in this directive, when job postings have been identified that exclude individuals based on arrest and/or conviction history. The notice states that in order to ensure that the employer and covered entity are in compliance with federal civil rights law, the employer will be given the opportunity to remove or edit the vacancy announcement. The notice and opportunity to remove or edit should be provided to the employer whether the vacancy announcement has been posted directly with the covered entity or has instead been made available in the job bank through other means.
- Vacancy announcements containing language excluding candidates based on criminal history should only remain posted when accompanied by the notice to job seekers that appear as Attachment 5 in this policy. This notice explains that the exclusions in the posting may have an adverse impact on protected groups, as set forth in the EEOC guidance. The notice further informs job seekers that individuals with criminal history records are not prohibited from applying for the posted position.
- Covered entities should retain records of the notices sent to address vacancy announcements containing hiring restrictions based on arrest and/or conviction records. The DOL recognizes that covered entities have a variety of systems in place to comply with nondiscrimination obligations, and that entities engage with employers in varying ways. Entities may elect to take other steps that are at least equally effective in achieving compliance with their nondiscrimination obligations.

Screening and referral based on criminal record restrictions

When screening or referring individuals for vacancy announcements, job orders, training, or other employment-related services:

- Covered entity staff should follow the EEOC's arrest and conviction guidance (Attachment 2), if an arrest or a conviction history is used for purposes of excluding an individual from the entity's training programs or other employment-related services. However, nothing in this directive prevents staff from taking into account

an individual's arrest or conviction history for purposes designed to help such individuals.

- Covered entities should refrain from screening and refusing to make referrals because an applicant has a criminal history record. Job seekers who are referred for positions where the job posting takes criminal history into account should receive a copy of Attachment 4 for job seekers along with the job announcement.

ACTION

This policy will be disseminated in the Local Workforce Development Area to the One-Stop Career Centers and WIOA Title I-funded subrecipients.

INQUIRIES

If you have any questions, please contact the Executive Director or designee at (559) 662-4500.

REENTRY MYTH

BUSTER!

A Product of the Federal Interagency Reentry Council

MYTH: People with criminal records are automatically barred from employment.

FACT: An arrest or conviction record will NOT automatically bar individuals from employment.

Title VII of the Civil Rights Act of 1964 makes it unlawful to discriminate in employment based on race, color, national origin, religion, or sex. This law does not prohibit an employer from requiring applicants to provide information about arrests, convictions or incarceration. But, employers may not treat people with the same criminal records differently because of their race or national origin. In addition, in the vast majority of cases, employers may not automatically bar everyone with an arrest or conviction record from employment. This is because an automatic bar to hiring everyone with a criminal record is likely to limit the employment opportunities of applicants or workers because of their race or ethnicity.

If an employer is aware of a conviction or incarceration, that information should only bar someone from employment when the conviction is closely related to the job, after considering:

- The nature of the job,
- The nature and seriousness of the offense, and
- The length of time since it occurred.

Since an arrest alone does not necessarily mean that someone has committed a crime, an employer should not assume that someone who has been arrested, but not convicted, did in fact commit the offense. Instead, the employer should allow the person to explain the circumstances of the arrest. If it appears that he or she engaged in the alleged unlawful conduct, the employer should assess whether the conduct is closely enough related to the job to justify denial of employment.

These rules apply to all employers that have 15 or more employees, including private sector employers, the federal government and federal contractors.

For More Information:

EEOC Policy Guidance and Statements on Arrest and Conviction Records

<http://www.eeoc.gov/policy/docs/convict1.html>

http://www.eeoc.gov/policy/docs/arrest_records.html

<http://www.eeoc.gov/policy/docs/race-color.html#VIB2conviction>

FTC Guidance on the Use of Arrest and Conviction Records Under the Fair Credit Reporting Act (FCRA).

The FCRA imposes a number of requirements on employers who wish to use criminal background checks to screen applicants and/or employees. For more information about these requirements, please visit the following websites:

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre36.shtm>

<http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know>

What is a REENTRY MYTH BUSTER? This Myth Buster is one in a series of fact sheets intended to clarify existing federal policies that affect formerly incarcerated individuals and their families. Each year, more than 700,000 individuals are released from state and federal prisons. Another 9 million cycle through local jails. When reentry fails, the social and economic costs are high -- more crime, more victims, more family distress, and more pressure on already-strained state and municipal budgets.

Because reentry intersects with health and housing, education and employment, family, faith, and community well-being, many federal agencies are focusing on initiatives for the reentry population. Under the auspices of the Cabinet-level interagency Reentry Council, federal agencies are working together to enhance community safety and well-being, assist those returning from prison and jail in becoming productive citizens, and save taxpayer dollars by lowering the direct and collateral costs of incarceration.

<i>EEOC Enforcement Guidance</i>	Number 915.002 Date 4/25/2012
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1. **SUBJECT:** Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.*
2. **PURPOSE:** The purpose of this Enforcement Guidance is to consolidate and update the U.S. Equal Employment Opportunity Commission's guidance documents regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*
3. **EFFECTIVE DATE:** Upon receipt.
4. **EXPIRATION DATE:** This Notice will remain in effect until rescinded or superseded.
5. **ORIGINATOR:** Office of Legal Counsel.

Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964

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I. Summary

- An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended.
- The Guidance builds on longstanding court decisions and existing guidance documents that the U.S. Equal Employment Opportunity Commission (Commission or EEOC) issued over twenty years ago.
- The Guidance focuses on employment discrimination based on race and national origin. The Introduction provides information about criminal records, employer practices, and Title VII.
- The Guidance discusses the differences between arrest and conviction records.
 - The fact of an arrest does not establish that criminal conduct has occurred, and an exclusion based on an arrest, in itself, is not job related and consistent with business necessity. However, an employer may make an employment decision based on the conduct underlying an arrest if the conduct makes the individual unfit for the position in question.
 - In contrast, a conviction record will usually serve as sufficient evidence that a person engaged in particular conduct. In certain circumstances, however, there may be reasons for an employer not to rely on the conviction record alone when making an employment decision.
- The Guidance discusses disparate treatment and disparate impact analysis under Title VII.
 - A violation may occur when an employer treats criminal history information differently for different applicants or employees, based on their race or national origin (disparate treatment liability).
 - An employer's neutral policy (e.g., excluding applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title VII, and may violate the law if not job related and consistent with business necessity (disparate impact liability).
 - National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.

- Two circumstances in which the Commission believes employers will consistently meet the “job related and consistent with business necessity” defense are as follows:
 - The employer validates the criminal conduct exclusion for the position in question in light of the Uniform Guidelines on Employee Selection Procedures (if there is data or analysis about criminal conduct as related to subsequent work performance or behaviors); or
 - The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three factors identified by the court in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977)). The employer’s policy then provides an opportunity for an individualized assessment for those people identified by the screen, to determine if the policy as applied is job related and consistent with business necessity. (Although Title VII does not require individualized assessment in all circumstances, the use of a screen that does not include individualized assessment is more likely to violate Title VII.).
- Compliance with other federal laws and/or regulations that conflict with Title VII is a defense to a charge of discrimination under Title VII.
- State and local laws or regulations are preempted by Title VII if they “purport[] to require or permit the doing of any act which would be an unlawful employment practice” under Title VII. 42 U.S.C. § 2000e-7.
- The Guidance concludes with best practices for employers.

II. Introduction

The EEOC enforces Title VII of the Civil Rights Act of 1964 (Title VII) which prohibits employment discrimination based on race, color, religion, sex, or national origin.¹ This Enforcement Guidance is issued as part of the Commission's efforts to eliminate unlawful discrimination in employment screening, for hiring or retention, by entities covered by Title VII, including private employers as well as federal, state, and local governments.²

In the last twenty years, there has been a significant increase in the number of Americans who have had contact³ with the criminal justice system⁴ and, concomitantly, a major increase in the number of people with criminal records in the working-age population.⁵ In 1991, only 1.8% of the adult population had served time in prison.⁶ After ten years, in 2001, the percentage rose to 2.7% (1 in 37 adults).⁷ By the end of 2007, 3.2% of all adults in the United States (1 in every 31) were under some form of correctional control involving probation, parole, prison, or jail.⁸ The Department of Justice's Bureau of Justice Statistics (DOJ/BJS) has concluded that, if incarceration rates do not decrease, approximately 6.6% of all persons born in the United States in 2001 will serve time in state or federal prison during their lifetimes.⁹

Arrest and incarceration rates are particularly high for African American and Hispanic men.¹⁰ African Americans and Hispanics¹¹ are arrested at a rate that is 2 to 3 times their proportion of the general population.¹² Assuming that current incarceration rates remain unchanged, about 1 in 17 White men are expected to serve time in prison during their lifetime;¹³ by contrast, this rate climbs to 1 in 6 for Hispanic men; and to 1 in 3 for African American men.¹⁴

The Commission, which has enforced Title VII since it became effective in 1965, has well-established guidance applying Title VII principles to employers' use of criminal records to screen for employment.¹⁵ This Enforcement Guidance builds on longstanding court decisions and policy documents that were issued over twenty years ago. In light of employers' increased access to criminal history information, case law analyzing Title VII requirements for criminal record exclusions, and other developments,¹⁶ the Commission has decided to update and consolidate in this document all of its prior policy statements about Title VII and the use of criminal records in employment decisions. Thus, this Enforcement Guidance will supersede the Commission's previous policy statements on this issue.

The Commission intends this document for use by employers considering the use of criminal records in their selection and retention processes; by individuals who suspect that they have been denied jobs or promotions, or have been discharged because of their criminal records; and by EEOC staff who are investigating discrimination charges involving the use of criminal records in employment decisions.

III. Background

The contextual framework for the Title VII analysis in this Enforcement Guidance includes how criminal record information is collected and recorded, why employers use criminal records, and the EEOC's interest in such criminal record screening.

A. Criminal History Records

Criminal history information can be obtained from a wide variety of sources including, but not limited to, the following:

- Court Records. Courthouses maintain records relating to criminal charges and convictions, including arraignments, trials, pleas, and other dispositions.¹⁷ Searching county courthouse records typically provides the most complete criminal history.¹⁸ Many county courthouse records must be retrieved on-site,¹⁹ but some courthouses offer their records online.²⁰ Information about federal crimes such as interstate drug trafficking, financial fraud, bank robbery, and crimes against the government may be found online in federal court records by searching the federal courts' Public Access to Court Electronic Records or Case Management/Electronic Case Files.²¹
- Law Enforcement and Corrections Agency Records. Law enforcement agencies such as state police agencies and corrections agencies may allow the public to access their records, including records of complaints, investigations, arrests, indictments, and periods of incarceration, probation, and parole.²² Each agency may differ with respect to how and where the records may be searched, and whether they are indexed.²³
- Registries or Watch Lists. Some government entities maintain publicly available lists of individuals who have been convicted of, or are suspected of having committed, a certain type of crime. Examples of such lists include state and federal sex offender registries and lists of individuals with outstanding warrants.²⁴
- State Criminal Record Repositories. Most states maintain their own centralized repositories of criminal records, which include records that are submitted by most or all of their criminal justice agencies, including their county courthouses.²⁵ States differ with respect to the types of records included in the repository,²⁶ the completeness of the records,²⁷ the frequency with which they are updated,²⁸ and whether they permit the public to search the records by name, by fingerprint, or both.²⁹ Some states permit employers (or third-parties acting on their behalf) to access these records, often for a fee.³⁰ Others limit access to certain types of records,³¹ and still others deny access altogether.³²
- The Interstate Identification Index (III). The Federal Bureau of Investigation (FBI) maintains the most comprehensive collection of criminal records in the nation, called the "Interstate Identification Index" (III). The III database compiles

records from each of the state repositories, as well as records from federal and international criminal justice agencies.³³

The FBI's III database may be accessed for employment purposes by:

- the federal government;³⁴
- employers in certain industries that are regulated by the federal government, such as “the banking, nursing home, securities, nuclear energy, and private security guard industries; as well as required security screenings by federal agencies of airport workers, HAZMAT truck drivers and other transportation workers”;³⁵ and
- employers in certain industries “that the state has sought to regulate, such as persons employed as civil servants, day care, school, or nursing home workers, taxi drivers, private security guards, or members of regulated professions.”³⁶

Recent studies have found that a significant number of state and federal criminal record databases include incomplete criminal records.

- A 2011 study by the DOJ/BJA reported that, as of 2010, many state criminal history record repositories still had not recorded the final dispositions for a significant number of arrests.³⁷
- A 2006 study by the DOJ/BJA found that only 50% of arrest records in the FBI's III database were associated with a final disposition.³⁸

Additionally, reports have documented that criminal records may be inaccurate.

- One report found that even if public access to criminal records has been restricted by a court order to seal and/or expunge such records, this does not guarantee that private companies also will purge the information from their systems or that the event will be erased from media archives.³⁹
- Another report found that criminal background checks may produce inaccurate results because criminal records may lack “unique” information or because of “misspellings, clerical errors or intentionally inaccurate identification information provided by search subjects who wish to avoid discovery of their prior criminal activities.”⁴⁰

Employers performing background checks to screen applicants or employees may attempt to search these governmental sources themselves or conduct a simple Internet search, but they often rely on third-party background screening businesses.⁴¹ Businesses that sell criminal history information to employers are “consumer reporting agencies” (CRAs)⁴² if they provide the information in “consumer reports”⁴³ under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (FCRA). Under FCRA, a CRA generally may not report records of arrests that did not result in entry of a judgment of conviction, where the arrests occurred more than seven years ago.⁴⁴

However, they may report convictions indefinitely.⁴⁵

CRA's often maintain their own proprietary databases that compile information from various sources, such as those described above, depending on the extent to which the business has purchased or otherwise obtained access to data.⁴⁶ Such databases vary with respect to the geographic area covered, the type of information included (e.g., information about arrests, convictions, prison terms, or specialized information for a subset of employers such as information about workplace theft or shoplifting cases for retail employers⁴⁷), the sources of information used (e.g., county databases, law enforcement agency records, sex offender registries), and the frequency with which they are updated. They also may be missing certain types of disposition information, such as updated convictions, sealing or expungement orders, or orders for entry into a diversion program.⁴⁸

B. Employers' Use of Criminal History Information

In one survey, a total of 92% of responding employers stated that they subjected all or some of their job candidates to criminal background checks.⁴⁹ Employers have reported that their use of criminal history information is related to ongoing efforts to combat theft and fraud,⁵⁰ as well as heightened concerns about workplace violence⁵¹ and potential liability for negligent hiring.⁵² Employers also cite federal laws as well as state and local laws⁵³ as reasons for using criminal background checks.

C. The EEOC's Interest in Employers' Use of Criminal Records in Employment Screening

The EEOC enforces Title VII, which prohibits employment discrimination based on race, color, religion, sex, or national origin. Having a criminal record is not listed as a protected basis in Title VII. Therefore, whether a covered employer's reliance on a criminal record to deny employment violates Title VII depends on whether it is part of a claim of employment discrimination based on race, color, religion, sex, or national origin. Title VII liability for employment discrimination is determined using two analytic frameworks: "disparate treatment" and "disparate impact." Disparate treatment is discussed in Section IV and disparate impact is discussed in Section V.

IV. Disparate Treatment Discrimination and Criminal Records

A covered employer is liable for violating Title VII when the plaintiff demonstrates that it treated him differently because of his race, national origin, or another protected basis.⁵⁴ For example, there is Title VII disparate treatment liability where the evidence shows that a covered employer rejected an African American applicant based on his criminal record but hired a similarly situated White applicant with a comparable criminal record.⁵⁵

Example 1: Disparate Treatment Based on Race. John, who is White, and Robert, who is African American, are both recent graduates of State University. They have similar educational backgrounds, skills, and work experience. They each pled guilty to charges of possessing and

distributing marijuana as high school students, and neither of them had any subsequent contact with the criminal justice system.

After college, they both apply for employment with Office Jobs, Inc., which, after short intake interviews, obtains their consent to conduct a background check. Based on the outcome of the background check, which reveals their drug convictions, an Office Jobs, Inc., representative decides not to refer Robert for a follow-up interview. The representative remarked to a co-worker that Office Jobs, Inc., cannot afford to refer “these drug dealer types” to client companies. However, the same representative refers John for an interview, asserting that John’s youth at the time of the conviction and his subsequent lack of contact with the criminal justice system make the conviction unimportant. Office Jobs, Inc., has treated John and Robert differently based on race, in violation of Title VII.

Title VII prohibits “not only decisions driven by racial [or ethnic] animosity, but also decisions infected by stereotyped thinking”⁵⁶ Thus, an employer’s decision to reject a job applicant based on racial or ethnic stereotypes about criminality—rather than qualifications and suitability for the position—is unlawful disparate treatment that violates Title VII.⁵⁷

Example 2: Disparate Treatment Based on National Origin. Tad, who is White, and Nelson, who is Latino, are both recent high school graduates with grade point averages above 4.0 and college plans. While Nelson has successfully worked full-time for a landscaping company during the summers, Tad only held occasional lawn-mowing and camp-counselor jobs. In an interview for a research job with Meaningful and Paid Internships, Inc. (MPII), Tad discloses that he pled guilty to a felony at age 16 for accessing his school’s computer system over the course of several months without authorization and changing his classmates’ grades. Nelson, in an interview with MPII, emphasizes his successful prior work experience, from which he has good references, but also discloses that, at age 16, he pled guilty to breaking and entering into his high school as part of a class prank that caused little damage to school property. Neither Tad nor Nelson had subsequent contact with the criminal justice system.

The hiring manager at MPII invites Tad for a second interview, despite his record of criminal conduct. However, the same hiring manager sends Nelson a rejection notice, saying to a colleague that Nelson is only qualified to do manual labor and, moreover, that he has a criminal record. In light of the evidence showing that Nelson’s and Tad’s educational backgrounds are similar, that Nelson’s work experience is more extensive, and that Tad’s criminal conduct is more indicative of untrustworthiness, MPII has failed to state a legitimate, nondiscriminatory reason for rejecting Nelson. If Nelson filed a Title VII charge alleging disparate treatment based on national origin and the EEOC’s investigation

confirmed these facts, the EEOC would find reasonable cause to believe that discrimination occurred.

There are several kinds of evidence that may be used to establish that race, national origin, or other protected characteristics motivated an employer's use of criminal records in a selection decision, including, but not limited to:

- Biased statements. Comments by the employer or decisionmaker that are derogatory with respect to the charging party's protected group, or that express group-related stereotypes about criminality, might be evidence that such biases affected the evaluation of the applicant's or employee's criminal record.
- Inconsistencies in the hiring process. Evidence that the employer requested criminal history information more often for individuals with certain racial or ethnic backgrounds, or gave Whites but not racial minorities the opportunity to explain their criminal history, would support a showing of disparate treatment.
- Similarly situated comparators (individuals who are similar to the charging party in relevant respects, except for membership in the protected group). Comparators may include people in similar positions, former employees, and people chosen for a position over the charging party. The fact that a charging party was treated differently than individuals who are not in the charging party's protected group by, for example, being subjected to more or different criminal background checks or to different standards for evaluating criminal history, would be evidence of disparate treatment.
- Employment testing. Matched-pair testing may reveal that candidates are being treated differently because of a protected status.⁵⁸
- Statistical evidence. Statistical analysis derived from an examination of the employer's applicant data, workforce data, and/or third party criminal background history data may help to determine if the employer counts criminal history information more heavily against members of a protected group.

V. Disparate Impact Discrimination and Criminal Records

A covered employer is liable for violating Title VII when the plaintiff demonstrates that the employer's neutral policy or practice has the effect of disproportionately screening out a Title VII-protected group and the employer fails to demonstrate that the policy or practice is job related for the position in question and consistent with business necessity.⁵⁹

In its 1971 *Griggs v. Duke Power Company* decision, the Supreme Court first recognized that Title VII permits disparate impact claims.⁶⁰ The *Griggs* Court explained that "[Title VII] proscribes . . . practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude [African Americans] cannot be shown to be related to job performance, the practice is prohibited."⁶¹ In 1991,

Congress amended Title VII to codify this analysis of discrimination and its burdens of proof.⁶² Title VII, as amended, states:

An unlawful employment practice based on disparate impact is established . . . if a complaining party demonstrates that an employer uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity. . . .⁶³

With respect to criminal records, there is Title VII disparate impact liability where the evidence shows that a covered employer's criminal record screening policy or practice disproportionately screens out a Title VII-protected group and the employer does not demonstrate that the policy or practice is job related for the positions in question and consistent with business necessity.

A. Determining Disparate Impact of Policies or Practices that Screen Individuals Based on Records of Criminal Conduct

1. Identifying the Policy or Practice

The first step in disparate impact analysis is to identify the particular policy or practice that causes the unlawful disparate impact. For criminal conduct exclusions, relevant information includes the text of the policy or practice, associated documentation, and information about how the policy or practice was actually implemented. More specifically, such information also includes which offenses or classes of offenses were reported to the employer (e.g., all felonies, all drug offenses); whether convictions (including sealed and/or expunged convictions), arrests, charges, or other criminal incidents were reported; how far back in time the reports reached (e.g., the last five, ten, or twenty years); and the jobs for which the criminal background screening was conducted.⁶⁴ Training or guidance documents used by the employer also are relevant, because they may specify which types of criminal history information to gather for particular jobs, how to gather the data, and how to evaluate the information after it is obtained.

2. Determining Disparate Impact

Nationally, African Americans and Hispanics are arrested in numbers disproportionate to their representation in the general population. In 2010, 28% of all arrests were of African Americans,⁶⁵ even though African Americans only comprised approximately 14% of the general population.⁶⁶ In 2008, Hispanics were arrested for federal drug charges at a rate of approximately three times their proportion of the general population.⁶⁷ Moreover, African Americans and Hispanics were more likely than Whites to be arrested, convicted, or sentenced for drug offenses even though their rate of drug use is similar to the rate of drug use for Whites.⁶⁸

African Americans and Hispanics also are incarcerated at rates disproportionate to their numbers in the general population. Based on national incarceration data, the U.S. Department of Justice estimated in 2001 that 1 out of every 17 White men (5.9% of the White men in the U.S.)

is expected to go to prison at some point during his lifetime, assuming that current incarceration rates remain unchanged.⁶⁹ This rate climbs to 1 in 6 (or 17.2%) for Hispanic men.⁷⁰ For African American men, the rate of expected incarceration rises to 1 in 3 (or 32.2%).⁷¹ Based on a state-by-state examination of incarceration rates in 2005, African Americans were incarcerated at a rate 5.6 times higher than Whites,⁷² and 7 states had a Black-to-White ratio of incarceration that was 10 to 1.⁷³ In 2010, Black men had an imprisonment rate that was nearly 7 times higher than White men and almost 3 times higher than Hispanic men.⁷⁴

National data, such as that cited above, supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to further investigate such Title VII disparate impact charges. During an EEOC investigation, the employer also has an opportunity to show, with relevant evidence, that its employment policy or practice does not cause a disparate impact on the protected group(s). For example, an employer may present regional or local data showing that African American and/or Hispanic men are not arrested or convicted at disproportionately higher rates in the employer's particular geographic area. An employer also may use its own applicant data to demonstrate that its policy or practice did not cause a disparate impact. The Commission will assess relevant evidence when making a determination of disparate impact, including applicant flow information maintained pursuant to the Uniform Guidelines on Employee Selection Procedures,⁷⁵ workforce data, criminal history background check data, demographic availability statistics, incarceration/conviction data, and/or relevant labor market statistics.⁷⁶

An employer's evidence of a racially balanced workforce will not be enough to disprove disparate impact. In *Connecticut v. Teal*, the Supreme Court held that a "bottom line" racial balance in the workforce does not preclude employees from establishing a prima facie case of disparate impact; nor does it provide employers with a defense.⁷⁷ The issue is whether the policy or practice deprives a disproportionate number of Title VII-protected individuals of employment opportunities.⁷⁸

Finally, in determining disparate impact, the Commission will assess the probative value of an employer's applicant data. As the Supreme Court stated in *Dothard v. Rawlinson*, an employer's "application process might itself not adequately reflect the actual potential applicant pool since otherwise qualified people might be discouraged from applying" because of an alleged discriminatory policy or practice.⁷⁹ Therefore, the Commission will closely consider whether an employer has a reputation in the community for excluding individuals with criminal records. Relevant evidence may come from ex-offender employment programs, individual testimony, employer statements, evidence of employer recruitment practices, or publicly posted notices, among other sources.⁸⁰ The Commission will determine the persuasiveness of such evidence on a case-by-case basis.

B. Job Related For the Position in Question and Consistent with Business Necessity

1. Generally

After the plaintiff in litigation establishes disparate impact, Title VII shifts the burdens of

production and persuasion to the employer to “demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.”⁸¹ In the legislative history of the 1991 Civil Rights Act, Congress referred to *Griggs* and its progeny such as *Albemarle Paper Company v. Moody*⁸² and *Dothard*⁸³ to explain how this standard should be construed.⁸⁴ The *Griggs* Court stated that the employer’s burden was to show that the policy or practice is one that “bear[s] a demonstrable relationship to successful performance of the jobs for which it was used” and “measures the person for the job and not the person in the abstract.”⁸⁵ In both *Albemarle*⁸⁶ and *Dothard*,⁸⁷ the Court emphasized the factual nature of the business necessity inquiry. The Court further stated in *Dothard* that the terms of the exclusionary policy must “be shown to be necessary to safe and efficient job performance.”⁸⁸

In a case involving a criminal record exclusion, the Eighth Circuit in its 1975 *Green v. Missouri Pacific Railroad* decision, held that it was discriminatory under Title VII for an employer to “follow[] the policy of disqualifying for employment any applicant with a conviction for any crime other than a minor traffic offense.”⁸⁹ The Eighth Circuit identified three factors (the “*Green* factors”) that were relevant to assessing whether an exclusion is job related for the position in question and consistent with business necessity:

- The nature and gravity of the offense or conduct;⁹⁰
- The time that has passed since the offense or conduct and/or completion of the sentence;⁹¹ and
- The nature of the job held or sought.⁹²

In 2007, the Third Circuit in *El v. Southeastern Pennsylvania Transportation Authority*⁹³ developed the statutory analysis in greater depth. Douglas El challenged SEPTA’s policy of excluding everyone ever convicted of a violent crime from the job of paratransit driver.⁹⁴ El, a 55 year-old African American paratransit driver-trainee, was terminated from employment when SEPTA learned of his conviction for second-degree murder 40 years earlier; the conviction involved a gang fight when he was 15 years old and was his only disqualifying offense under SEPTA’s policy.⁹⁵ The Third Circuit expressed “reservations” about a policy such as SEPTA’s (exclusion for all violent crimes, no matter how long ago they were committed) “in the abstract.”⁹⁶

Applying Supreme Court precedent, the *El* court observed that some level of risk is inevitable in all hiring, and that, “[i]n a broad sense, hiring policies . . . ultimately concern the management of risk.”⁹⁷ Recognizing that assessing such risk is at the heart of criminal record exclusions, the Third Circuit concluded that Title VII requires employers to justify criminal record exclusions by demonstrating that they “accurately distinguish between applicants [who] pose an unacceptable level of risk and those [who] do not.”⁹⁸

The Third Circuit affirmed summary judgment for SEPTA, but stated that the outcome of the case might have been different if Mr. El had, “for example, hired an expert who testified that there is a time at which a former criminal is no longer any more likely to recidivate than the average person, . . . [so] there would be a factual question for the jury to resolve.”⁹⁹ The Third Circuit reasoned, however, that the recidivism evidence presented by SEPTA’s experts, in

conjunction with the nature of the position at issue—paratransit driver-trainee with unsupervised access to vulnerable adults—required the employer to exercise the utmost care.¹⁰⁰

In the subsections below, the Commission discusses considerations that are relevant to assessing whether criminal record exclusion policies or practices are job related and consistent with business necessity. First, we emphasize that arrests and convictions are treated differently.

2. Arrests

The fact of an arrest does not establish that criminal conduct has occurred.¹⁰¹ Arrests are not proof of criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed.¹⁰² Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.¹⁰³

An arrest, however, may in some circumstances trigger an inquiry into whether the conduct underlying the arrest justifies an adverse employment action. Title VII calls for a fact-based analysis to determine if an exclusionary policy or practice is job related and consistent with business necessity. Therefore, an exclusion based on an arrest, in itself, is not job related and consistent with business necessity.

Another reason for employers not to rely on arrest records is that they may not report the final disposition of the arrest (e.g., not prosecuted, convicted, or acquitted). As documented in Section III.A., *supra*, the DOJ/BJIS reported that many arrest records in the FBI's III database and state criminal record repositories are not associated with final dispositions.¹⁰⁴ Arrest records also may include inaccuracies or may continue to be reported even if expunged or sealed.¹⁰⁵

Example 3: Arrest Record Is Not Grounds for Exclusion. Mervin and Karen, a middle-aged African American couple, are driving to church in a predominantly white town. An officer stops them and interrogates them about their destination. When Mervin becomes annoyed and comments that his offense is simply “driving while Black,” the officer arrests him for disorderly conduct. The prosecutor decides not to file charges against Mervin, but the arrest remains in the police department's database and is reported in a background check when Mervin applies with his employer of fifteen years for a promotion to an executive position. The employer's practice is to deny such promotions to individuals with arrest records, even without a conviction, because it views an arrest record as an indicator of untrustworthiness and irresponsibility. If Mervin filed a Title VII charge based on these facts, and disparate impact based on race were established, the EEOC would find reasonable cause to believe that his employer violated Title VII.

Although an arrest record standing alone may not be used to deny an employment opportunity, an employer may make an employment decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question. The conduct, not the arrest, is relevant for employment purposes.

Example 4: Employer's Inquiry into Conduct Underlying Arrest.

Andrew, a Latino man, worked as an assistant principal in Elementary School for several years. After several ten and eleven-year-old girls attending the school accused him of touching them inappropriately on the chest, Andrew was arrested and charged with several counts of endangering the welfare of children and sexual abuse. Elementary School has a policy that requires suspension or termination of any employee who the school believes engaged in conduct that impacts the health or safety of the students. After learning of the accusations, the school immediately places Andrew on unpaid administrative leave pending an investigation. In the course of its investigation, the school provides Andrew a chance to explain the events and circumstances that led to his arrest. Andrew denies the allegations, saying that he may have brushed up against the girls in the crowded hallways or lunchroom, but that he doesn't really remember the incidents and does not have regular contact with any of the girls. The school also talks with the girls, and several of them recount touching in crowded situations. The school does not find Andrew's explanation credible. Based on Andrew's conduct, the school terminates his employment pursuant to its policy.

Andrew challenges the policy as discriminatory under Title VII. He asserts that it has a disparate impact based on national origin and that his employer may not suspend or terminate him based solely on an arrest without a conviction because he is innocent until proven guilty. After confirming that an arrest policy would have a disparate impact based on national origin, the EEOC concludes that no discrimination occurred. The school's policy is linked to conduct that is relevant to the particular jobs at issue, and the exclusion is made based on descriptions of the underlying conduct, not the fact of the arrest. The Commission finds no reasonable cause to believe Title VII was violated.

3. Convictions

By contrast, a record of a conviction will usually serve as sufficient evidence that a person engaged in particular conduct, given the procedural safeguards associated with trials and guilty pleas.¹⁰⁶ However, there may be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged, or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor.¹⁰⁷

Some states require employers to wait until late in the selection process to ask about convictions.¹⁰⁸ The policy rationale is that an employer is more likely to objectively assess the relevance of an applicant's conviction if it becomes known when the employer is already knowledgeable about the applicant's qualifications and experience.¹⁰⁹ As a best practice, and consistent with applicable laws,¹¹⁰ the Commission recommends that employers not ask about

convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.

4. Determining Whether a Criminal Conduct Exclusion Is Job Related and Consistent with Business Necessity

To establish that a criminal conduct exclusion that has a disparate impact is job related and consistent with business necessity under Title VII, the employer needs to show that the policy operates to effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of a particular position.

Two circumstances in which the Commission believes employers will consistently meet the “job related and consistent with business necessity” defense are as follows:

- The employer validates the criminal conduct screen for the position in question per the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines) standards (if data about criminal conduct as related to subsequent work performance is available and such validation is possible);¹¹¹ or
- The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three *Green* factors), and then provides an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job related and consistent with business necessity.

The individualized assessment would consist of notice to the individual that he has been screened out because of a criminal conviction; an opportunity for the individual to demonstrate that the exclusion should not be applied due to his particular circumstances; and consideration by the employer as to whether the additional information provided by the individual warrants an exception to the exclusion and shows that the policy as applied is not job related and consistent with business necessity. *See* Section V.B.9, *infra* (examples of relevant considerations in individualized assessments).

Depending on the facts and circumstances, an employer may be able to justify a targeted criminal records screen solely under the *Green* factors. Such a screen would need to be narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question. Title VII thus does not necessarily require individualized assessment in all circumstances. However, the use of individualized assessments can help employers avoid Title VII liability by allowing them to consider more complete information on individual applicants or employees, as part of a policy that is job related and consistent with business necessity.

5. Validation

The Uniform Guidelines describe three different approaches to validating employment screens.¹¹² However, they recognize that “[t]here are circumstances in which a user cannot or

need not utilize” formal validation techniques and that in such circumstances an employer “should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact as set forth [in the following subsections].”¹¹³ Although there may be social science studies that assess whether convictions are linked to future behaviors, traits, or conduct with workplace ramifications,¹¹⁴ and thereby provide a framework for validating some employment exclusions, such studies are rare at the time of this drafting.

6. Detailed Discussion of the *Green* Factors and Criminal Conduct Screens

Absent a validation study that meets the Uniform Guidelines’ standards, the *Green* factors provide the starting point for analyzing how specific criminal conduct may be linked to particular positions. The three *Green* factors are:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense, conduct and/or completion of the sentence; and
- The nature of the job held or sought.

a. The Nature and Gravity of the Offense or Conduct

Careful consideration of the nature and gravity of the offense or conduct is the first step in determining whether a specific crime may be relevant to concerns about risks in a particular position. The nature of the offense or conduct may be assessed with reference to the harm caused by the crime (e.g., theft causes property loss). The legal elements of a crime also may be instructive. For example, a conviction for felony theft may involve deception, threat, or intimidation.¹¹⁵ With respect to the gravity of the crime, offenses identified as misdemeanors may be less severe than those identified as felonies.

b. The Time that Has Passed Since the Offense, Conduct and/or Completion of the Sentence

Employer policies typically specify the duration of a criminal conduct exclusion. While the *Green* court did not endorse a specific timeframe for criminal conduct exclusions, it did acknowledge that permanent exclusions from all employment based on any and all offenses were not consistent with the business necessity standard.¹¹⁶ Subsequently, in *El*, the court noted that the plaintiff might have survived summary judgment if he had presented evidence that “there is a time at which a former criminal is no longer any more likely to recidivate than the average person”¹¹⁷ Thus, the court recognized that the amount of time that had passed since the plaintiff’s criminal conduct occurred was probative of the risk he posed in the position in question.

Whether the duration of an exclusion will be sufficiently tailored to satisfy the business necessity standard will depend on the particular facts and circumstances of each case. Relevant and available information to make this assessment includes, for example, studies demonstrating how much the risk of recidivism declines over a specified time.¹¹⁸

c. The Nature of the Job Held or Sought

Finally, it is important to identify the particular job(s) subject to the exclusion. While a factual inquiry may begin with identifying the job title, it also encompasses the nature of the job's duties (e.g., data entry, lifting boxes), identification of the job's essential functions, the circumstances under which the job is performed (e.g., the level of supervision, oversight, and interaction with co-workers or vulnerable individuals), and the environment in which the job's duties are performed (e.g., out of doors, in a warehouse, in a private home). Linking the criminal conduct to the essential functions of the position in question may assist an employer in demonstrating that its policy or practice is job related and consistent with business necessity because it "bear[s] a demonstrable relationship to successful performance of the jobs for which it was used."¹¹⁹

7. Examples of Criminal Conduct Exclusions that Do Not Consider the *Green* Factors

A policy or practice requiring an automatic, across-the-board exclusion from all employment opportunities because of any criminal conduct is inconsistent with the *Green* factors because it does not focus on the dangers of particular crimes and the risks in particular positions. As the court recognized in *Green*, "[w]e cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed."¹²⁰

Example 5: Exclusion Is Not Job Related and Consistent with Business Necessity. The National Equipment Rental Company uses the Internet to accept job applications for all positions. All applicants must answer certain questions before they are permitted to submit their online application, including "have you ever been convicted of a crime?" If the applicant answers "yes," the online application process automatically terminates, and the applicant sees a screen that simply says "Thank you for your interest. We cannot continue to process your application at this time."

The Company does not have a record of the reasons why it adopted this exclusion, and it does not have information to show that convictions for all offenses render all applicants unacceptable risks in all of its jobs, which range from warehouse work, to delivery, to management positions. If a Title VII charge were filed based on these facts, and there was a disparate impact on a Title VII-protected basis, the EEOC would find reasonable cause to believe that the blanket exclusion was not job related and consistent with business necessity because the risks associated with all convictions are not pertinent to all of the Company's jobs.

Example 6: Exclusion Is Not Job Related and Consistent with Business Necessity. Leo, an African American man, has worked

successfully at PR Agency as an account executive for three years. After a change of ownership, the new owners adopt a policy under which it will not employ anyone with a conviction. The policy does not allow for any individualized assessment before exclusion. The new owners, who are highly respected in the industry, pride themselves on employing only the “best of the best” for every position. The owners assert that a quality workforce is a key driver of profitability.

Twenty years earlier, as a teenager, Leo pled guilty to a misdemeanor assault charge. During the intervening twenty years, Leo graduated from college and worked successfully in advertising and public relations without further contact with the criminal justice system. At PR Agency, all of Leo’s supervisors assessed him as a talented, reliable, and trustworthy employee, and he has never posed a risk to people or property at work. However, once the new ownership of PR Agency learns about Leo’s conviction record through a background check, it terminates his employment. It refuses to reconsider its decision despite Leo’s positive employment history at PR Agency.

Leo files a Title VII charge alleging that PR Agency’s conviction policy has a disparate impact based on race and is not job related for the position in question and consistent with business necessity. After confirming disparate impact, the EEOC considers PR Agency’s defense that it employs only the “best of the best” for every position, and that this necessitates excluding everyone with a conviction. PR Agency does not show that all convictions are indicative of risk or danger in all its jobs for all time, under the *Green* factors. Nor does PR Agency provide any factual support for its assertion that having a conviction is necessarily indicative of poor work or a lack of professionalism. The EEOC concludes that there is reasonable cause to believe that the Agency’s policy is not job related for the position in question and consistent with business necessity.¹²¹

8. Targeted Exclusions that Are Guided by the *Green* Factors

An employer policy or practice of excluding individuals from particular positions for specified criminal conduct within a defined time period, as guided by the *Green* factors, is a targeted exclusion. Targeted exclusions are tailored to the rationale for their adoption, in light of the particular criminal conduct and jobs involved, taking into consideration fact-based evidence, legal requirements, and/or relevant and available studies.

As discussed above in Section V.B.4, depending on the facts and circumstances, an employer may be able to justify a targeted criminal records screen solely under the *Green* factors. Such a screen would need to be narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question. Title VII thus does not necessarily require individualized assessment in all circumstances. However, the use of individualized assessments can help employers avoid Title VII liability by allowing them to consider more complete information on individual applicants or employees, as part of a policy that is job related and consistent with business necessity.

9. Individualized Assessment

Individualized assessment generally means that an employer informs the individual that he may be excluded because of past criminal conduct; provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and considers whether the individual's additional information shows that the policy as applied is not job related and consistent with business necessity.

The individual's showing may include information that he was not correctly identified in the criminal record, or that the record is otherwise inaccurate. Other relevant individualized evidence includes, for example:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison;¹²²
- Evidence that the individual performed the same type of work, post conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;¹²³
- Rehabilitation efforts, e.g., education/training;¹²⁴
- Employment or character references and any other information regarding fitness for the particular position;¹²⁵ and
- Whether the individual is bonded under a federal, state, or local bonding program.¹²⁶

If the individual does not respond to the employer's attempt to gather additional information about his background, the employer may make its employment decision without the information.

Example 7: Targeted Screen with Individualized Assessment Is Job Related and Consistent with Business Necessity. County Community Center rents meeting rooms to civic organizations and small businesses, party rooms to families and social groups, and athletic facilities to local recreational sports leagues. The County has a targeted rule prohibiting anyone with a conviction for theft crimes (e.g., burglary, robbery, larceny, identity theft) from working in a position with access to personal financial

information for at least four years after the conviction or release from incarceration. This rule was adopted by the County's Human Resources Department based on data from the County Corrections Department, national criminal data, and recent recidivism research for theft crimes. The Community Center also offers an opportunity for individuals identified for exclusion to provide information showing that the exclusion should not be applied to them.

Isaac, who is Hispanic, applies to the Community Center for a full-time position as an administrative assistant, which involves accepting credit card payments for room rentals, in addition to having unsupervised access to the personal belongings of people using the facilities. After conducting a background check, the County learns that Isaac pled guilty eighteen months earlier, at age twenty, to credit card fraud, and that he did not serve time in prison. Isaac confirms these facts, provides a reference from the restaurant where he now works on Saturday nights, and asks the County for a "second chance" to show that he is trustworthy. The County tells Isaac that it is still rejecting his employment application because his criminal conduct occurred eighteen months ago and is directly pertinent to the job in question. The information he provided did nothing to dispel the County's concerns.

Isaac challenges this rejection under Title VII, alleging that the policy has a disparate impact on Hispanics and is not job related and consistent with business necessity. After confirming disparate impact, the EEOC finds that this screen was carefully tailored to assess unacceptable risk in relevant positions, for a limited time period, consistent with the evidence, and that the policy avoided overbroad exclusions by allowing individuals an opportunity to explain special circumstances regarding their criminal conduct. Thus, even though the policy has a disparate impact on Hispanics, the EEOC does not find reasonable cause to believe that discrimination occurred because the policy is job related and consistent with business necessity.¹²⁷

Example 8: Targeted Exclusion Without Individualized Assessment Is Not Job Related and Consistent with Business Necessity. "Shred 4 You" employs over 100 people to pick up discarded files and sensitive materials from offices, transport the materials to a secure facility, and shred and recycle them. The owner of "Shred 4 You" sells the company to a competitor, known as "We Shred." Employees of "Shred 4 You" must reapply for employment with "We Shred" and undergo a background check. "We Shred" has a targeted criminal conduct exclusion policy that prohibits the employment of anyone who has been convicted of any crime related to theft or fraud in the past five years, and the policy does not provide for any individualized consideration. The company explains that its clients entrust it with handling sensitive and confidential information

and materials; therefore, it cannot risk employing people who pose an above-average risk of stealing information.

Jamie, who is African American, worked successfully for “Shred 4 You” for five years before the company changed ownership. Jamie applies for his old job, and “We Shred” reviews Jamie’s performance appraisals, which include high marks for his reliability, trustworthiness, and honesty. However, when “We Shred” does a background check, it finds that Jamie pled guilty to misdemeanor insurance fraud five years ago, because he exaggerated the costs of several home repairs after a winter storm. “We Shred” management informs Jamie that his guilty plea is evidence of criminal conduct and that his employment will be terminated. Jamie asks management to consider his reliable and honest performance in the same job at “Shred 4 You,” but “We Shred” refuses to do so. The employer’s conclusion that Jamie’s guilty plea demonstrates that he poses an elevated risk of dishonesty is not factually based given Jamie’s history of trustworthiness in the same job. After confirming disparate impact based on race (African American), the EEOC finds reasonable cause to believe that Title VII was violated because the targeted exclusion was not job related and consistent with business necessity based on these facts.

C. Less Discriminatory Alternatives

If an employer successfully demonstrates that its policy or practice is job related for the position in question and consistent with business necessity, a Title VII plaintiff may still prevail by demonstrating that there is a less discriminatory “alternative employment practice” that serves the employer’s legitimate goals as effectively as the challenged practice but that the employer refused to adopt.¹²⁸

VI. Positions Subject to Federal Prohibitions or Restrictions on Individuals with Records of Certain Criminal Conduct

In some industries, employers are subject to federal statutory and/or regulatory requirements that prohibit individuals with certain criminal records from holding particular positions or engaging in certain occupations. Compliance with federal laws and/or regulations is a defense to a charge of discrimination. However, the EEOC will continue to coordinate with other federal departments and agencies with the goal of maximizing federal regulatory consistency with respect to the use of criminal history information in employment decisions.¹²⁹

A. Hiring in Certain Industries

Federal laws and regulations govern the employment of individuals with specific convictions in certain industries or positions in both the private and public sectors. For example, federal law excludes an individual who was convicted in the previous ten years of specified crimes from working as a security screener or otherwise having unescorted access to the secure areas of an airport.¹³⁰ There are equivalent requirements for federal law enforcement officers,¹³¹

child care workers in federal agencies or facilities,¹³² bank employees,¹³³ and port workers,¹³⁴ among other positions.¹³⁵ Title VII does not preempt these federally imposed restrictions. However, if an employer decides to impose an exclusion that goes beyond the scope of a federally imposed restriction, the discretionary aspect of the policy would be subject to Title VII analysis.

Example 9: Exclusion Is Not Job Related and Consistent with Business Necessity. Your Bank has a rule prohibiting anyone with convictions for any type of financial or fraud-related crimes within the last twenty years from working in positions with access to customer financial information, even though the federal ban is ten years for individuals who are convicted of any criminal offense involving dishonesty, breach of trust, or money laundering from serving in such positions.

Sam, who is Latino, applies to Your Bank to work as a customer service representative. A background check reveals that Sam was convicted of a misdemeanor for misrepresenting his income on a loan application fifteen years earlier. Your Bank therefore rejects Sam, and he files a Title VII charge with the EEOC, alleging that the Bank's policy has a disparate impact based on national origin and is not job related and consistent with business necessity. Your Bank asserts that its policy does not cause a disparate impact and that, even if it does, it is job related for the position in question because customer service representatives have regular access to financial information and depositors must have "100% confidence" that their funds are safe. However, Your Bank does not offer evidence showing that there is an elevated likelihood of committing financial crimes for someone who has been crime-free for more than ten years. After establishing that the Bank's policy has a disparate impact based on national origin, the EEOC finds that the policy is not job related for the position in question and consistent with business necessity. The Bank's justification for adding ten years to the federally mandated exclusion is insufficient because it is only a generalized concern about security, without proof.

B. Obtaining Occupational Licenses

Title VII also does not preempt federal statutes and regulations that govern eligibility for occupational licenses and registrations. These restrictions cover diverse sectors of the economy including the transportation industry,¹³⁶ the financial industry,¹³⁷ and import/export activities,¹³⁸ among others.¹³⁹

C. Waiving or Appealing Federally Imposed Occupational Restrictions

Several federal statutes and regulations provide a mechanism for employers or individuals to appeal or apply for waivers of federally imposed occupational restrictions. For example, unless a bank receives prior written consent from the Federal Deposit Insurance

Corporation (FDIC), an individual convicted of a criminal offense involving dishonesty, breach of trust, money laundering, or another financially related crime may not work in, own, or control “an insured depository institution” (e.g., bank) for ten years under the Federal Deposit Insurance Act.¹⁴⁰ To obtain such FDIC consent, the insured institution must file an application for a waiver on behalf of the particular individual.¹⁴¹ Alternatively, if the insured institution does not apply for the waiver on the individual’s behalf, the individual may file a request directly with the FDIC for a waiver of the institution filing requirement, demonstrating “substantial good cause” to grant the waiver.¹⁴² If the FDIC grants the individual’s waiver request, the individual can then file an application directly with the FDIC for consent to work for the insured institution in question.¹⁴³ Once the institution, or the individual, submits the application, the FDIC’s criminal record waiver review process requires consideration of mitigating factors that are consistent with Title VII, including evidence of rehabilitation, and the nature and circumstances of the crime.¹⁴⁴

Additionally, port workers who are denied the Transportation Workers Identification Credential (TWIC) based on their conviction record may seek a waiver for certain permanently disqualifying offenses or interim disqualifying offenses, and also may file an individualized appeal from the Transportation Security Administration’s initial determination of threat assessment based on the conviction.¹⁴⁵ The Maritime Transportation Security Act, which requires all port workers to undergo a criminal background check to obtain a TWIC,¹⁴⁶ provides that individuals with convictions for offenses such as espionage, treason, murder, and a federal crime of terrorism are permanently disqualified from obtaining credentials, but those with convictions for firearms violations and distribution of controlled substances may be temporarily disqualified.¹⁴⁷ Most offenses related to dishonesty are only temporarily disqualifying.¹⁴⁸

Example 10: Consideration of Federally Imposed Occupational Restrictions. John Doe applies for a position as a truck driver for Truckers USA. John’s duties will involve transporting cargo to, from, and around ports, and Truckers USA requires all of its port truck drivers to have a TWIC. The Transportation Security Administration (TSA) conducts a criminal background check and may deny the credential to applicants who have permanently disqualifying criminal offenses in their background as defined by federal law. After conducting the background check for John Doe, TSA discovers that he was convicted nine years earlier for conspiracy to use weapons of mass destruction. TSA denies John a security card because this is a permanently disqualifying criminal offense under federal law.¹⁴⁹ John, who points out that he was a minor at the time of the conviction, requests a waiver by TSA because he had limited involvement and no direct knowledge of the underlying crime at the time of the offense. John explains that he helped a friend transport some chemical materials that the friend later tried to use to damage government property. TSA refuses to grant John’s waiver request because a conviction for conspiracy to use weapons of mass destruction is not subject to the TSA’s waiver procedures.¹⁵⁰ Based on this denial, Truckers USA rejects John’s application for the port truck driver position. Title VII does not override Truckers USA’s policy because the policy is consistent with another federal law.

While Title VII does not mandate that an employer seek such waivers, where an employer does seek waivers it must do so in a nondiscriminatory manner.

D. Security Clearances

The existence of a criminal record may result in the denial of a federal security clearance, which is a prerequisite for a variety of positions with the federal government and federal government contractors.¹⁵¹ A federal security clearance is used to ensure employees' trustworthiness, reliability, and loyalty before providing them with access to sensitive national security information.¹⁵² Under Title VII's national security exception, it is not unlawful for an employer to "fail or refuse to hire and employ" an individual because "such individual has not fulfilled or has ceased to fulfill" the federal security requirements.¹⁵³ This exception focuses on whether the position in question is, in fact, subject to national security requirements that are imposed by federal statute or Executive Order, and whether the adverse employment action actually resulted from the denial or revocation of a security clearance.¹⁵⁴ Procedural requirements related to security clearances must be followed without regard to an individual's race, color, religion, sex, or national origin.¹⁵⁵

E. Working for the Federal Government

Title VII provides that, with limited coverage exceptions, "[a]ll personnel actions affecting employees or applicants for employment . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin."¹⁵⁶ The principles discussed above in this Guidance apply in the federal employment context. In most circumstances, individuals with criminal records are not automatically barred from working for the federal government.¹⁵⁷ However, the federal government imposes criminal record restrictions on its workforce through "suitability" requirements for certain positions.¹⁵⁸ The federal government's Office of Personnel Management (OPM) defines suitability as "determinations based on a person's character or conduct that may have an impact on the integrity or efficiency of the service."¹⁵⁹ Under OPM's rules, agencies may bar individuals from federal employment for up to three years if they are found unsuitable based on criminal or dishonest conduct, among other factors.¹⁶⁰ OPM gives federal agencies the discretion to consider relevant mitigating criteria when deciding whether an individual is suitable for a federal position.¹⁶¹ These mitigating criteria, which are consistent with the three *Green* factors and also provide an individualized assessment of the applicant's background, allow consideration of: (1) the nature of the position for which the person is applying or in which the person is employed; (2) the nature and seriousness of the conduct; (3) the circumstances surrounding the conduct; (4) the recency of the conduct; (5) the age of the person involved at the time of the conduct; (6) contributing societal conditions; and (7) the absence or presence of rehabilitation or efforts toward rehabilitation.¹⁶² In general, OPM requires federal agencies and departments to consider hiring an individual with a criminal record if he is the best candidate for the position in question and can comply with relevant job requirements.¹⁶³ The EEOC continues to coordinate with OPM to achieve employer best practices in the federal sector.¹⁶⁴

VII. Positions Subject to State and Local Prohibitions or Restrictions on Individuals with Records of Certain Criminal Conduct

States and local jurisdictions also have laws and/or regulations that restrict or prohibit the employment of individuals with records of certain criminal conduct.¹⁶⁵ Unlike federal laws or regulations, however, state and local laws or regulations are preempted by Title VII if they “purport[] to require or permit the doing of any act which would be an unlawful employment practice” under Title VII.¹⁶⁶ Therefore, if an employer’s exclusionary policy or practice is *not* job related and consistent with business necessity, the fact that it was adopted to comply with a state or local law or regulation does not shield the employer from Title VII liability.¹⁶⁷

Example 11: State Law Exclusion Is Job Related and Consistent with Business Necessity. Elijah, who is African American, applies for a position as an office assistant at Pre-School, which is in a state that imposes criminal record restrictions on school employees. Pre-School, which employs twenty-five full- and part-time employees, uses all of its workers to help with the children. Pre-School performs a background check and learns that Elijah pled guilty to charges of indecent exposure two years ago. After being rejected for the position because of his conviction, Elijah files a Title VII disparate impact charge based on race to challenge Pre-School’s policy. The EEOC conducts an investigation and finds that the policy has a disparate impact and that the exclusion is job related for the position in question and consistent with business necessity because it addresses serious safety risks of employment in a position involving regular contact with children. As a result, the EEOC would not find reasonable cause to believe that discrimination occurred.

Example 12: State Law Exclusion Is Not Consistent with Title VII. County Y enforces a law that prohibits all individuals with a criminal conviction from working for it. Chris, an African American man, was convicted of felony welfare fraud fifteen years ago, and has not had subsequent contact with the criminal justice system. Chris applies to County Y for a job as an animal control officer trainee, a position that involves learning how to respond to citizen complaints and handle animals. The County rejects Chris’s application as soon as it learns that he has a felony conviction. Chris files a Title VII charge, and the EEOC investigates, finding disparate impact based on race and also that the exclusionary policy is not job related and consistent with business necessity. The County cannot justify rejecting everyone with any conviction from all jobs. Based on these facts, County Y’s law “purports to require or permit the doing of an[] act which would be an unlawful employment practice” under Title VII.

VIII. Employer Best Practices

The following are examples of best practices for employers who are considering criminal record information when making employment decisions.

General

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decisionmakers about Title VII and its prohibition on employment discrimination.

Developing a Policy

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
 - Identify essential job requirements and the actual circumstances under which the jobs are performed.
 - Determine the specific offenses that may demonstrate unfitness for performing such jobs.
 - Identify the criminal offenses based on all available evidence.
 - Determine the duration of exclusions for criminal conduct based on all available evidence.
 - Include an individualized assessment.
 - Record the justification for the policy and procedures.
 - Note and keep a record of consultations and research considered in crafting the policy and procedures.
- Train managers, hiring officials, and decisionmakers on how to implement the policy and procedures consistent with Title VII.

Questions about Criminal Records

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.

Confidentiality

- Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.

Approved by the Commission:

Chair Jacqueline A. Berrien

Date

ENDNOTES

¹ 42 U.S.C. § 2000e *et seq.* The EEOC also enforces other anti-discrimination laws including: Title I of the Americans with Disabilities Act of 1990, as amended (ADA), and Section 501 of the Rehabilitation Act, as amended, which prohibit employment discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended (ADEA), which prohibits discrimination on the basis of age 40 or above; Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits discrimination on the basis of genetic information; and the Equal Pay Act of 1963, as amended (EPA), which requires employers to pay male and female employees at the same establishment equal wages for equal work.

² All entities covered by Title VII are subject to this analysis. *See* 42 U.S.C. § 2000e-2 (anti-discrimination provisions); 42 U.S.C. § 2000e(b)–(e) (defining “employer,” “employment agency,” and “labor organization”); 42 U.S.C. § 2000e-16(a) (prohibiting discriminatory employment practices by federal departments and agencies). For purposes of this Guidance, the term “employer” is used in lieu of listing all Title VII-covered entities. The Commission considers other coverage questions that arise in particular charges involving, for example, joint employment or third party interference in *Compliance Manual Section 2: Threshold Issues*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, § 2-III B., *Covered Entities*, <http://www.eeoc.gov/policy/docs/threshold.html#2-III-B> (last visited April 23, 2012).

³ For the purposes of this Guidance, references to “contact” with the criminal justice system may include, for example, an arrest, charge, indictment, citation, conviction, incarceration, probation, or parole.

⁴ *See* THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974–2001, at 3 (2003), <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf> [hereinafter PREVALENCE OF IMPRISONMENT] (“Between 1974 and 2001 the number of former prisoners living in the United States more than doubled, from 1,603,000 to 4,299,000.”); SEAN ROSENMERKEL ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 2006 – STATISTICAL TABLES 1 (2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf> (reporting that between 1990 and 2006, there has been a 37% increase in the number of felony offenders sentenced in state courts); *see also* PEW CTR. ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 4 (2009), http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf [hereinafter ONE IN 31] (“During the past quarter-century, the number of prison and jail inmates has grown by 274 percent . . . [bringing] the total population in custody to 2.3 million. During the same period, the number under community supervision grew by a staggering 3,535,660 to a total of 5.1 million.”); PEW CTR. ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, at 3 (2008), http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf (“[M]ore than one in every 100 adults is now confined in an American jail or

prison.”); Robert Brame, Michael G. Turner, Raymond Paternoster, & Shawn D. Bushway, *Cumulative Prevalence of Arrest From Ages 8 to 23 in a National Sample*, 129 PEDIATRICS 21, 25, 26 (2012) (finding that approximately 1 out of 3 of all American youth will experience at least 1 arrest for a nontraffic offense by the age of 23).

⁵ See JOHN SCHMITT & KRIS WARNER, CTR. FOR ECON. & POLICY RESEARCH, EX-OFFENDERS AND THE LABOR MARKET 12 (2010), www.cepr.net/documents/publications/ex-offenders-2010-11.pdf (“In 2008, ex-prisoners were 2.9 to 3.2 percent of the total working-age population (excluding those currently in prison or jail) or about one in 33 working-age adults. Ex-felons were a larger share of the total working-age population: 6.6 to 7.4 percent, or about one in 15 working-age adults [not all felons serve prison terms].”); see *id.* at 3 (concluding that “in the absence of some reform of the criminal justice system, the share of ex-offenders in the working-age population will rise substantially in coming decades”).

⁶ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 4, Table 3.

⁷ *Id.*

⁸ ONE IN 31, *supra* note 4, at 5 (noting that when all of the individuals who are probationers, parolees, prisoners or jail inmates are added up, the total is more than 7.3 million adults; this is more than the populations of Chicago, Philadelphia, San Diego, and Dallas combined, and larger than the populations of 38 states and the District of Columbia).

⁹ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 7.

¹⁰ *Id.* at 5, Table 5; cf. PEW CTR. ON THE STATES, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY 6 (2010), http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653 (“Simply stated, incarceration in America is concentrated among African American men. While 1 in every 87 white males ages 18 to 64 is incarcerated and the number for similarly-aged Hispanic males is 1 in 36, for black men it is 1 in 12.”). Incarceration rates are even starker for 20-to-34-year-old men without a high school diploma or GED: 1 in 8 White males in this demographic group is incarcerated, compared to 1 in 14 Hispanic males, and 1 in 3 Black males. PEW CTR. ON THE STATES, *supra*, at 8, Figure 2.

¹¹ This document uses the terms “Black” and “African American,” and the terms “Hispanic” and “Latino,” interchangeably.

¹² See *infra* notes 65–67 (citing data for the arrest rates and population statistics for African Americans and Hispanics).

¹³ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 1.

¹⁴ *Id.* at 8.

¹⁵ See *Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (Feb. 4, 1987), <http://www.eeoc.gov/policy/docs/convict1.html>; *EEOC Policy Statement on the Use of Statistics in Charges Involving the Exclusion of Individuals with Conviction Records from Employment*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (July 29, 1987), <http://www.eeoc.gov/policy/docs/convict2.html>; *Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (Sept. 7, 1990), http://www.eeoc.gov/policy/docs/arrest_records.html; *Compliance Manual Section 15: Race & Color Discrimination*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, § 15-VI.B.2 (April 19, 2006), <http://www.eeoc.gov/policy/docs/race-color.pdf>. See also EEOC Decision No. 72-1497 (1972) (challenging a criminal record exclusion policy based on "serious crimes"); EEOC Decision No. 74-89 (1974) (challenging a policy where a felony conviction was considered an adverse factor that would lead to disqualification); EEOC Decision No. 78-03 (1977) (challenging an exclusion policy based on felony or misdemeanor convictions involving moral turpitude or the use of drugs); EEOC Decision No. 78-35 (1978) (concluding that an employee's discharge was reasonable given his pattern of criminal behavior and the severity and recentness of his criminal conduct).

¹⁶ In 2011, U.S. Attorney General Eric Holder assembled a Cabinet-level interagency Reentry Council to support the federal government's efforts to promote the successful reintegration of ex-offenders back into their communities. *National Reentry Resource Center – Federal Interagency Reentry Council*, <http://www.nationalreentryresourcecenter.org/reentry-council> (last visited April 23, 2012). As a part of the Council's efforts, it has focused on removing barriers to employment for ex-offenders to reduce recidivism by publishing several fact sheets on employing individuals with criminal records. See, e.g., FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! ON FEDERAL HIRING POLICIES (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1083/Reentry_Council_Mythbuster_Fed_Employment.pdf; FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! ON HIRING/CRIMINAL RECORDS GUIDANCE (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry_Council_Mythbuster_Employment.pdf; FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! CRIMINAL HISTORIES AND EMPLOYMENT BACKGROUND CHECKS (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1176/Reentry_Council_Mythbuster_FCRA_Employment.pdf; FED. INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER! ON FEDERAL BONDING PROGRAM (2011), http://www.nationalreentryresourcecenter.org/documents/0000/1061/Reentry_Council_Mythbuster_Federal_Bonding.pdf.

In addition to these federal efforts, several state law enforcement agencies have embraced initiatives and programs that encourage the employment of ex-offenders. For example, Texas' Department of Criminal Justice has a Reentry and Integration Division and within that Division, a Reentry Task Force Workgroup. See *Reentry and Integration Division-Reentry Task Force*, TEX. DEP'T OF CRIMINAL JUSTICE, http://www.tdcj.state.tx.us/divisions/rid/rid_texas_reentry_task_force.html (last visited April 23, 2012). One of the Workgroups in this Task Force specifically focuses on identifying

employment opportunities for ex-offenders and barriers that affect ex-offenders' access to employment or vocational training programs. *Reentry and Integration Division – Reentry Task Force Workgroups*, TEX. DEP'T OF CRIMINAL JUSTICE, http://www.tdcj.state.tx.us/divisions/rid/r_workgroup/rid_workgroup_employment.html (last visited April 23, 2012). Similarly, Ohio's Department of Rehabilitation and Correction has an Offender Workforce Development Office that “works with departmental staff and correctional institutions within the Ohio Department of Rehabilitation and Correction to prepare offenders for employment and the job search process.” *Jobs for Ohio Offenders*, OHIO DEP'T OF REHAB. AND CORR. OFFENDER WORKFORCE DEV., <http://www.drc.ohio.gov/web/JOBOFFEN.HTM> (last updated Aug. 9, 2010). Law enforcement agencies in other states such as Indiana and Florida have also recognized the importance of encouraging ex-offender employment. *See, e.g., IDOC: Road to Re-Entry*, IND. DEP'T OF CORR., <http://www.in.gov/idoc/reentry/index.htm> (last visited April 23, 2012) (describing various services and programs that are available to ex-offenders to help them to obtain employment); FLA. DEP'T OF CORRS., *RECIDIVISM REDUCTION STRATEGIC PLAN: FISCAL YEAR 2009-2014*, at 11, 12 (2009), <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (identifying the lack of employment as one of the barriers to successful ex-offender reentry).

¹⁷ CARL R. ERNST & LES ROSEN, “NATIONAL” CRIMINAL HISTORY DATABASES 1 (2002), <http://www.brpub.com/articles/CriminalHistoryDB.pdf>.

¹⁸ LEXISNEXIS, *CRIMINAL BACKGROUND CHECKS: WHAT NON-PROFITS NEED TO KNOW ABOUT CRIMINAL RECORDS* 4 (2009), http://www.lexisnexis.com/risk/nonprofit/documents/Volunteer_Screening_White_Paper.pdf.

¹⁹ *Id.*

²⁰ ERNST & ROSEN, *supra* note 17, at 1; NAT'L ASS'N OF PROF'L BACKGROUND SCREENERS, *CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT PURPOSES* 5, http://www.napbs.com/files/public/Learn_More/White_Papers/CriminalBackgroundChecks.pdf.

²¹ LEXISNEXIS, *supra* note 18, at 6. *See also* NAT'L ASS'N OF PROF'L BACKGROUND SCREENERS, *supra* note 20 at 5.

²² ERNST & ROSEN, *supra* note 17, at 1.

²³ *Id.*

²⁴ *See* SEARCH, *THE NATIONAL TASK FORCE ON THE CRIMINAL BACKGROUNDING OF AMERICA* 3, 4 (2005), <http://www.search.org/files/pdf/ReportofNTFCBA.pdf>. Registries and watch lists can also include federal and international terrorist watch lists, and registries of individuals who are being investigated for certain types of crimes, such as gang-related crimes. *Id.* *See also* LEXISNEXIS, *supra* note 18, at 5 (reporting that “all 50 states currently have a publicly available sex offender registry”).

²⁵ *See* U.S. DEP'T OF JUSTICE, *THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY*

BACKGROUND CHECKS 4 (2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf [hereinafter BACKGROUND CHECKS]. *See also* ERNST & ROSEN, *supra* note 17, at 2.

²⁶ *See* NAT'L ASS'N OF PROF'L BACKGROUND SCREENER, *supra* note 20, at 5. *See also* LEXISNEXIS, *supra* note 18, at 5.

²⁷ LEXISNEXIS, *supra* note 18, at 5. *See also* AM. ASS'N OF COLLS. OF PHARMACY, REPORT OF THE AACP CRIMINAL BACKGROUND CHECK ADVISORY PANEL 6-7 (2006), <http://www.aacp.org/resources/academicpolicies/admissionguidelines/Documents/AACPBackgroundChkRpt.pdf>.

²⁸ AM. ASS'N OF COLLS. OF PHARMACY, *supra* note 27, at 6-7.

²⁹ BACKGROUND CHECKS, *supra* note 25, at 4.

³⁰ *Id.*

³¹ NAT'L ASS'N OF PROF'L BACKGROUND SCREENER, *supra* note 20, at 5.

³² BACKGROUND CHECKS, *supra* note 25, at 4.

³³ *Id.* at 3.

³⁴ *See id.* (“Non-criminal justice screening using FBI criminal history records is typically done by a government agency applying suitability criteria that have been established by law or the responsible agency.”).

³⁵ *Id.* at 5.

³⁶ *Id.* at 4.

³⁷ DENNIS A. DEBACCO & OWEN M. GREENSPAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2010, at 2 (2011), <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf> [hereinafter STATE CRIMINAL HISTORY].

³⁸ *See* BACKGROUND CHECKS, *supra* note 25, at 17.

³⁹ SEARCH, REPORT OF THE NATIONAL TASK FORCE ON THE COMMERCIAL SALE OF CRIMINAL JUSTICE RECORD INFORMATION 83 (2005), www.search.org/files/pdf/RNTFCSCJRI.pdf; *see also* Douglas Belkin, *More Job Seekers Scramble to Erase Their Criminal Past*, WALL ST. J., Nov. 11, 2009, at A1, available at <http://online.wsj.com/article/SB125789494126242343.html?KEYWORDS=Douglas+Belkin> (“Arrests that have been legally expunged may remain on databases that data-harvesting companies offer to prospective employers; such background companies are under no legal obligation to erase them.”).

If applicants deny the existence of expunged or sealed records, as they are permitted to do in several states, they may appear dishonest if such records are reported in a criminal background check. *See generally* Debbie A. Mukamal & Paul N. Samuels, *Statutory Limitations on Civil Rights of People with Criminal Records*, 30 *FORDHAM URB. L.J.* 1501, 1509–10 (2003) (noting that 29 of the 40 states that allow expungement/sealing of arrest records permit the subject of the record to deny its existence if asked about it on employment applications or similar forms, and 13 of the 16 states that allow the expungement/sealing of adult conviction records permit the subject of the record to deny its existence under similar circumstances).

⁴⁰ *See* SEARCH, INTERSTATE IDENTIFICATION NAME CHECK EFFICACY: REPORT OF THE NATIONAL TASK FORCE TO THE U.S. ATTORNEY GENERAL 21–22 (1999), www.search.org/files/pdf/III_Name_Check.pdf (“A so-called ‘name check’ is based not only on an individual’s name, but also on other personal identifiers such as sex, race, date of birth and Social Security Number. . . . [N]ame checks are known to produce inaccurate results as a consequence of identical or similar names and other identifiers.”); *id.* at 7 (finding that in a sample of 82,601 employment applicants, 4,562 of these individuals were *inaccurately* indicated by a “name check” to have criminal records, which represents approximately 5.5% of the overall sample).

⁴¹ BACKGROUND CHECKS, *supra* note 25, at 2.

⁴² A “consumer reporting agency” is defined by FCRA as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information *or other information* on consumers for the purposes of furnishing consumer reports to third parties” 15 U.S.C. § 1681a(f) (emphasis added); *see also* BACKGROUND CHECKS, *supra* note 25, at 43 (stating that the records that CRAs collect include “criminal history information, such as arrest and conviction information”).

⁴³ A “consumer report” is defined by FCRA as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, *character, general reputation, personal characteristics*, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for . . . employment purposes” 15 U.S.C. § 1681a(d)(1) (emphasis added).

⁴⁴ *See* 15 U.S.C. § 1681c(a)(2) (“[N]o consumer reporting agency may make any consumer report containing . . . records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.”). *But see id.* §1681c(b)(3) (stating that the reporting restrictions for arrest records do not apply to individuals who will earn “an annual salary which equals, or which may reasonably be expected to equal \$75,000 or more”).

⁴⁵ 15 U.S.C. § 1681c(a)(5) (“[N]o consumer reporting agency may make any consumer report containing . . . [a]ny other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.”).

⁴⁶ BACKGROUND CHECKS, *supra* note 25, at 2.

⁴⁷ See Adam Klein, *Written Testimony of Adam Klein*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/klein.cfm> (last visited April 23, 2012) (describing how “several data-collection agencies also market and sell a retail-theft contributory database that is used by prospective employers to screen applicants”). See also *Retail Theft Database, ESTEEM, Workplace Theft Contributory Database*, LEXISNEXIS, <http://www.lexisnexis.com/risk/solutions/retail-theft-contributory-database.aspx> (last visited April 23, 2012) (stating that their database has “[t]heft and shoplifting cases supplied by more than 75,000 business locations across the country”). These databases may contain inaccurate and/or misleading information about applicants and/or employees. See generally *Goode v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 2:11-CV-2950-JD, 2012 WL 975043 (E.D. Pa. Mar. 22, 2012) (unpublished).

⁴⁸ BACKGROUND CHECKS, *supra* note 25, at 2.

⁴⁹ SOC'Y FOR HUMAN RES. MGMT., BACKGROUND CHECKING: CONDUCTING CRIMINAL BACKGROUND CHECKS, slide 3 (Jan. 22, 2010), http://www.slideshare.net/shrm/background-check-criminal?from=share_email [hereinafter CONDUCTING CRIMINAL BACKGROUND CHECKS] (73% of the responding employers reported that they conducted criminal background checks on all of their job candidates, 19% reported that they conducted criminal background checks on selected job candidates, and a mere 7% reported that they did not conduct criminal background checks on any of their candidates). The survey excluded the “not sure” responses from its analysis, which may account for the 1% gap in the total number of employer responses. *Id.*

⁵⁰ CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 7 (39% of the surveyed employers reported that they conducted criminal background checks “[t]o reduce/prevent theft and embezzlement, other criminal activity”); see also Sarah E. Needleman, *Businesses Say Theft by Their Workers is Up*, WALL ST. J., Dec. 11, 2008, at B8, available at <http://online.wsj.com/article/SB122896381748896999.html>.

⁵¹ CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 7 (61% of the surveyed employers reported that they conducted criminal background checks “[to] ensure a safe work environment for employees”); see also ERIKA HARRELL, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, WORKPLACE VIOLENCE, 1993–2009, at 1 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/wv09.pdf> (reporting that in 2009, “[n]onfatal violence in the workplace was about 15% of all nonfatal violent crime against persons age 16 or older”). *But see id.* (noting that from “2002 to 2009, the rate of nonfatal workplace violence has declined by 35%, following a 62% decline in the rate from 1993 to 2002”). Studies indicate that most workplace violence is committed by individuals with no relationship to the business or its employees. See *id.* at 6 (reporting that between 2005 and 2009, strangers committed the majority of workplace violence against individuals (53% for males and 41% for females) while violence committed by co-workers accounted for a much smaller percentage (16.3% for males and 14.3% for females)); see also NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH, CTR. FOR DISEASE CONTROL & PREVENTION, WORKPLACE VIOLENCE PREVENTION STRATEGIES AND RESEARCH

NEEDS 4, Table 1 (2006), <http://www.cdc.gov/niosh/docs/2006-144/pdfs/2006-144.pdf> (reporting that approximately 85% of the workplace homicides examined were perpetrated in furtherance of a crime by persons with no relationship to the business or its employees; approximately 7% were perpetrated by employees or former employees, 5% were committed by persons with a personal relationship to an employee, and 3% were perpetrated by persons with a customer-client relationship to the business).

⁵² CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 7 (55% percent of the surveyed employers reported that they conducted criminal background checks “[t]o reduce legal liability for negligent hiring”). Employers have a common law duty to exercise reasonable care in hiring to avoid foreseeable risks of harm to employees, customers, and the public. If an employee engages in harmful misconduct on the job, and the employer has not exercised such care in selecting the employee, the employer may be subject to liability for negligent hiring. *See, e.g., Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313, 1318 (M.D. Fla. 2002) (“[N]egligent hiring occurs when . . . the employer knew or should have known of the employee’s unfitness, and the issue of liability primarily focuses upon the adequacy of the employer’s pre-employment investigation into the employee’s background.”).

⁵³ CONDUCTING CRIMINAL BACKGROUND CHECKS, *supra* note 49, at slide 4 (40% of the surveyed employers reported that they conducted criminal background checks for “[j]ob candidates for positions for which state law requires a background check (e.g., day care teachers, licensed medical practitioners, etc.)”); *see id.* at slide 7 (20% of the employers reported that they conducted criminal background checks “[t]o comply with the applicable State law requiring a background check (e.g., day care teachers, licensed medical practitioners, etc.) for a particular position”). The study did not report the exact percentage of employers that conducted criminal background checks to comply with applicable federal laws or regulations, but it did report that 25% of the employers conducted background checks for “[j]ob candidates for positions involving national defense or homeland security.” *Id.* at slide 4.

⁵⁴ *See* 42 U.S.C. § 2000e-2(a).

⁵⁵ Disparate treatment based on the race or national origin of job applicants with the same qualifications and criminal records has been documented. For example, a 2003 study demonstrated that White applicants with the same qualifications and criminal records as Black applicants were three times more likely to be invited for interviews than the Black applicants. *See* Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 958, Figure 6 (2003), www.princeton.edu/~pager/pager_ajs.pdf. Pager matched pairs of young Black and White men as “testers” for her study. The “testers” in Pager’s study were college students who applied for 350 low-skilled jobs advertised in Milwaukee-area classified advertisements, to test the degree to which a criminal record affects subsequent employment opportunities. The same study showed that White job applicants with a criminal record were called back for interviews more often than equally-qualified Black applicants who *did not have* a criminal record. *Id.* at 958. *See also* Devah Pager et al., *Sequencing Disadvantage: The Effects of Race and Criminal Background for Low Wage Job Seekers*, 623 ANNALS AM. ACAD. POL. & SOC. SCI., 199 (2009), www.princeton.edu/~pager/annals_sequencingdisadvantage.pdf (finding that among Black and

White testers with similar backgrounds and criminal records, “the negative effect of a criminal conviction is substantially larger for blacks than whites. . . . the magnitude of the criminal record penalty suffered by black applicants (60 percent) is roughly double the size of the penalty for whites with a record (30 percent)”); *see id.* at 200–201 (finding that personal contact plays an important role in mediating the effects of a criminal stigma in the hiring process, and that Black applicants are less often invited to interview, thereby having fewer opportunities to counteract the stigma by establishing rapport with the hiring official); Devah Pager, *Statement of Devah Pager, Professor of Sociology at Princeton University*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, <http://www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm> (last visited April 23, 2012) (discussing the results of the *Sequencing Disadvantage* study); DEVAH PAGER & BRUCE WESTERN, NYC COMMISSION ON HUMAN RIGHTS, RACE AT WORK, REALITIES OF RACE AND CRIMINAL RECORD IN THE NYC JOB MARKET 6, Figure 2 (2006), http://www.nyc.gov/html/cchr/pdf/race_report_web.pdf (finding that White testers *with* a felony conviction were called back 13% of the time, Hispanic testers *without* a criminal record were called back 14% of the time, and Black testers *without* a criminal record were called back 10% of the time).

⁵⁶ *Race & Color Discrimination*, *supra* note 15, § V.A.1.

⁵⁷ A 2006 study demonstrated that employers who are averse to hiring people with criminal records sometimes presumed, in the absence of evidence to the contrary, that African American men applying for jobs have disqualifying criminal records. Harry J. Holzer et al., *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J.L. & ECON. 451 (2006), <http://www.jstor.org/stable/pdfplus/10.1086/501089.pdf>; *see also* HARRY HOLZER ET AL., URBAN INST., EMPLOYER DEMAND FOR EX-OFFENDERS: RECENT EVIDENCE FROM LOS ANGELES 6–7 (2003), http://www.urban.org/UploadedPDF/410779_ExOffenders.pdf (describing the results of an employer survey where over 40% of the employers indicated that they would “probably not” or “definitely not” be willing to hire an applicant with a criminal record).

⁵⁸ The Commission has not done matched-pair testing to investigate alleged discriminatory employment practices. However, it has issued an Enforcement Guidance that discusses situations where individuals or organizations file charges on the basis of matched-pair testing, among other practices. *See generally Enforcement Guidance: Whether “Testers” Can File Charges and Litigate Claims of Employment Discrimination*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N (May 22, 1996), <http://www.eeoc.gov/policy/docs/testers.html>.

⁵⁹ 42 U.S.C. § 2000e-2(k)(1)(A)(i). If an employer successfully demonstrates that its policy or practice is job related for the position in question and consistent with business necessity, a Title VII plaintiff may still prevail by demonstrating that there is a less discriminatory “alternative employment practice” that serves the employer’s legitimate goals as effectively as the challenged practice but that the employer refused to adopt. *Id.* § 2000e-2(k)(1)(A)(ii).

⁶⁰ 401 U.S. 424, 431–32 (1971).

⁶¹ *Id.* at 431.

⁶² The Civil Rights Act of 1991, Pub. L. No. 102-166, § 105; *see also* *Lewis v. City of Chicago*, 130 S. Ct. 2191 (2010) (reaffirming disparate impact analysis); *Ricci v. DeStefano*, 557 U.S. 557 (2009) (same).

⁶³ 42 U.S.C. § 2000e-2(k)(1)(A)(i).

⁶⁴ The Commission presumes that employers use the information sought and obtained from its applicants and others in making an employment decision. *See* *Gregory v. Litton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal.1970). If an employer asserts that it did not factor the applicant's or employee's known criminal record into an employment decision, the EEOC will seek evidence supporting this assertion. For example, evidence that the employer has other employees from the same protected group with roughly comparable criminal records may support the conclusion that the employer did not use the applicant's or employee's criminal record to exclude him from employment.

⁶⁵ UNIF. CRIME REPORTING PROGRAM, FED. BUREAU OF INVESTIGATION, CRIME IN THE U.S. 2010, at Table 43a (2011), <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-43/10tbl43a.xls>.

⁶⁶ U.S. CENSUS BUREAU, THE BLACK POPULATION: 2010, at 3 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf> (reporting that in 2010, “14 percent of all people in the United States identified as Black, either alone, or in combination with one or more races”).

⁶⁷ Accurate data on the number of Hispanics arrested and convicted in the United States is limited. *See* NANCY E. WALKER ET AL., NAT'L COUNCIL OF LA RAZA, LOST OPPORTUNITIES: THE REALITY OF LATINOS IN THE U.S. CRIMINAL JUSTICE SYSTEM 17–18 (2004), <http://www.policyarchive.org/handle/10207/bitstreams/20279.pdf> (explaining why “[i]t is very difficult to find any information – let alone accurate information – on the number of Latinos arrested in the United States”). The Department of Justice's Bureau of Justice Statistics' (BJS) *Sourcebook of Criminal Justice Statistics* and the FBI's Crime Information Services Division do not provide data for arrests by ethnicity. *Id.* at 17. However, the U.S. Drug Enforcement Administration (DEA) disaggregates data by Hispanic and non-Hispanic ethnicity. *Id.* at 18. According to DOJ/BJS, from October 1, 2008 to September 30, 2009, 45.5% of drug arrests made by the DEA were of Hispanics or Latinos. MARK MOTIVANS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FEDERAL JUSTICE STATISTICS, 2009 – STATISTICAL TABLES, at 6, Table 1.4 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fjs09.pdf>. Accordingly, Hispanics were arrested for drug offenses by the DEA at a rate of three times their numbers in the general population. *See* U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010, at 3 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf> (reporting that in 2010, “there were 50.5 million Hispanics in the United States, composing 16 percent of the total population”). However, national statistics indicate that Hispanics have similar or lower drug usage rates compared to Whites. *See, e.g.*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS.

ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2010 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 21, Figure 2.10 (2011), <http://oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf> (reporting, for example, that the usage rate for Hispanics in 2009 was 7.9% compared to 8.8% for Whites).

⁶⁸ See, e.g., HUMAN RIGHTS WATCH, DECADES OF DISPARITY: DRUG ARRESTS AND RACE IN THE UNITED STATES 1 (2009), http://www.hrw.org/sites/default/files/reports/us0309web_1.pdf (noting that the "[t]he higher rates of black drug arrests do not reflect higher rates of black drug offending . . . blacks and whites engage in drug offenses - possession and sales - at roughly comparable rates"); SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2010 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 21 (2011), <http://oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf> (reporting that in 2010, the rates of illicit drug use in the United States among persons aged 12 or older were 10.7% for African Americans, 9.1% for Whites, and 8.1% for Hispanics); HARRY LEVINE & DEBORAH SMALL, N.Y. CIVIL LIBERTIES UNION, MARIJUANA ARREST CRUSADE: RACIAL BIAS AND POLICE POLICY IN NEW YORK CITY, 1997–2007, at 13–16 (2008), www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf (citing U.S. Government surveys showing that Whites use marijuana at higher rates than African Americans and Hispanics; however, the marijuana arrest rate of Hispanics is nearly three times the arrest rate of Whites, and the marijuana arrest rate of African Americans is five times the arrest rate of Whites).

⁶⁹ PREVALENCE OF IMPRISONMENT, *supra* note 4, at 1, 8. Due to the nature of available data, the Commission is using incarceration data as a proxy for conviction data.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² MARC MAUER & RYAN S. KING, THE SENTENCING PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 10 (2007), www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Crd_stateratesofincbyraceandethnicity.pdf.

⁷³ *Id.*

⁷⁴ PAUL GUERINO ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2010, at 27, Table 14 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf> (reporting that as of December 31, 2010, Black men were imprisoned at a rate of 3,074 per 100,000 Black male residents, Hispanic men were imprisoned at a rate of 1,258 per 100,000 Hispanic male residents, and White men were imprisoned at a rate of 459 per 100,000 White male residents); *cf.* ONE IN 31, *supra* note 4, at 5 (“Black adults are four times as likely as whites and nearly 2.5 times as likely as Hispanics to be under correctional control. One in 11 black adults -- 9.2 percent -- was under correctional control [probation, parole, prison, or jail] at year end 2007.”).

⁷⁵ The Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. part 1607, provide that “[employers] should maintain and have available . . . information on [the] adverse impact of [their employment selection procedures].” 29 C.F.R. § 1607.15A. “Where [an employer] has not maintained [such records, the EEOC] may draw an inference of adverse impact of the selection process from the failure of [the employer] to maintain such data” *Id.* § 1607.4D.

⁷⁶ *See, e.g.*, *El v. SEPTA*, 418 F. Supp. 2d 659, 668–69 (E.D. Pa. 2005) (finding that the plaintiff established a prima facie case of disparate impact with evidence from the defendant’s personnel records and national data sources from the U.S. Bureau of Justice Statistics and the Statistical Abstract of the U.S.), *aff’d on other grounds*, 479 F.3d 232 (3d Cir. 2007); *Green v. Mo. Pac. R.R.*, 523 F.2d 1290, 1294–95 (8th Cir. 1975) (concluding that the defendant’s criminal record exclusion policy had a disparate impact based on race by evaluating local population statistics and applicant data), *appeal after remand*, 549 F.2d 1158, 1160 (8th Cir. 1977).

⁷⁷ 457 U.S. 440, 442 (1982).

⁷⁸ *Id.* at 453–54

⁷⁹ 433 U.S. 321, 330 (1977).

⁸⁰ *See, e.g.*, *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) (stating that “[a] consistently enforced discriminatory policy can surely deter job applications from those who are aware of it and are unwilling to subject themselves to the humiliation of explicit and certain rejection”).

⁸¹ 42 U.S.C. § 2000e-2(k)(1)(A)(i). *See Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). *See also* 42 U.S.C. § 2000e(m) (defining the term “demonstrates” to mean “meets the burdens of production and persuasion”).

⁸² 422 U.S. 405 (1975).

⁸³ 433 U.S. 321 (1977).

⁸⁴ 137 CONG. REC. 15273 (1991) (statement of Sen. Danforth) (“[T]he terms ‘business necessity’ and ‘job related’ are intended to reflect the concepts enunciated by the Supreme Court in *Griggs v. Duke Power Co.*, and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio.*” (citations omitted)). Section 105(b) of the Civil Rights Act of 1991 provides that only the interpretive memorandum read by Senator Danforth in the Congressional Record may be considered legislative history or relied upon in construing or applying the business necessity standard.

⁸⁵ 401 U.S. at 431, 436.

⁸⁶ 422 U.S. at 430–31 (endorsing the EEOC’s position that discriminatory tests are impermissible unless shown, by professionally acceptable methods, to predict or correlate with “‘important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated’” (quoting 29 C.F.R. § 1607.4(c))).

⁸⁷ 433 U.S. at 331–32 (concluding that using height and weight as proxies for strength did not satisfy the business necessity defense because the employer failed to establish a correlation between height and weight and the necessary strength, and also did not specify the amount of strength necessary to perform the job safely and efficiently).

⁸⁸ *Id.* at 331 n.14.

⁸⁹ 523 F.2d 1290, 1293 (8th Cir. 1975). “In response to a question on an application form, Green [a 29-year-old African American man] disclosed that he had been convicted in December 1967 for refusing military induction. He stated that he had served 21 months in prison until paroled on July 24, 1970.” *Id.* at 1292–93.

⁹⁰ *Green v. Mo. Pac. R.R.*, 549 F.2d 1158, 1160 (8th Cir. 1977) (upholding the district court’s injunction prohibiting the employer from using an applicant’s conviction record as an absolute bar to employment but allowing it to consider a prior criminal record as a factor in making individual hiring decisions, as long as the defendant took these three factors into account).

⁹¹ *Id.* (referring to completion of the sentence rather than completion of parole).

⁹² *Id.*

⁹³ 479 F.3d 232 (3d Cir. 2007).

⁹⁴ *Id.* at 235.

⁹⁵ *Id.* at 235, 236.

⁹⁶ *Id.* at 235.

⁹⁷ *Id.* at 244.

⁹⁸ *Id.* at 244–45.

⁹⁹ *Id.* at 247. *Cf.* Shawn Bushway et al., *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?*, 49 *CRIMINOLOGY* 27, 52 (2011) [hereinafter *The Predictive Value of Criminal Background Checks*] (“Given the results of the current as well as previous [recidivism] studies, the 40-year period put forward in *El v. SEPTA* (2007) . . . seems too old of a score to be still in need of settlement.”).

¹⁰⁰ *El*, 479 F.3d at 248.

¹⁰¹ Some states have enacted laws to limit employer inquiries concerning all or some arrest records. *See* BACKGROUND CHECKS, *supra* note 25, at 48–49. At least 13 states have statutes explicitly prohibiting arrest record inquiries and/or dissemination subject to certain exceptions. *See, e.g.*, Alaska (ALASKA STAT. § 12.62.160(b)(8)); Arkansas (ARK. CODE ANN. § 12-12-1009(c)); California (CAL. LAB. CODE § 432.7(a)); Connecticut (CONN. GEN. STAT. § 46a-80(e)); Illinois (775 ILL. COMP. STAT. § 5/2-103(A)) (dealing with arrest records that have been ordered expunged, sealed, or impounded); Massachusetts (MASS. GEN. LAWS ch. 151B § 4(9)); Michigan (MICH COMP. LAWS § 37.2205a(1) (applying to misdemeanor arrests only)); Nebraska (NEB. REV. STAT. § 29-3523(2)) (ordering no dissemination of arrest records under certain conditions and specified time periods)); New York (N.Y. EXEC. LAW § 296(16)); North Dakota (N.D. CENT. CODE § 12-60-16.6(2)); Pennsylvania (18 PA. CONS. STAT. § 9121(b)(2)); Rhode Island (R.I. GEN. LAWS § 28-5-7(7)), and Wisconsin (WIS. STAT. §§ 111.321, 111.335a).

¹⁰² *See* United States v. Armstrong, 517 U.S. 456, 464 (1996) (discussing federal prosecutors’ broad discretionary authority to determine whether to prosecute cases and whether to bring charges before a grand jury); Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) (explaining same for state prosecutors); *see also* THOMAS H. COHEN & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2006, at 10, Table 11 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf> (reporting that in the 75 largest counties in the country, nearly one-third of the felony arrests did not result in a conviction because the charges against the defendants were dismissed).

¹⁰³ *Schwartz v. Bd. of Bar Exam’rs*, 353 U.S. 232, 241 (1957) (“The mere fact that a [person] has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.”); *United States v. Hynes*, 467 F.3d 951, 957 (6th Cir. 2006) (upholding a preliminary jury instruction that stated that a “defendant is presumed to be innocent unless proven guilty. The indictment against the Defendant is only an accusation, nothing more. It’s not proof of guilt or anything else.”); *see Gregory v. Litton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (“[I]nformation concerning a prospective employee’s record of arrests without convictions, is irrelevant to [an applicant’s] suitability or qualification for employment.”), *modified on other grounds*, 472 F.2d 631 (9th Cir. 1972); *Dozier v. Chupka*, 395 F. Supp. 836, 850 n.10 (S.D. Ohio 1975) (stating that the use of arrest records was too crude a predictor of an employee’s predilection for theft where there were no procedural safeguards to prevent reliance on unwarranted arrests); *City of Cairo v. Ill. Fair Empl. Prac. Comm.*, 8 Empl. Prac. Dec. (CCH) ¶ 9682 (Ill. App. Ct. 1974) (concluding that, where applicants sought to become police officers, they could not be absolutely barred from appointment solely because they had been arrested, as distinguished from convicted); *see also* EEOC Dec. 74-83, ¶ 6424 (CCH) (1983) (finding no business justification for an employer’s unconditional termination of all employees with arrest records (all five employees terminated were Black), purportedly to reduce thefts in the workplace; the employer produced no evidence that these particular employees had been involved in any of the thefts, or that all people who are arrested but not convicted are prone towards crime in the future); EEOC Dec. 76-87, ¶ 6665 (CCH) (1983) (holding that an applicant who sought to become a police officer could not be rejected based on one arrest five years earlier

for riding in a stolen car when he asserted that he did not know that the car was stolen and the charge was dismissed).

¹⁰⁴ See STATE CRIMINAL HISTORY, *supra* note 37, at 2; see also BACKGROUND CHECKS, *supra* note 25, at 17.

¹⁰⁵ See *supra* notes 39–40.

¹⁰⁶ See *Clark v. Arizona*, 548 U.S. 735, 766 (2006) (“The first presumption [in a criminal case] is that a defendant is innocent unless and until the government proves beyond a reasonable doubt each element of the offense charged. . . .”). See also FED. R. CRIM P 11 (criminal procedure rule governing pleas). The Supreme Court has concluded that criminal defendants have a Sixth Amendment right to effective assistance of counsel during plea negotiations. See generally *Lafler v. Cooper*, 132 S. Ct. 1376 (2012); *Missouri v. Frye*, 132 S. Ct. 1399 (2012).

¹⁰⁷ See *supra* text accompanying note 39.

¹⁰⁸ See e.g., HAW. REV. STAT. § 378-2.5(b). Under this provision, the employer may withdraw the offer of employment if the prospective employee has a conviction record “that bears a rational relationship to the duties and responsibilities of the position.” *Id.* See also CONN. GEN. STAT. § 46a-80(b) (“[N]o employer . . . shall inquire about a prospective employee’s past convictions until such prospective employee has been deemed otherwise qualified for the position.”); MINN. STAT. § 364.021(a) (“[A] public employer may not inquire or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.”). State fair employment practices agencies have information about applicable state law.

¹⁰⁹ See generally NAT’L LEAGUE OF CITIES & NAT’L EMP’T LAW PROJECT, CITIES PAVE THE WAY: PROMISING REENTRY POLICIES THAT PROMOTE LOCAL HIRING OF PEOPLE WITH CRIMINAL RECORDS (2010), www.nelp.org/page/-/SCLP/2010/CitiesPavetheWay.pdf?nocdn=1 (identifying local initiatives that address ways to increase employment opportunities for individuals with criminal records, including delaying a background check until the final stages of the hiring process, leveraging development funds, and expanding bid incentive programs to promote local hiring priorities); NAT’L EMP’T LAW PROJECT, CITY AND COUNTY HIRING INITIATIVES (2010), www.nelp.org/page/-/SCLP/CityandCountyHiringInitiatives.pdf (discussing the various city and county initiatives that have removed questions regarding criminal history from the job application and have waited until after a conditional offer of employment has been made to conduct a background check and inquire about the applicant’s criminal background).

¹¹⁰ Several federal laws automatically prohibit employing individuals with certain felony convictions or, in some cases, misdemeanor convictions. See, e.g., 5 U.S.C. § 7371(b) (requiring the mandatory removal of any federal law enforcement officer who is convicted of a felony); 46 U.S.C. § 70105(c)(1)(A) (mandating that individuals who have been convicted of espionage, sedition, treason or terrorism be permanently disqualified from receiving a biometric transportation security card and thereby excluded from port work employment); 42 U.S.C.

§ 13726(b)(1) (disqualifying persons with felony convictions or domestic violence convictions from working for a private prisoner transport company); 25 U.S.C. § 3207(b) (prohibiting individuals with a felony conviction, or any of two or more misdemeanor convictions, from working with Indian children if their convictions involved crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons, or offenses committed against children); 18 U.S.C. § 922(g)(1), (9) (prohibiting an individual convicted of a felony or a misdemeanor for domestic violence from possessing a firearm, thereby excluding such individual from a wide range of jobs that require such possession); 18 U.S.C. § 2381 (prohibiting individuals convicted of treason from “holding any office under the United States”). Other federal laws prohibit employing individuals with certain convictions for a defined time period. *See, e.g.*, 5 U.S.C. § 7313(a) (prohibiting individuals convicted of a felony for inciting a riot or civil disorder from holding any position in the federal government for five years after the date of the conviction); 12 U.S.C. § 1829 (requiring a ten-year ban on employing individuals in banks if they have certain financial-related convictions); 49 U.S.C. § 44936(b)(1)(B) (imposing a ten-year ban on employing an individual as a security screener for an air carrier if that individual has been convicted of specified crimes).

111 *See* 29 C.F.R. § 1607.5 (describing the general standards for validity studies).

112 *Id.*

113 *Id.* § 1607.6B. The following subsections state:

(1) *Where informal or unscored procedures are used.* When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) *Where formal and scored procedures are used.* When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

Id. § 1607.6A, B(1)–(2).

114 *See, e.g.*, Brent W. Roberts et al., *Predicting the Counterproductive Employee in a Child-to-Adult Prospective Study*, 92 J. APPLIED PSYCHOL. 1427, 1430 (2007), <http://internal.psychology.illinois.edu/~broberts/Roberts,%20Harms,%20Caspi,%20&%20Moffitt,%202007.pdf> (finding that in a study of New Zealand residents from birth to age 26, “[a]dolescent criminal convictions were unrelated to committing counterproductive activities at work [such as tardiness, absenteeism, disciplinary problems, etc.]. In fact, according to the

[results of the study], people with an adolescent criminal conviction record were less likely to get in a fight with their supervisor or steal things from work.”).

¹¹⁵ See OHIO REV. CODE ANN. § 2913.02.

¹¹⁶ 523 F.2d at 1298 (stating that “[w]e cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed”).

¹¹⁷ 479 F.3d at 247.

¹¹⁸ See, e.g., Keith Soothill & Brian Francis, *When do Ex-Offenders Become Like Non-Offenders?*, 48 HOWARD J. OF CRIM. JUST., 373, 380–81 (2009) (examining conviction data from Britain and Wales, a 2009 study found that the risk of recidivism declined for the groups with prior records and eventually converged within 10 to 15 years with the risk of those of the nonoffending comparison groups); Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 CRIMINOLOGY 327 (2009) (concluding that there may be a “point of redemption” (i.e., a point in time where an individual’s risk of re-offending or re-arrest is reasonably comparable to individuals with no prior criminal record) for individuals arrested for certain offenses if they remain crime free for a certain number of years); Megan C. Kurlychek, Robert Brame & Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53 CRIME & DELINQUENCY 64 (2007) (analyzing juvenile police contacts and Racine, Wisconsin police contacts for an aggregate of crimes for 670 males born in 1942 and concluding that, after seven years, the risk of a new offense approximates that of a person without a criminal record); Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL’Y 483 (2006) (evaluating juvenile police contacts and arrest dates from Philadelphia police records for an aggregate of crimes for individuals born in 1958, a 2006 study concluded that the risk of recidivism decreases over time and that, six or seven years after an arrest, an individual’s risk of re-arrest approximates that of an individual who has never been arrested).

¹¹⁹ *Griggs*, 401 U.S. at 431.

¹²⁰ 523 F.2d at 1298; see also *Field v. Orkin Extermination Co.*, No. Civ. A. 00-5913, 2002 WL 32345739, at *1 (E.D. Pa. Feb. 21, 2002) (unpublished) (“[A] blanket policy of denying employment to any person having a criminal conviction is a [*per se*] violation of Title VII.”). The only exception would be if such an exclusion were required by federal law or regulation. See, e.g., *supra* note 110.

¹²¹ Cf. *Field*, 2002 WL 32345739, at *1. In *Field*, an employee of ten years was fired after a new company that acquired her former employer discovered her 6-year-old felony conviction. The new company had a blanket policy of firing anyone with a felony conviction less than 10 years old. The court granted summary judgment for the employee because the employer’s argument that her conviction was related to her job qualifications was “weak at best,” especially

given her positive employment history with her former employer. *Id.*

¹²² Recidivism rates tend to decline as ex-offenders' ages increase. A 2011 study found that an individual's age at conviction is a variable that has a "substantial and significant impact on recidivism." *The Predictive Value of Criminal Background Checks*, *supra* note 99, at 43. For example, the 26-year-olds in the study, with no prior criminal convictions, had a 19.6% chance of reoffending in their first year after their first conviction, compared to the 36-year-olds who had an 8.8% chance of reoffending during the same time period, and the 46-year-olds who had a 5.3% of reoffending. *Id.* at 46. *See also* PATRICK A. LANGAN & DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: RECIDIVISM OF PRISONERS RELEASED IN 1994, at 7 (2002), <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf> (finding that, although 55.7% of ex-offenders aged 14–17 released in 1994 were reconvicted within three years, the percentage declined to 29.7% for ex-offenders aged 45 and older who were released the same year).

Consideration of an applicant's age at the time the offense occurred or at his release from prison would benefit older individuals and, therefore, would not violate the Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. § 621 *et seq.* *See* Age Discrimination in Employment Act, 29 C.F.R. § 1625.2 ("Favoring an older individual over a younger individual because of age is not unlawful discrimination under the ADEA, even if the younger individual is at least 40 years old."); *see also* Gen. Dynamics Land Sys., Inc. v. Cline, 540 U.S. 581, 600 (2004) (concluding that the ADEA does not preclude an employer from favoring an older employee over a younger one within the protected age group).

¹²³ *See* Laura Moskowitz, *Statement of Laura Moskowitz, Staff Attorney, National Employment Law Project's Second Chance Labor Project*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/11-20-08/moskowitz.cfm> (last visited April 23, 2012) (stating that one of the factors that is relevant to the assessment of an ex-offender's risk to a workplace and to the business necessity analysis, is the "length and consistency of the person's work history, including whether the person has been recently employed"; also noting that various studies have "shown a strong relationship between employment and decreases in crime and recidivism"). *But see* Stephen J. Tripodi et al., *Is Employment Associated With Reduced Recidivism?: The Complex Relationship Between Employment and Crime*, 54 INT'L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 716, 716 (2010) (finding that "[b]ecoming employed after incarceration, although apparently providing initial motivation to desist from crime, does not seem to be on its own sufficient to prevent recidivism for many parolees").

¹²⁴ *See* WENDY ERISMAN & JEANNE BAYER CONTARDO, INST. FOR HIGHER EDUC. POLICY, LEARNING TO REDUCE RECIDIVISM: A 50 STATE ANALYSIS OF POSTSECONDARY CORRECTIONAL EDUCATION 5 (2005), <http://www.ihep.org/assets/files/publications/g-1/LearningReduceRecidivism.pdf> (finding that increasing higher education for prisoners enhances their prospects for employment and serves as a cost-effective approach to reducing recidivism); *see also* John H. Laud & Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIME & JUST. 1, 17–24 (2001), <http://www.ncjrs.gov/pdffiles1/Digitization/192542-192549NCJRS.pdf> (stating that factors associated with personal rehabilitation and social

stability, such as stable employment, family and community involvement, and recovery from substance abuse, are correlated with a decreased risk of recidivism).

¹²⁵ Some employers have expressed a greater willingness to hire ex-offenders who have had an ongoing relationship with third party intermediary agencies that provide supportive services such as drug testing, referrals for social services, transportation, child care, clothing, and food. See Amy L. Solomon et al., *From Prison to Work: The Employment Dimensions of Prisoner Reentry*, 2004 URBAN INST. 20, http://www.urban.org/UploadedPDF/411097_From_Prison_to_Work.pdf. These types of services can help ex-offenders avoid problems that may interfere with their ability to obtain and maintain employment. *Id.*; see generally Victoria Kane, *Transcript of 7-26-11 Meeting*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/transcript.cfm#kane> (last visited April 23, 2012) (describing why employers should partner with organizations that provide supportive services to ex-offenders).

¹²⁶ See generally REENTRY MYTHBUSTER! ON FEDERAL BONDING PROGRAM, *supra* note 16; *Work Opportunity Tax Credit (WOTC)*, EMP'T & TRAINING ADMIN., U.S. DEP'T OF LABOR, <http://www.doleta.gov/business/incentives/opptax/> (last visited April 3, 2012); *Directory of State Bonding Coordinators*, EMP'T & TRAINING ADMIN., U.S. DEP'T OF LABOR, <http://www.doleta.gov/usworkforce/onestop/FBPCcontact.cfm> (last visited April 3, 2012); *Federal Bonding Program - Background*, U.S. DEP'T OF LABOR, <http://www.bonds4jobs.com/program-background.html> (last visited April 3, 2012); *Bureau of Prisons: UNICOR's Federal Bonding Program*, http://www.bop.gov/inmate_programs/itb_bonding.jsp (last visited April 3, 2012).

¹²⁷ This example is loosely based on a study conducted by Alfred Blumstein and Kiminori Nakamura measuring the risk of recidivism for individuals who have committed burglary, robbery, or aggravated assault. See Blumstein & Nakamura, *supra* note 118.

¹²⁸ 42 U.S.C. § 2000e-2(k)(1)(A)(ii), (C). See also *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 998 (1988).

¹²⁹ See Exec. Order No. 12,067, 3 C.F.R. 206 (1978 Comp.).

¹³⁰ See 49 U.S.C. §§ 44935(e)(2)(B), 44936(a)(1), (b)(1). The statute mandates a criminal background check.

¹³¹ See 5 U.S.C. § 7371(b) (requiring mandatory removal from employment of law enforcement officers convicted of felonies).

¹³² See 42 U.S.C. § 13041(c) (“Any conviction for a sex crime, an offense involving a child victim, or a drug felony may be grounds for denying employment or for dismissal of an employee. . . .”).

¹³³ 12 U.S.C. § 1829.

¹³⁴ 46 U.S.C. § 70105(c).

¹³⁵ Other jobs and programs subject to federally-imposed restrictions based on criminal convictions include the business of insurance (18 U.S.C. § 1033(e)), employee benefits employee (29 U.S.C. § 1111(a)), participation in Medicare and state health care programs (42 U.S.C. § 1320a-7(a)–(b)), defense contractor (10 U.S.C. § 2408(a)), prisoner transportation (42 U.S.C. § 13726b(b)(1)), and court-imposed occupational restrictions (18 U.S.C. §§ 3563(b)(5), 3583(d)). This list is not meant to be exhaustive.

¹³⁶ *See, e.g.*, federal statutes governing commercial motor vehicle operator’s licenses (49 U.S.C. § 31310(b)–(h)), locomotive operator licenses (49 U.S.C. § 20135(b)(4)(B)), and certificates, ratings, and authorizations for pilots, flight instructors, and ground instructors (49 U.S.C. §§ 44709(b)(2), 44710(b), 4711(c); 14 C.F.R. § 61.15).

¹³⁷ *See, e.g.*, federal statutes governing loan originator licensing/registration (12 U.S.C. § 5104(b)(2)), registration of brokers and dealers (15 U.S.C. § 78o(b)(4)(B)), registration of commodity dealers (7 U.S.C. § 12a(2)(D), (3)(D), (E), (H)), and registration of investment advisers (15 U.S.C. § 80b-3(e)(2)–(3), (f)).

¹³⁸ *See, e.g.*, custom broker’s licenses (19 U.S.C. § 1641(d)(1)(B)), export licenses (50 U.S.C. App. § 2410(h)), and arms export (22 U.S.C. § 2778(g)).

¹³⁹ *See, e.g.*, grain inspector’s licenses (7 U.S.C. § 85), merchant mariner’s documents, licenses, or certificates of registry (46 U.S.C. § 7503(b)), licenses to import, manufacture, or deal in explosives or permits to use explosives (18 U.S.C. § 843(d)), and farm labor contractor’s certificates of registration (29 U.S.C. § 1813(a)(5)). This list of federally-imposed restrictions on occupational licenses and registrations for individuals with certain criminal convictions is not meant to be exhaustive. For additional information, please consult the relevant federal agency or department.

¹⁴⁰ *See* 12 U.S.C. § 1829(a)(1). The statute imposes a ten-year ban for individuals who have been convicted of certain financial crimes such as corruption involving the receipt of commissions or gifts for procuring loans (18 U.S.C. § 215), embezzlement or theft by an officer/employee of a lending, credit, or insurance institution (18 U.S.C. § 657), false or fraudulent statements by an officer/employee of the federal reserve or a depository institution (18 U.S.C. § 1005), or fraud by wire, radio, or television that affects a financial institution (18 U.S.C. § 1343), among other crimes. *See* 12 U.S.C. § 1829(a)(2)(A)(i)(I), (II). Individuals who have either been convicted of the crimes listed in § 1829(a)(2)(A), or conspiracy to commit those crimes, will not receive an exception to the application of the 10-year ban from the FDIC. 12 U.S.C. § 1829(a)(2)(A).

¹⁴¹ *See* FED. DEPOSIT INS. CORP., FDIC STATEMENT OF POLICY FOR SECTION 19 OF THE FDI ACT, § C, “PROCEDURES” (amended May 13, 2011), <http://www.fdic.gov/regulations/laws/rules/5000-1300.html> [hereinafter FDIC POLICY]; *see also*

Statement of Policy, 63 Fed. Reg. 66,177, 66,184 (Dec. 1, 1998); Clarification of Statement of Policy, 76 Fed. Reg. 28,031 (May 13, 2011) (clarifying the FDIC’s Statement of Policy for Section 19 of the FDI Act).

“Approval is automatically granted and an application [for a waiver] will not be required where [an individual who has been convicted of] the covered offense [criminal offenses involving dishonesty, breach of trust, or money laundering] . . . meets all of the [“*de minimis*”] criteria” set forth in the FDIC’s Statement of Policy. FDIC POLICY, *supra*, § B (5). These criteria include the following: (1) there is only one conviction or program of record for a covered offense; (2) the offense was punishable by imprisonment for a term of one year or less and/or a fine of \$1,000 or less, and the individual did not serve time in jail; (3) the conviction or program was entered at least five years prior to the date an application would otherwise be required; and (4) the offense did not involve an insured depository institution or insured credit union. *Id.* Additionally, an individual’s conviction for writing a “bad” check will be considered a *de minimis* offense, even if it involved an insured depository institution or insured credit union, if: (1) all other requirements of the *de minimis* offense provisions are met; (2) the aggregate total face value of the bad or insufficient funds check(s) cited in the conviction was \$1000 or less; and (3) no insured depository institution or insured credit union was a payee on any of the bad or insufficient funds checks that were the basis of the conviction. *Id.*

¹⁴² See FDIC POLICY, *supra* note 141, § C, “PROCEDURES.”

¹⁴³ *Id.* *But cf.* NAT’L H.I.R.E. NETWORK, PEOPLE WITH CRIMINAL RECORDS WORKING IN FINANCIAL INSTITUTIONS: THE RULES ON FDIC WAIVERS, <http://www.hirenetwork.org/FDIC.html> (“Institutions rarely seek a waiver, except for higher level positions when the candidate is someone the institution wants to hire. Individuals can only seek FDIC approval themselves if they ask the FDIC to waive the usual requirement. Most individuals probably are unaware that they have this right.”); FED. DEPOSIT INSUR. CORP. 2010 ANNUAL REPORT, § VI.A: KEY STATISTICS, FDIC ACTIONS ON FINANCIAL INSTITUTION APPLICATIONS 2008–2010 (2011), <http://www.fdic.gov/about/strategic/report/2010annualreport/chpt6-01.html> (reporting that between 2008 and 2010, the FDIC approved a total of 38 requests for consent to employ individuals with covered offenses in their background; the agency did not deny any requests during this time period).

¹⁴⁴ FDIC POLICY, *supra* note 141, § D, “EVALUATION OF SECTION 19 APPLICATIONS” (listing the factors that are considered in this waiver review process, which include: (1) the nature and circumstances underlying the offense; (2) “[e]vidence of rehabilitation including the person’s reputation since the conviction . . . the person’s age at the time of conviction . . . and the time which has elapsed since the conviction”; (3) the position to be held in the insured institution; (4) the amount of influence/control the individual will be able to exercise over management affairs; (5) management’s ability to control and supervise the individual’s activities; (6) the degree of ownership the individual will have in the insured institution; (7) whether the institution’s fidelity bond coverage applies to the individual; (8) the opinion of the applicable federal and/or state regulators; and (9) any other relevant factors).

¹⁴⁵ See 49 C.F.R. §§ 1515.7 (describing the procedures for waiver of criminal offenses, among other standards), 1515.5 (explaining how to appeal the Initial Determination of Threat Assessment based on a criminal conviction). In practice, some worker advocacy groups have criticized the TWIC appeal process due to prolonged delays, which leaves many workers jobless; especially workers of color. See generally MAURICE Emsellem et al., NAT'L EMP'T LAW PROJECT, A SCORECARD ON THE POST-9/11 PORT WORKER BACKGROUND CHECKS: MODEL WORKER PROTECTIONS PROVIDE A LIFELINE FOR PEOPLE OF COLOR, WHILE MAJOR TSA DELAYS LEAVE THOUSANDS JOBLESS DURING THE RECESSION (2009), http://nelp.3cdn.net/2d5508b4cec6e13da6_upm6b20e5.pdf.

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6201, 124 Stat. 721 (2010) (the Act) includes a process to appeal or dispute the accuracy of information obtained from criminal records. The Act requires participating states to perform background checks on applicants and current employees who have direct access to patients in long-term care facilities, such as nursing homes, to determine if they have been convicted of an offense or have other disqualifying information in their background, such as a finding of patient or resident abuse, that would disqualify them from employment under the Social Security Act or as specified by state law. See 42 U.S.C. § 1320a-7l(a)(3)(A), (a)(4)(B), (6)(A)–(E). The background check involves an individualized assessment of the relevance of a conviction or other disqualifying information. The Act protects applicants and employees in several ways, for example, by: (1) providing a 60-day provisional period of employment for the prospective employee, pending the completion of the criminal records check; (2) providing an independent process to appeal or dispute the accuracy of the information obtained in the criminal records check; and (3) allowing the employee to remain employed (subject to direct on-site supervision) during the appeals process. 42 U.S.C. § 1320a-7l(a)(4)(B)(iii), (iv).

¹⁴⁶ See 46 U.S.C. § 70105(d); see generally TWIC Program, 49 C.F.R. § 1572.103 (listing the disqualifying offenses for maritime and land transportation security credentials, such as convictions and findings of not guilty by reason of insanity for espionage, murder, or unlawful possession of an explosive; also listing temporarily disqualifying offenses, within seven years of conviction or five years of release from incarceration, including dishonesty, fraud, or misrepresentation (expressly excluding welfare fraud and passing bad checks), firearms violations, and distribution, intent to distribute, or importation of controlled substances).

¹⁴⁷ 46 U.S.C. § 70105(c)(1)(A)–(B).

¹⁴⁸ 46 U.S.C. § 70105(c)(1)(B)(iii).

¹⁴⁹ See 46 U.S.C. § 70105(c)(1)(A)(iv) (listing “Federal crime of terrorism” as a permanent disqualifying offense); see also 18 U.S.C. § 2332b(g)(5)(B) (defining “Federal crime of terrorism” to include the use of weapons of mass destruction under § 2332a).

¹⁵⁰ See 49 C.F.R. § 1515.7(a)(i) (explaining that only certain applicants with disqualifying crimes in their backgrounds may apply for a waiver; these applicants do not include individuals

who have been convicted of a Federal crime of terrorism as defined by 18 U.S.C. § 2332b(g)).

¹⁵¹ These positions are defined as “national security positions” and include positions that “involve activities of the Government that are concerned with the protection of the nation from foreign aggression or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of the military strength of the United States” or “require regular use of, or access to, classified information.” 5 C.F.R. § 732.102(a)(1)–(2). The requirements for “national security positions” apply to competitive service positions, Senior Executive Service positions filled by career appointment within the Executive Branch, and excepted service positions within the Executive Branch. *Id.* § 732.102(b). The head of each Federal agency can designate any position within that department or agency as a “sensitive position” if the position “could bring about, by virtue of the nature of the position, a material adverse effect on the national security.” *Id.* § 732.201(a). Designation of a position as a “sensitive position” will fall under one of three sensitivity levels: Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive. *Id.*

¹⁵² See Exec. Order No. 12,968, § 3.1(b), 3 C.F.R. 391 (1995 Comp.):

[E]ligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

¹⁵³ 42 U.S.C. § 2000e-2(g); *see, e.g.*, *Bennett v. Chertoff*, 425 F.3d 999, 1001 (D.C. Cir. 2005) (“[E]mployment actions based on denial of a security clearance are not subject to judicial review, including under Title VII.”); *Ryan v. Reno*, 168 F.3d 520, 524 (D.C. Cir. 1999) (“[A]n adverse employment action based on denial or revocation of a security clearance is not actionable under Title VII.”).

¹⁵⁴ See *Policy Guidance on the use of the national security exception contained in § 703(g) of Title VII of the Civil Rights Act of 1964, as amended*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, § II, *Legislative History* (May 1, 1989), http://www.eeoc.gov/policy/docs/national_security_exemption.html (“[N]ational security requirements must be applied equally without regard to race, sex, color, religion or national origin.”); *see also* *Jones v. Ashcroft*, 321 F. Supp. 2d 1, 8 (D.D.C. 2004) (indicating that the

national security exception did not apply because there was no evidence that the government considered national security as a basis for its decision not to hire the plaintiff at any time before the commencement of the plaintiff's lawsuit, where the plaintiff had not been forthright about an arrest).

¹⁵⁵ Federal contractor employees may challenge the denial of a security clearance with the EEOC or the Office of Contract Compliance Programs when the denial is based on race, color, religion, sex, or national origin. *See generally* Exec. Order No. 11,246, 3 C.F.R. 339 (1964–1965 Comp.).

¹⁵⁶ 42 U.S.C. § 2000e-16(a).

¹⁵⁷ Robert H. Shriver, III, *Written Testimony of Robert H. Shriver, III, Senior Policy Counsel for the U.S. Office of Personnel Management*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/shriver.cfm> (last visited April 23, 2012) (stating that “with just a few exceptions, criminal convictions do not automatically disqualify an applicant from employment in the competitive civil service”); *see also* REENTRY MYTHBUSTER! ON FEDERAL HIRING POLICIES, *supra* note 16 (“The Federal Government employs people with criminal records with the requisite knowledge, skills and abilities.”). *But see supra* note 110, listing several federal statutes that prohibit individuals with certain convictions from working as federal law enforcement officers or port workers, or with private prisoner transport companies.

¹⁵⁸ OPM has jurisdiction to establish the federal government's suitability policy for competitive service positions, certain excepted service positions, and career appointments in the Senior Executive Service. *See* 5 C.F.R. §§ 731.101(a) (stating that OPM has been directed “to examine ‘suitability’ for competitive Federal employment”), 731.101(b) (defining the covered positions within OPM's jurisdiction); *see also* Shriver, *supra* note 157.

OPM is also responsible for establishing standards that help agencies decide whether to grant their employees and contractor personnel long-term access to federal facilities and information systems. *See* Homeland Security Presidential Directive 12: Policy for a Common Identification Standard for Federal Employees and Contractors, 2 PUB. PAPERS 1765 (Aug. 27, 2004) (“establishing a mandatory, Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors [including contractor employees]”); *see also* Exec. Order No. 13,467, § 2.3(b), 3 C.F.R. 196 (2009 Comp.) (“[T]he Director of [OPM] . . . [is] responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of suitability and eligibility for logical and physical access.”); *see generally* Shriver, *supra* note 157.

¹⁵⁹ 5 C.F.R. § 731.101(a).

¹⁶⁰ *See* 5 C.F.R. §§ 731.205(a) (stating that if an agency finds applicants unsuitable based on the factors listed in 5 C.F.R. § 731.202, it may, in its discretion, bar those applicants from federal employment for three years), § 731.202(b) (disqualifying factors from federal civilian

employment may include: misconduct or negligence in employment; material, intentional false statement, or deception or fraud in examination or appointment; refusal to furnish testimony as required by 5 C.F.R. § 5.4; alcohol abuse without evidence of substantial rehabilitation; illegal use of narcotics, drugs, or other controlled substances; and knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force).

¹⁶¹ See *id.* § 731.202(c).

¹⁶² *Id.*

¹⁶³ See generally Shriver, *supra* note 157. See also REENTRY MYTHBUSTER! ON FEDERAL HIRING POLICIES, *supra* note 16 (“Consistent with Merit System Principles, [federal] agencies [and departments] are required to consider people with criminal records when filling positions if they are the best candidates and can comply with requirements.”).

¹⁶⁴ See generally EEOC Informal Discussion Letter (March 19, 2007), http://www.eeoc.gov/eeoc/foia/letters/2007/arrest_and_conviction_records.html#N1 (discussing the EEOC’s concerns with changes to OPM’s suitability regulations at 5 CFR part 731).

¹⁶⁵ See Stephen Saltzburg, *Transcript of 7-26-11 Meeting*, U.S. EQUAL EMP’T OPPORTUNITY COMM’N, <http://www.eeoc.gov/eeoc/meetings/7-26-11/transcript.cfm#saltzburg> (last visited April 23, 2012) (discussing the findings from the American Bar Association’s (ABA) Collateral Consequences of Conviction Project, which found that in 17 states that it has examined to date, 84% of the collateral sanctions against ex-offenders relate to employment). For more information about the ABA’s project, visit: Janet Levine, *ABA Criminal Justice Section Collateral Consequences Project*, INST. FOR SURVEY RESEARCH, TEMPLE UNIV., <http://isrweb.isr.temple.edu/projects/accproject/> (last visited April 20, 2012). In April 2011, Attorney General Holder sent a letter to every state Attorney General, with a copy to every Governor, asking them to “evaluate the collateral consequences” of criminal convictions in their state, such as employment-related restrictions on ex-offenders, and “to determine whether those [consequences] that impose burdens on individuals . . . without increasing public safety should be eliminated.” Letter from Eric H. Holder, Jr., Att’y Gen., Dep’t of Justice, to state Attorney Generals and Governors (April 18, 2011), http://www.nationalreentryresourcecenter.org/documents/0000/1088/Reentry_Council_AG_Letter.pdf.

Most states regulate occupations that involve responsibility for vulnerable citizens such as the elderly and children. See STATE CRIMINAL HISTORY, *supra* note 37, at 10 (“Fifty states and the District of Columbia reported that criminal history background checks are legally required” for several occupations such as nurses/elder caregivers, daycare providers, caregivers in residential facilities, school teachers, and nonteaching school employees). For example, Hawaii’s Department of Human Services may deny applicants licensing privileges to operate a childcare facility if: (1) the applicant or any prospective employee has been convicted of a crime other than a minor traffic violation or has been confirmed to have abused or neglected a child or threatened harm; and (2) the department finds that the criminal history or child abuse record of

the applicant or prospective employee may pose a risk to the health, safety, or well-being of children. *See* HAW. REV. STAT. § 346-154(e)(1)–(2).

¹⁶⁶ 42 U.S.C. § 2000e-7.

¹⁶⁷ *See* Int'l Union v. Johnson Controls, Inc., 499 U.S. 187, 210 (1991) (noting that “[i]f state tort law furthers discrimination in the workplace and prevents employers from hiring women who are capable of manufacturing the product as efficiently as men, then it will impede the accomplishment of Congress’ goals in enacting Title VII”); *Gulino v. N.Y. State Educ. Dep’t*, 460 F.3d 361, 380 (2d Cir. 2006) (affirming the district court’s conclusion that “the mandates of state law are no defense to Title VII liability”).

Notice #1 for Employers Regarding Job Bank Nondiscrimination and Criminal Record Exclusions

The public workforce system must comply with federal civil rights laws, including those concerning nondiscrimination in employment. In addition, as explained in the information below provided by the Equal Employment Opportunity Commission (EEOC) – the agency that administers and enforces Title VII of the Civil Rights Act of 1964, as amended – an employer may be liable under Title VII for its use of criminal record information to make employment decisions, depending on the factual circumstances under which the criminal records are used.

An employer that submits a job announcement containing restrictions or exclusions based on arrest or conviction history will have an opportunity to edit or remove the announcement, to help ensure that the employer and the public workforce system are in compliance with the law.

EEOC Information on Employer Consideration of Arrest and Conviction History

Title VII of the Civil Rights Act of 1964 makes it unlawful to discriminate in employment based on race, color, national origin, religion, or sex. This law does not prohibit an employer from requiring applicants to provide information about arrests, convictions or incarceration. But, employers may not treat people with the same criminal records differently because of their race, national origin or another protected characteristic. In addition, unless required by federal law or regulation, employers may not automatically bar everyone with an arrest or conviction record from employment. This is because an automatic bar to hiring everyone with a criminal record is likely to unjustifiably limit the employment opportunities of applicants or workers of certain racial or ethnic groups.

If an employer's criminal record exclusion policy or practice has a disparate impact on Title VII-protected individuals, it must be job related and consistent with business necessity. For greater detail on meeting this standard, please see the EEOC's Guidance referenced below.

Since an arrest alone does not necessarily mean that someone has committed a crime, an employer should not assume that someone who has been arrested, but not convicted, did in fact commit the offense. Instead, the employer should allow the person to explain the circumstances of the arrest to determine whether the conduct underlying the arrest justifies an adverse employment action. These rules apply to all employers that have 15 or more employees. For more information:

www.eeoc.gov/laws/guidance/arrest_conviction.cfm;

www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm;

www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry_Council_Mythbuster_Employment.pdf

Other Relevant Information

The Fair Credit Reporting Act (FCRA) imposes a number of obligations on employers that wish to use criminal background checks to screen applicants. This law requires the employer to obtain the applicant's permission before asking a background screening company for a criminal history report, and requires the employer to provide the applicant with a copy of the report and a summary of the applicant's rights before the employer takes an adverse action (such as denying an application for employment) based on information in the criminal history report. For more information:

business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know

The California Investigative Consumer Reporting Agencies Act, which limits reporting by consumer reporting agencies of criminal convictions that are older than seven years, and California Labor Code § 432.7 and California Code of Regulations, Title 2, § 7287.4(d)(1), which prevent employers from asking about arrests that did not lead to conviction and about misdemeanor convictions that have been dismissed pursuant to California Penal Code § 1203.4.

Employers should also be aware of the Work Opportunity Tax Credit (WOTC) and the Federal Bonding Program (FBP), two incentives that support employers' hiring of individuals with conviction histories. The WOTC provides a credit of 25-40% of first-year wages, or \$1,500-\$2,400, for employers that hire qualified individuals with felony convictions. For more information:

www.doleta.gov/wotc

www.edd.ca.gov/Jobs_and_Training/WOTC_Frequently_Asked_Questions.htm/

Through the FBP, funded and administered by the U.S. Department of Labor, fidelity insurance bonds are available to reimburse the employer for any loss due to employee theft of money or property, with no employer deductible. For more information:

www.bonds4jobs.com/index.html

The U.S. Department of Labor enforces Title VI of the Civil Rights Act of 1964 as it applies to public workforce system programs or activities receiving federal financial assistance, as well as the nondiscrimination provisions of the Workforce Investment and Wagner-Peyser Acts, which fund the public workforce system. Title VI and its implementing regulations prohibit any program or activity receiving federal financial assistance from excluding from participation in, or denying the benefits of the program, or otherwise subjecting anyone to discrimination, on the ground of race, color, or national origin. The nondiscrimination provisions in the laws that fund the public workforce system apply to discrimination on these bases, as well as discrimination on other grounds including disability, age, sex, and religion.

Notice #2 for Employers Regarding Job Postings Containing Criminal Record Exclusions

The public workforce system must comply with federal civil rights laws, including those concerning nondiscrimination in employment. In addition, as explained in the information below provided by the Equal Employment Opportunity Commission (EEOC) – the agency that administers and enforces Title VII of the Civil Rights Act of 1964, as amended – an employer may be liable under Title VII for its use of criminal record information to make employment decisions depending on the factual circumstances under which the criminal records are used. The workforce system has identified criminal record exclusions or restrictions in the job announcement submitted for posting by this employer or in a job announcement referenced in a Job Bank.

The employer should take this opportunity to remove or edit the posting as needed to ensure that the employer and the public workforce system are in compliance with the law. If the employer wishes to post the announcement as is, the announcement will be posted along with information about the civil rights laws that may apply to such restrictions.

EEOC Information on Employer Consideration of Arrest and Conviction History

Title VII of the Civil Rights Act of 1964 makes it unlawful to discriminate in employment based on race, color, national origin, religion, or sex. This law does not prohibit an employer from requiring applicants to provide information about arrests, convictions or incarceration. But, employers may not treat people with the same criminal records differently because of their race, national origin or another protected characteristic. In addition, unless required by federal law or regulation, employers may not automatically bar everyone with an arrest or conviction record from employment. This is because an automatic bar to hiring everyone with a criminal record is likely to unjustifiably limit the employment opportunities of applicants or workers of certain racial or ethnic groups.

If an employer's criminal record exclusion policy or practice has a disparate impact on Title VII-protected individuals, it must be job related and consistent with business necessity. For greater detail on meeting this standard, please see the EEOC's Guidance referenced below.

Since an arrest alone does not necessarily mean that someone has committed a crime, an employer should not assume that someone who has been arrested, but not convicted, did in fact commit the offense. Instead, the employer should allow the person to explain the circumstances of the arrest to determine whether the conduct underlying the arrest justifies an adverse employment action. These rules apply to all employers that have 15 or more employees. For more information:

www.eeoc.gov/laws/guidance/arrest_conviction.cfm

www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm

www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry_Council_Mythbuster_Employment.pdf

Other Relevant Information

The Fair Credit Reporting Act (FCRA) imposes a number of obligations on employers that wish to use criminal background checks to screen applicants. This law requires the employer to obtain the applicant's permission before asking a background screening company for a criminal history report, and requires the employer to provide the applicant with a copy of the report and a summary of the applicant's rights before the employer takes an adverse action (such as denying an application for employment) based on information in the criminal history report. For more information:

business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know

The California Investigative Consumer Reporting Agencies Act, which limits reporting by consumer reporting agencies of criminal convictions that are older than seven years, and California Labor Code § 432.7 and California Code of Regulations, Title 2, § 7287.4(d)(1), which prevent employers from asking about arrests that did not lead to conviction and about misdemeanor convictions that have been dismissed pursuant to California Penal Code § 1203.4.

Employers should also be aware of the Work Opportunity Tax Credit (WOTC) and the Federal Bonding Program (FBP), two incentives that support employers' hiring of individuals with conviction histories. The WOTC provides a credit of 25-40% of first-year wages, or \$1,500-\$2,400, for employers that hire qualified individuals with felony convictions. For more information:

www.doleta.gov/wotc

www.edd.ca.gov/Jobs_and_Training/WOTC_Frequently_Asked_Questions.htm/

Through the FBP, funded and administered by the U.S. Department of Labor, fidelity insurance bonds are available to reimburse the employer for any loss due to employee theft of money or property, with no employer deductible. For more information:

www.bonds4jobs.com/index.html

The U.S. Department of Labor enforces Title VI of the Civil Rights Act of 1964 as it applies to public workforce system programs or activities receiving federal financial assistance, as well as the nondiscrimination provisions of the Workforce Investment and Wagner-Peyser Acts, which fund the public workforce system. Title VI and its implementing regulations prohibit any program or activity receiving federal financial assistance from excluding from participation in, or denying the benefits of the program, or otherwise subjecting anyone to discrimination, on the ground of race, color, or national origin. The nondiscrimination provisions in the laws that fund the public workforce system apply to discrimination on these bases, as well as discrimination on other grounds including disability, age, sex, and religion.

Notice #3 for Job Seekers to be Attached to Job Postings with Criminal Record Exclusions

Notice: Individuals with conviction or arrest histories are not prohibited from applying for this job. The public workforce system has identified criminal record exclusions or restrictions in the attached job announcement. These exclusions or restrictions may be unlawful under certain circumstances. Therefore, the system is providing this notice to job seekers. Please see below for more information.

Information from the Equal Employment Opportunity Commission (EEOC) on Employer Consideration of Arrest and Conviction History

Title VII of the Civil Rights Act of 1964 makes it unlawful to discriminate in employment based on race, color, national origin, religion, or sex. This law does not prohibit an employer from requiring applicants to provide information about arrests, convictions or incarceration. But, employers may not treat people with the same criminal records differently because of their race, national origin or another protected characteristic. In addition, unless required by federal law or regulation, employers may not automatically bar everyone with an arrest or conviction record from employment. This is because an automatic bar to hiring everyone with a criminal record is likely to unjustifiably limit the employment opportunities of applicants or workers of certain racial or ethnic groups.

If an employer's criminal record exclusion policy or practice has a disparate impact on Title VII-protected individuals, it must be job related and consistent with business necessity. For greater detail on this standard, please see the EEOC's Guidance referenced below.

Since an arrest alone does not necessarily mean that someone has committed a crime, an employer should not assume that someone who has been arrested, but not convicted, did in fact commit the offense. Instead, the employer should allow the person to explain the circumstances of the arrest to determine whether the conduct underlying the arrest justifies an adverse employment action. These rules apply to all employers that have 15 or more employees, as well as employment agencies that regularly refer potential employees to at least one employer covered under Title VII. For more information:

www.eeoc.gov/laws/guidance/arrest_conviction.cfm

www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm

www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry_Council_Mythbuster_Employment.pdf

For information on filing a discrimination charge with the EEOC:

www.eeoc.gov/facts/howtofil.html

or 800-669-4000

Other Relevant Information

The Fair Credit Reporting Act (FCRA) requires an employer to obtain the applicant's permission before asking a background screening company for a criminal history report, and requires the employer to provide the applicant with a copy of the report and a summary of the applicant's rights before the employer takes an adverse action (such as denying an application for employment) based on information in the criminal history report. For more information:

www.ftc.gov/bcp/edu/pubs/consumer/credit/cre36.shtm

The California Investigative Consumer Reporting Agencies Act, which limits reporting by consumer reporting agencies of criminal convictions that are older than seven years, and California Labor Code § 432.7 and California Code of Regulations, Title 2, § 7287.4(d)(1), which prevent employers from asking about arrests that did not lead to conviction and about misdemeanor convictions that have been dismissed pursuant to California Penal Code § 1203.4.

The U.S. Department of Labor enforces Title VI of the Civil Rights Act of 1964 as it applies to public workforce system programs or activities receiving federal financial assistance, as well as the nondiscrimination provisions of the Workforce Investment and Wagner Peyser Acts, which fund the public workforce system. Title VI and its implementing regulations prohibit any program or activity receiving federal financial assistance from excluding from participation in, or denying the benefits of the program, or otherwise subjecting anyone to discrimination, on the ground of race, color, or national origin. The nondiscrimination provisions in the laws that fund the public workforce system apply to discrimination on these bases, as well as discrimination on other grounds including disability, age, sex, and religion. For information on filing a discrimination complaint regarding the public workforce system:

www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm

or (877) 709-5797



SERVICES AND REFERRALS TO VICTIMS OF HUMAN TRAFFICKING POLICY

EDD Directive Date: 01/31/2019

WDB Review Date: 12/19/2019

EXECUTIVE SUMMARY

Purpose:

This policy provides the guidance and establishes the procedures regarding services and referrals to victims of human trafficking.

In an effort to assist the United States Government to combat human trafficking, which affects millions of individuals worldwide, the DOL plays an important role, which includes the following:

- Identifying and seeking restitution for unpaid labor performed by victims of trafficking.
- Providing training and employment services to victims of trafficking who qualify for those services, and helping them to become self-sufficient.
- Funding research and technical assistance to combat the worst forms of child labor overseas.
- Maintaining lists of goods, including their countries of origin, which are made using forced labor or forced child labor.

This policy is intended to assist local area staff in recognizing the characteristics of human trafficking, referring individuals to the proper authorities and resources, providing employment and training services, and offering information and referrals to other wraparound services.

REFERENCES

- *Workforce Innovation and Opportunity Act (WIOA)* (Public Law 113-128), Section 188(a)(5)
- *The Victims of Trafficking and Violence Protection Act (TVPA)* of 2000, Section 103(8) (P.L. 106-386)
- Department of Labor (DOL) Training and Employment Guidance Letter 09-12, Subject: *Human Trafficking: The Role of the Public Workforce System in the Delivery of Services and Referrals to Victims of Trafficking* (October 24, 2012)

POLICY AND PROCEDURES

Definitions

Section 103(8) of the TVPA defines the term “severe forms of trafficking in persons” as follows:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Essential Steps

Employment is an essential step in integrating victims of trafficking into society, and therefore, Local Area staff are reminded that they can assist trafficking victims in the following ways, as applicable:

1. Recognize the characteristics of victims of trafficking and refer individuals to proper authorities and resources.

Many victims of trafficking do not self-identify. It is important for Local Area staff to recognize the characteristics of potential victims of trafficking and refer them to the proper authorities and resources. Some common characteristics of victims of trafficking include the following:

- The potential victim does not possess identification and/or travel documents.
- The potential victim appears to be coached on what to say to law enforcement and immigration officials.
- The potential victim was recruited for one purpose and forced to engage in some other job.

Further information concerning common characteristics of victims of trafficking can be found in Attachment 1. For information about hotlines that frontline staff can call to get help for potential victims, see Attachment 2. If an individual is under immediate threat or states that they are in danger, staff should call 911.

2. Provide employment and training services:

United States citizens or lawful residents who are victims of trafficking can receive the same services that are provided to the general public under WIOA. Specifically, Section 188(a)(5) of WIOA further prohibits discrimination against certain non-citizens and indicates that participation in programs, activities, and receiving funds shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Secretary the Department of Homeland Security to work in the United States. This is also discussed under Section 107(b) of the TVPA where it is indicated that foreign nationals are also eligible for WIOA Title I services. This includes the following:

- Victims of a severe form of trafficking in persons.
- Individuals granted the T Nonimmigrant Status (T Visa).

The T visa is available to individuals who are, or have been, victims of human trafficking, and protects these victims of human trafficking by allowing them to remain in the United States to assist in an investigation or prosecution of human trafficking. Additional information about T visas can be found by visiting the U.S. Citizenship and Immigration Services website.

Employment and training services for victims of trafficking should follow the same procedures and case management processes as given to other America's Job Center of CaliforniaSM (AJCC) customers. However, in the case of victims of trafficking, services may need to be tailored and adapted to match the particular needs of this population. For instance, victims of trafficking may be Limited English Proficient (LEP) individuals, may have criminal records (e.g. prostitution), or limited résumés. Victims of trafficking who are LEP individuals will likely require referrals to courses in English as a Second Language (ESL) in order to enhance job readiness. Local Area staff will work with local training providers and community colleges to find ESL course offerings, as needed. For more information on working with LEP individuals, Local Area staff should refer to the Limited English Proficiency WDB policy.

3. Offer information and referral to other wraparound services:

In most cases, victims of trafficking will come into contact with Local Area staff toward the end of their rehabilitation process and will have already been working with other nonprofit organizations and governmental agencies.

In the event that the victim has not yet received services, it is important for Local Area staff to be aware of and utilize local resources and service providers, particularly non-profit organizations that provide services to trafficking victims. Service providers for trafficking victims can also refer or accompany their clients to the nearest AJCC when they are ready for employment and training services.

A description of available services for victims of trafficking offered either directly by federal agencies or provided by local service providers with funding from the United States can be found in Attachment 3 of this policy.

If no local service providers are known, the National Human Trafficking Resource Center (NHTRC) at 1-888-373-7888 can help determine best steps for assisting the individual. For additional information, see Attachment 2 of this policy. Local Area staff may also call the NHTRC to inquire about local service providers and familiarize themselves with what is available for victims in the local community.

ACTION

This policy will be disseminated in the Local Workforce Development Area to the One-Stop Career Centers, satellite locations, and WIOA Title I-funded subrecipients.

INQUIRIES

If you have any questions, please contact the Executive Director or designee at (559) 662-4500.

Attachments and Links:

- Attachment 1 Characteristics of Potential Victims of Trafficking
- Attachment 2 Trafficking Hotlines
- Attachment 3 Services Available to Victims of Human Trafficking:
https://www.edd.ca.gov/jobs_and_training/pubs/wsd18-09att3.pdf

Characteristics of Potential Victims of Trafficking

The information on this page lists some warning signs that trafficking may be taking place. The presence of any of these signs should be taken seriously and may indicate that trafficking is occurring. These warning signs are based on the Department of Homeland Security's Blue Campaign Human Trafficking Indicators card. However, Local Workforce Development Area staff are not expected to, or may not be able to, identify these signs. More tools and information are available on the [DHS Blue Campaign](#) webpage.

Warning Signs that Trafficking May Have Occurred

- The potential victim does not possess identification and/or travel documents.
- The potential victim appears to be coached on what to say to law enforcement and immigration officials.
- The potential victim was recruited for one purpose and forced to engage in some other job.
- The potential victim's salary appears to be being garnished to pay off a smuggling fee (Note – Paying off a smuggling fee alone is not considered trafficking).
- The potential victim appears to have been forced to perform sexual acts.
- The potential victim does not appear to have freedom of movement.
- The potential victim and/or their family have been threatened with harm if the victim attempts to escape.
- The potential victim has been threatened with deportation or law enforcement action.
- The potential victim has been harmed or deprived of food, water, sleep, medical care, and/or other life necessities.
- The potential victim cannot freely contact friends or family.
- The potential victim is a juvenile engaged in commercial sex.
- The potential victim is not allowed to socialize or attend religious services.

Trafficking Hotlines

Human trafficking is a crime involving the exploitation of someone for the purposes of compelled labor or a commercial sex act through the use of force, fraud, or coercion. Where a person younger than 18 is induced to perform a commercial sex act, it is a crime regardless of whether there is any force, fraud, or coercion. Victims can be anyone from around the world or right next door: women and men, adults and children, citizens and noncitizens alike.

GET HELP

REPORT A TIP

LEARN MORE

-- IN AN EMERGENCY, PLEASE CALL 911 --

Call the National Human Trafficking Resource Center (NHTRC) at 1-888-373-7888 to:

GET HELP and connect with a service provider in your area.

REPORT A TIP with information on potential human trafficking activity.

LEARN MORE by requesting training, technical assistance, or resources.

The NHTRC is a national, toll-free hotline available to answer calls from anywhere in the country, 24 hours a day, 7 days a week, every day of the year. The NHTRC is not a law enforcement or immigration authority and is operated by a nongovernmental organization funded by the federal government.

Call federal law enforcement directly to report suspected human trafficking and get help through the following resources:

- The U.S. Department of Homeland Security at www.ice.gov. Individuals across the world can report suspicious criminal activity to the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Tip Line. The Tip Line is accessible internationally by calling **1-866-347-2423** 24 hours a day, 7 days a week, every day of the year, or submit a tip online at **1-802-872-6199**. Highly trained specialists take reports from both the public and law enforcement agencies on more than 400 laws enforced by ICE HSI, including those related to human trafficking.
- The U.S. Department of Justice Trafficking in Persons and Worker Exploitation Task Force Complaint Line at **1-888-428-7581** (voice and TTY) from 9:00 a.m. to 5:00 p.m. (EST). Individuals can report incidents of trafficking to this hotline. A tip may also be submitted online to the Federal Bureau of Investigation (FBI) through their online form, [FBI Tips and Public Leads](#) or by calling your local FBI office (FBI field offices can be located by visiting the [Field Offices](#) page of the FBI website).

Call the following federal government lines for other assistance:

- Department of Labor (DOL), Wage and Hour Division at **1-866-487-9243** for cases where labor exploitation may be present but does not rise to the threshold of trafficking.
- DOL's Office of Inspector General (OIG) Hotline at **1-202-693-6999** or **1-800-347-3756**, which is available 24 hours a day, 7 days a week to report allegations of trafficking committed through fraud in DOL programs, including, but not limited to, the H-1B, H-2A, H-2B, and Permanent Labor Certification Program. When filing an OIG Hotline complaint, it is not necessary to provide names or any other identifying information. More information about the OIG Hotline can be found by visiting DOL's [OIG Hotline](#) page.
- The Equal Employment Opportunity Commission at **1-800-669-4000** from 7 a.m. to 8 p.m. (EST) for information about how workers, including trafficking victims, can file a charge of employment discrimination.

Report suspected child prostitution activity to the CyberTipLine:

- The Congressionally-authorized CyberTipline, which is a part of the National Center for Missing & Exploited Children's website, is operated by a nongovernmental organization and provides a means for reporting crimes against children. The CyberTipline is staffed 24 hours a day, 7 days a week. To report child sexual exploitation, use the [CyberTipline](#). To report information about a missing child call **1-800-THE-LOST (1-800-843-5678)**.



Agenda Item 8.1

Consent Action Information

To: Workforce Development Board of Madera County
From: Tracie Scott-Contreras, Executive Director December
Date: 19, 2019
Subject: WDB Workshop: Identifying Criteria for Quality Jobs

Information:

The State Workforce Board and several initiatives being developed within the Newsome administration place significant emphasis on the principles of economic self-sufficiency and job quality. Staff would like input from the Board on criteria that might be included in a local definition of a quality job, including consideration of data from the Family Needs Calculator developed by the Insight Center for Community Economic Development. The Family Needs Calculator helps to determine the earnings needs of a family, based on family size and composition, in order to support economic self-sufficiency.

Some of the criteria that might be considered as factors which support the determination of whether a particular employment opportunity could be considered a quality job include:

- A wage that supports a decent standard of living
- A safe workplace
- A benefits package, including health insurance, paid time off, and a retirement savings plan
- Access to training and professional development
- Potential for upward mobility and wealth-building
- Dignity, respect, and agency

How job quality is defined locally could also impact program operations and service delivery, particularly our On-the-Job Training program and required wage rates for employers to utilize that service to train new workers. Another impact could be a determination that underemployed individuals who don't meet the local definition of self-sufficiency earnings might be eligible for services/training beyond what our current definitions allow – making more individuals eligible for assistance, with potential impacts to our budget and creating the necessity to use a priority system to determine who is served.

Financing:

Workforce Innovation and Opportunity Act



AGENDA

**December 12, 2019
3:00 p.m.**

Meeting will be held at:

***Workforce Assistance Center
Conference Room
2037 W. Cleveland Avenue
Madera, CA 93637
(559) 662-4589***

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY Pursuant to the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, any individual with a disability who requires reasonable accommodation to attend or participate in a meeting or function of the Madera County Workforce Investment Corporation, may request assistance by contacting the Executive Assistant at Madera County Workforce Investment Corporation office, 2037 W. Cleveland Avenue, Madera, CA 93637; Telephone 559/662-4589; CRS 711; Fax 559/673-1794.

This agenda and supporting documents relating to the items on this agenda are available through the Madera County Workforce Investment Corporation (MCWIC) website at <http://www.maderaworkforce.org/mcwic-meetings-and-agenda/>. These documents are also available at the Workforce Assistance Center – office of the Executive Director. MCWIC is an equal Opportunity Employer/Program. Auxiliary aids and services are available upon request.

1.0 Call to Order

1.1 Pledge of Allegiance

2.0 Additions to the Agenda

Items identified after preparation of the Agenda for which there is a need to take immediate action. Two-thirds vote required for consideration (Government Code Section 54954.2(b)(2))

3.0 Public Comment

This time is made available for comment from the public on matters within the Board's jurisdiction but not appearing on the agenda. The Board will not take action on any items presented under public comment. The comment period will be limited to 15 minutes.

4.0 Introductions and Recognitions

5.0 Adoption of Board Agenda

6.0 Consent Calendar

6.1 Consideration of approval of the October 24, 2019 Madera County Workforce Investment Corporation (MCWIC) meeting minutes.

7.0 Action Items

7.1 Consideration of approval of the Audit Report for the 2019 audited financial statements submitted by Moss Adams.

8.0 Information Items

8.1 Workforce Development Board (WDB) of Madera County – No Update

8.2 MCWIC Year-to-Date Financial Reports Update

8.3 Program Update

8.4 Update on U.S. Census 2020

8.5 Mission, Vision and Credo Statement Workshop

9.0 Written Communication

10.0 Open Discussion/Reports/Information

10.1 Board Members

10.2 Staff

11.0 Next Meeting

January 23, 2020

12.0 Adjournment



MINUTES

October 24, 2019

***Convened at the Workforce Assistance Center - Conference Room
2037 W. Cleveland Avenue, Madera, CA 93637
(559) 662-4589***

PRESENT: Debi Bray, Gabriel Mejia (3:05), Lindsay Callahan (3:13), Mattie Mendez, Mike Farmer, Ramona Davie, Robyn Smith, Roger Leach, Tim Riche

ABSENT:

GUEST:

STAFF: Bertha Vega, Jessica Roche, Maiknue Vang, Nicki Martin, Tracie Scott-Contreras

1.0 Call to Order

Meeting called to order by Chair Debi Bray at 3:00 p.m.

1.1 Pledge of Allegiance

2.0 Additions to the Agenda

Tracie Scott-Contreras requested the addition of information item 8.6 to provide information related to possible MCWIC staff involvement in litigation. The information does not require a closed session.

Mike Farmer moved to add information item 8.6 to the agenda, seconded by Roger Leach.

Vote: Approved – majority

Yes: Debi Bray, Mattie Mendez, Mike Farmer, Robyn Smith, Roger Leach, Tim Riche

Abstain: Mattie Mendez

3.0 Public Comment

Mattie Mendez would like to make sure that the MCWIC keep information regarding the upcoming 2020 U.S. Census on the agenda in order to keep the Board informed and updated on the Census.

4.0 Introductions and Recognitions

Ramona (Mona) Davie was introduced. Her application is on the agenda for approval. She will represent the financial institution sector on the Board. Roundtable introductions were done by everyone in attendance.

5.0 Adoption of Board Agenda

Roger Leach moved to adopt the agenda, seconded by Robyn Smith.

Vote: Approved – unanimous

Yes: Debi Bray, Gabriel Mejia, Mattie Mendez, Mike Farmer, Robyn Smith, Roger Leach, Tim Riche

6.0 Consent Calendar

6.1 Consideration of approval of the September 26, 2019 Madera County Workforce Investment Corporation (MCWIC) meeting minutes.

Roger Leach suggested that "Other" be removed from the minutes attendance section and replaced by "Staff".

Mattie Mendez moved to approve the minutes with the change as recommended by Roger Leach to replace "Other" with "Staff", seconded by Time Riche.

Vote: Approved – unanimous

Yes: Debi Bray, Gabriel Mejia, Mattie Mendez, Mike Farmer, Robyn Smith, Roger Leach, Tim Riche

7.0 Action Items

7.1 Consideration of approval of the application of Ramona Davie to the MCWIC.

Mona Davie will represent the financial institution sector on the MCWIC. She is very involved in the community. Mona has worked for Union Bank for over 20 years. She has worked with a couple of offices in Madera plus an office in Merced. She has worked with Jr. Achievement, the Downtown Association and provided financial classes.

Robyn moved to approve, seconded by Mike Farmer.

Vote: Approved – unanimous

Yes: Debi Bray, Gabriel Mejia, Mattie Mendez, Mike Farmer, Robyn Smith, Roger Leach, Tim Riche

7.2 Consideration of approval of revising the MCWIC Mission, Vision, Credo statement.

Staff are asking that the Board review and consider whether the Mission, Vision and Credo statement needs to be revised. It was suggested that MCWIC staff could also provide input for the Statement. Tracie will gather input from staff as well as look at Statements from similar organizations.

Mattie Mendez motioned to table this to a meeting in December or January to include MCWIC staff, seconded by Lindsay Callahan.

Vote: Tabled – unanimous

Yes: Debi Bray, Gabriel Mejia, Lindsay Callahan, Mattie Mendez, Mike Farmer, Ramona Davie, Robyn Smith, Roger Leach, Tim Riche

8.0 Information Items

8.1 Workforce Development Board (WDB) of Madera County Update

The WDB approved the new members. Two of the members represent the hospitality sector – Marck Choe and Lanie Suderman. Tracie is now on the Visit Yosemite Board. It is a good relationship and will provide opportunities for Workforce to become more active in the communities in Eastern Madera County.

8.2 MCWIC Year-to-Date Financial Reports Update

Financials presented are un-audited. Staff are still waiting to receive the final unaudited financials and will provide when they are made available to staff.

8.3 Program Update

No new information on AB1111 has been provided - may receive some information in mid to late November. Staff provided the Program Impact Report. The infographic provides information on the number of customers served and services provided. 45,205 people came through the Center and 19,711 services provided to individuals. Information on job seeker demographics and the costs of

services provided and its impact on the budget was included in the report. Business Services information was also included. This report was also provided to the Workforce Development Board. It was suggested that total earnings be included. All input is welcome. Mattie Mendez was interested in knowing whether it was possible to track childcare needs. Staff have not noticed any roadblocks regarding childcare for customers coming to the Center. This could be due to various factors including families providing their own childcare. Childcare needs are part of the initial questionnaire given to customers coming in for services. Staff are able to make referrals to other organization for childcare as needed. Workforce makes sure to offer trainings that use alternative schedules which might help with childcare issues. Maiknue Vang, Deputy Director, stated that childcare tends to be mentioned within the ELL population.

8.4 Wells Fargo Grant Application Award

The Wells Fargo Foundation invited Workforce to apply for an application. It was a short turn around – notified on a Thursday and due on Monday. Staff were notified that Workforce had been awarded a \$20,000 grant which will be used to provide ongoing support for the HiSET and ESL programs. These funds may be used to fund another summer class.

8.5 Update on Advertising

Staff provided information related to advertising costs for advertising at the DMV offices through MVN and also with Pecan Pie advertising. Tim Riche stated that he had been to the DMV office recently and noticed that people were not paying attention to the monitors. Customers are asked how they heard about Workforce services when they come in to meet with staff. The number one way people hear about the Workforce is through friends and family. A Friends and Family referral program was implemented where staff will provide a referral card to customers. The cards that are turned in to staff will be included in a quarterly raffle for the customer who made the referral. Staff need to work on marketing to employers as well as young adults. Mailing information through USPS may be an option. Staff need to get out to the outlying communities. A schedule will be created to schedule staff visits to the outlying communities so staff can share information on Workforce.

8.6 Possible Workforce Staff Involvement in Litigation

Staff have been made aware and received a records request for a TOEIC program from 2009. A staff member received a subpoena. The attorney has been contacted. There were not many documents as this program took place while Workforce was still under Madera County Office of Education – MCWIC had not been established at that time. The attorney is reviewing the subpoena and will give guidance to MCWIC.

9.0 Written Communication

Information provided for the California's Forgotten Children event taking place at Edward's Theatre on January 9, 2020. The Future of Work Commission – A Bird's Eye View article was provided that speaks to quality jobs, inclusivity, entrepreneurial efforts and other information.

10.0 Open Discussion/Reports/Information

10.1 Board Members

- *Mattie Mendez: wants to make sure updates on the Census are added to MCWIC meeting agendas. Wants to make sure we let the community know how important it is. Staff stated that the Census will be using the Center for some recruitments.*
- *Debi Bray: attended the State Center Community College District (SCCCD) accreditation meetings. A recommendation for accreditation will go to the Commission in January where they will receive information on whether the District will receive accreditation or will need to continue to work towards that goal. Tracie believes that the campus will most likely get approval and start to work separately from the Reedley College system.*

10.2 Staff

- *Tracie Scott-Contreras: The Fall Job Fair was held today at the Pan American Center. 235 job seekers attended, 37 employers participated and 5 resource organization were in attendance. ABC30 came to the Fair and interviewed Jorge Espinosa – Lead Business Specialist. Jorge also did*

an early morning interview with Arriba Valle Central. Tracie nominated Maiknue Vang, Deputy Director, for the 40 under 40 award – Maiknue was selected to receive an award! A reception will be held on December 5, 2019 at Chukchansi Park. Madera Workforce was featured in a dun & bradstreet newsletter for their use of Econovue and the Madera Job Fair. Staff have been part of CTE committee and the Growing Healthy Families workgroups.

- *Maiknue Vang: reported that the MUSD Planning group is looking into other countries' achievements within their education programs. Other countries spend more funds on CTE than the U.S. High performing countries focus on helping low performing students and increase efforts on developing high performing teachers. Maiknue reported that the EO monitoring found no findings. EO monitoring focuses on universal access to services.*

11.0 Next Meeting

The next meeting will be held on December 12, 2019 and will include staff recognition.

12.0 Adjournment

Roger Leach moved to adjourn at 4:26 p.m., seconded by Mike Farmer.



Agenda Item 8.3

Consent Action Information

To: Workforce Development Board of Madera County
From: Tracie Scott-Contreras, Executive Director
Date: December 19, 2019
Subject: WDB Program Year 2018-19 Performance

Information:

Program performance outcomes for 2018-19 WIOA Adult, Dislocated Worker, and Youth programs have been finalized and published by the California Workforce Development Board. In Madera County, we exceeded all but one of the established performance standards, and achieved 96% of the standard for Adult program median earnings in the second quarter after exit. The complete performance chart is attached for the Board's review.

Financing:

Workforce Innovation and Opportunity Act



PROGRAM YEAR 2018-2019 PERFORMANCE

	Employment Rate 2 nd Quarter After Exit		Employment Rate 4 th Quarter After Exit		Median Earnings 2 nd Quarter After Exit		Credential Attainment within 4 th Quarters After Exit	
	Goal	Actual	Goal	Actual	Goal	Actual	Goal	Actual
ADULT	64.0%	64.67%	63.0%	66.48%	\$4,850	\$4,672 (96%)	56.5%	67.5%
DISLOCATED WORKER	71.0%	76.6%	70.0%	77.27%	\$6,100	\$7,513	65.0%	93.3%
YOUTH	60.0%	65.7%	62.0%	76.47%	No Goal Established	\$4,148	57.0%	75.0%



Agenda Item 8.4

Consent Action Information

To: Workforce Development Board of Madera County
From: Tracie Scott-Contreras, Executive Director
Date: December 19, 2019
Subject: Program Update

Information:

We have been notified that the Prison to Employment Direct and Support Services/Earn and Learn Grant contracting process has been finalized with a start date of December 1, 2019.

In response to the State Board's Request for Applications for the Breaking Barriers to Employment Act (AB1111), staff submitted an application as the lead with CVOC and the Educational Leadership Foundation to serve immigrants, migrant/seasonal farmworkers, unemployed & underemployed individuals, and English language learners in the project amount of \$429,539, with \$166,488 for MCWIC. We also partnered on another AB1111 regional application with the Fresno Regional Workforce Development Board, Reading and Beyond, and Fresno Economic Opportunity Commission to serve disadvantaged populations in the project amount of \$661,124, with \$105,000 for MCWIC. These funds are designed to create partnerships with local community-based organizations to assist targeted populations to successfully access the broader range of available workforce system services. **Unfortunately, we were not awarded funds for this project.**

• **CCP/AB109:**

Grant award: \$56,627 In-Custody
\$34,762 Post-Release

Grant term: 7/1/2019 - 6/30/2020

Scope: Provide a 4-week workshop for In-Custody Pre-Release customers at Department of Corrections and facilitate periodic job fairs inside the facility. Additionally, provide a 3-hour group Orientation and CalJOBS system registration workshop to Post-Release individuals four times a month at the Center as well as coordinate monthly resource fairs with Probation at the Center.

of Participants to be Served: Open

of Participants Enrolled: 33 referred in-custody, 4 enrolled
20 referred post release, 1 enrolled

• **Department of Social Services (DSS) – Expanded Co-Enrollment and Occupational Skills Training Pilot:**

Grant award: \$98,398

Grant term: 7/1/2019 – 6/30/2020

Scope: An assigned Career Specialist to meet one on one with CalWORKs participants enrolled in the Welfare to Work's Career Club activity to determine their interest in concurrent participation in WIOA Title I services. Funding will also sponsor vocational training programs in occupations in demand in the local area that will result in a certificate or credential.

of CalWORKS participants referred from Career Club for WIOA Services: 5

of CalWORKS participants enrolled in WIOA Services: 0

of CalWORKS participants referred for Vocational Training: 5

of CalWORKS participants enrolled in Vocational Training: 0

- **Department of Social Services (DSS) – Job Fair**

Grant award: \$22,898 Annually

Grant term: 7/1/2017 – 6/30/2020

Scope: Coordinate an annual Job Fair each spring.

of Participants to be Served: Approximately 1,500 per event

of Job Seekers (April 2, 2020): TBD

of Employers (April 2, 2020): TBD

of Job Seekers who obtained employment within 90 days: TBD

- **Disability Employment Initiative (DEI) -Technical Assistance:**

Grant award: \$7,000

Grant term: 10/1/2016 – 4/1/2020

Scope: Provide technical assistance to new grantees of the DEI project. Travel and attend quarterly meetings provided by State EDD. We have requested additional resources from the State to enable our team to continue to participate in TA activities.

- **Prison to Employment (P2E) Planning:**

Grant award: \$19,000

Grant lead: Worknet Merced County

Grant term: 10/1/18 – 3/31/20

Scope: Funding for planning and coordination of P2E activities.

- **Slingshot 2.0 – Construction Pre-Apprenticeship Pipeline for Ex-Offenders**

Grant award: \$12,500

Grant lead: Fresno Regional Workforce Development Board

Grant term: 4/1/19 – 11/30/19

Scope: Provide recruitment, screening, referrals, assessments, and case management, of ex-offenders into a multi-craft, pre-apprenticeship training from the building and construction trades. Upon completion of training, assist participants with applying to appropriate Union Apprenticeship Programs, connect participants to transitional jobs, or find other gainful employment.

of Participants to be Served: 5

of Participants to Enrolled: 1 (Participant received a Certificate of Completion)

- **Ticket-to-Work:**

Scope: Provide employment and training support to SSI/SSDI beneficiaries.

Ticket Payments Received 5/2019 - 10/2019: \$34,237

of Tickets Assigned: 20

- **Comprehensive Literacy Activities Supporting Success (CLASS)**

Grant award: \$36,563

Grant lead: Office of Community and Economic Development, CSU, Fresno

Grant term: 3/1/2018 – 8/31/2019 – **Grant Closed**

Scope: Offers digital and financial literacy programs via OCED/CSUF Parent University; financial capability orientations offered by MCWIC staff and individual financial coaching provided by OCED staff members. Services are combined with ESL, ABE, and HiSET Preparation or other literacy activities.

Other Partners: Mission Economic Development Agency, San Francisco, CA

Participants to be Served: 200

of Participants Enrolled: 193

• **Wells Fargo Grant:**

Grant award: \$20,000

Grant term: 6/2018 until expended

Scope: Support an open entry/open exit HiSET Class in partnership with the Department of Social Services and the Madera Adult School.

of Participants to be Served: Open

of Participants Enrolled: **188**

Financing:

Workforce Innovation and Opportunity Act



Agenda Item 8.5

Consent Action Information

To: Workforce Development Board of Madera County
From: Tracie Scott-Contreras, Executive Director
Date: December 19, 2019
Subject: Upcoming Grant Opportunities

Information:

Staff have been, and are currently, working on additional grant opportunities for our area. We recently submitted a proposal for additional Disability Employment Accelerator funding to develop a partnership with the Madera Community College Center and CSU, Fresno to serve individuals with disabilities who have, or will soon, complete a degree or certificate program to provide services and support that will assist them in obtaining employment.

We are also partnering with the Merced Department of Workforce Investment on a regional project to train and place Veterans and eligible spouses of Veterans in high-growth, high-wage occupations.

We are also partnering regionally, with the Fresno Regional Workforce Development Board as the lead, on an application for funding under SB1, which provides for pre-apprentice and apprenticeship training for public infrastructure projects through the Building Trades councils.

Finally, staff is currently developing an application for Workforce Accelerator Fund resources to develop a comprehensive local network to serve those who are experiencing homelessness or who are precariously housed. We have identified CAPMC, the Housing Authority of the City of Madera, and Madera County Behavioral Health as project team members for this grant application, which is due December 23rd.

Financing:

Workforce Innovation and Opportunity Act

Senate Bill 1

Workforce Accelerator Fund



Agenda Item 8.6

Consent Action Information

To: Workforce Development Board of Madera County
From: Tracie Scott-Contreras, Executive Director
Date: December 19, 2019
Subject: Quarterly Program Financial Reports Period Ending 9/30/19

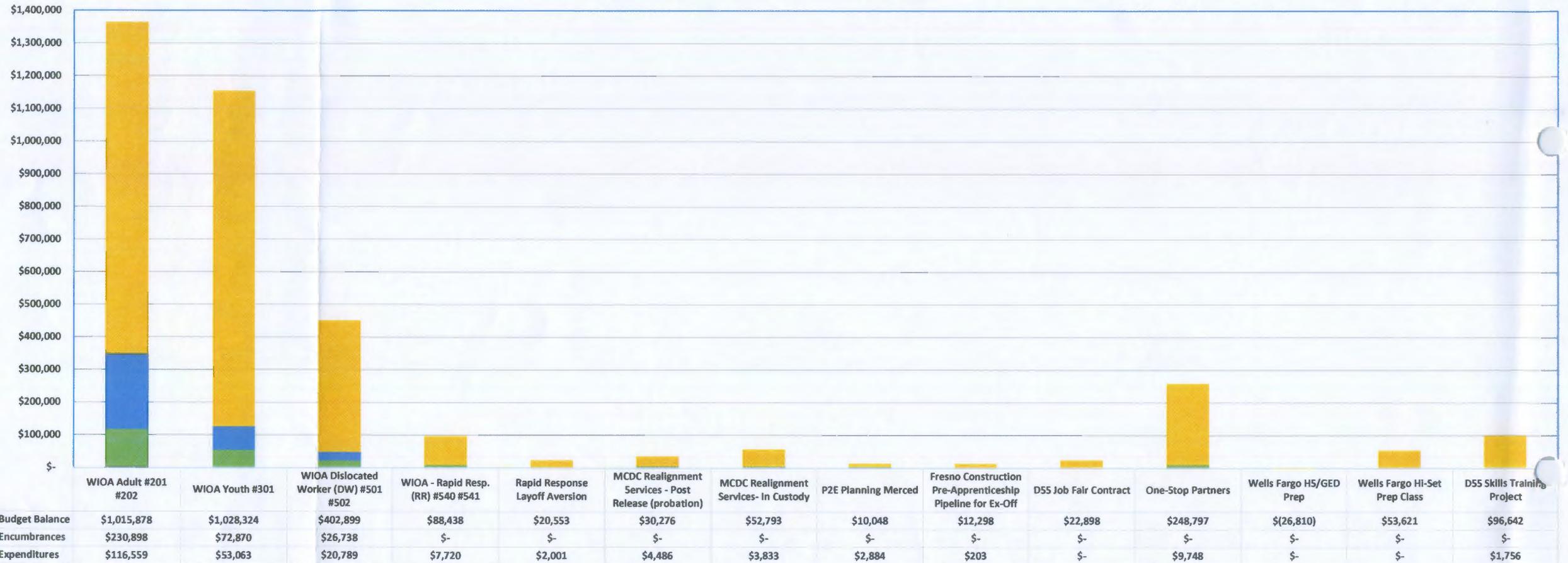
Information:

Program financial reports for the period from July 1, 2019 through September 30, 2019, by fund source, with supporting charts outlining expenditures by activity, are attached for the Board's review. Staff will be happy to answer any questions.

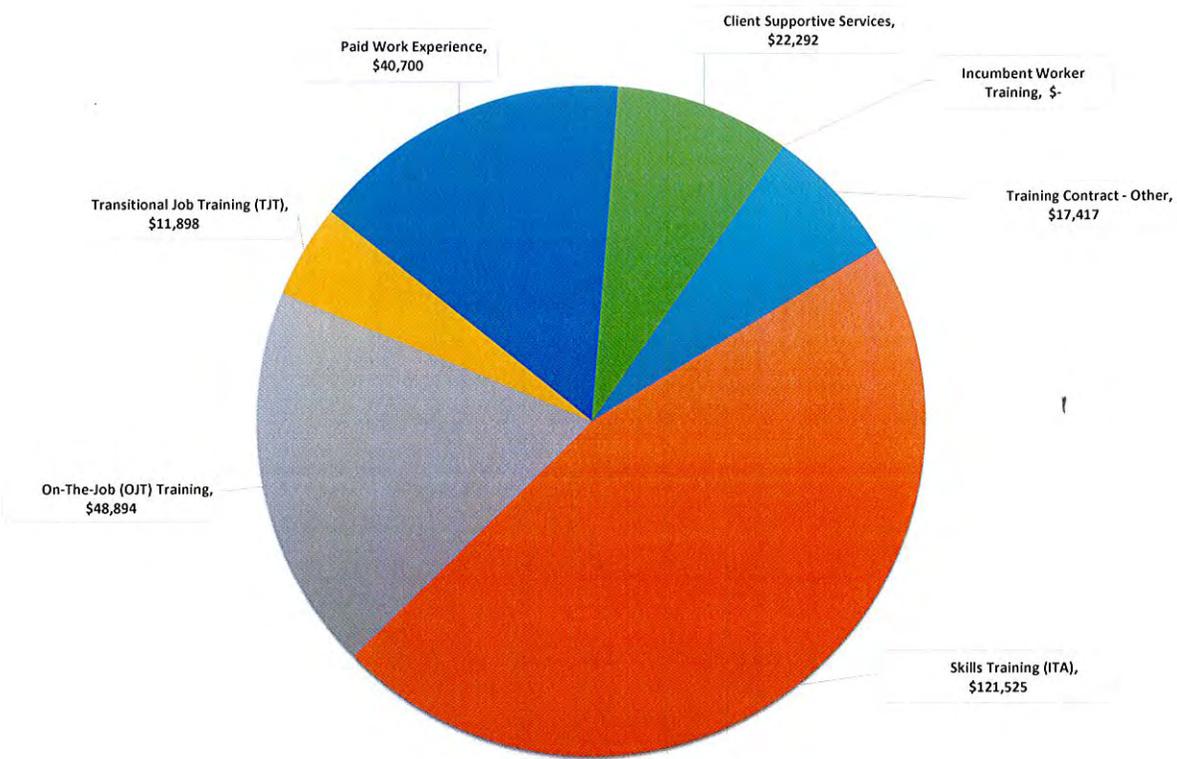
Financing:

Workforce Innovation and Opportunity Act

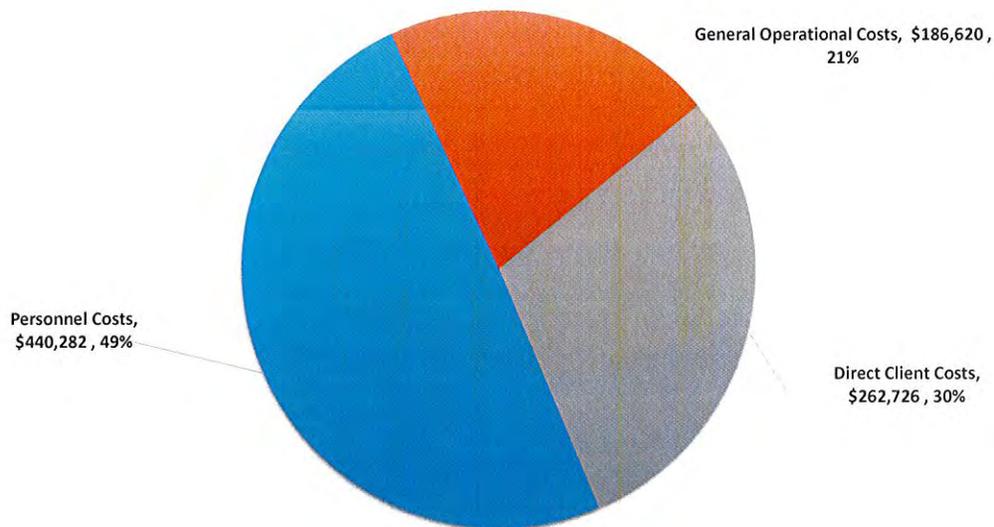
FY 2019-2020 WIOA Chart by Grant as of 9/30/19



Direct Client Expenses as of 09/30/2019
Total \$262,726



Total Operating Costs as of 09/30/2019
Total \$889,628



■ Personnel Costs ■ General Operational Costs ■ Direct Client Costs

WIA/WIOA FUNDS UTILIZATION CHART - program 80% requirement											9.30.19	
K8106642 YOA 2017: PY 2017/2018												
Grant Code	Grant	Total Allocation	Allowable Admin	Allowable Program Funding 90%	Adm: Expenditures and Obligations	Pgm: Expenditures and Obligations	Additional Program Expenditures and Obligations Needed by June 30, 2017	% of Pgm (80%) Utilized (EXEMPT WSD15-08)	% of Admin Utilized	Total % Expended /Obligated	Balance Remaining (not including Obl)	
201/202/500	Adult	\$ 980,153.00	\$ 98,015.30	\$ 882,137.70	\$ 98,015.30	\$ 882,137.70	0	125.00%	10.00%	100.00%	\$ -	
301/203	Youth	\$ 721,567.00	\$ 72,156.70	\$ 649,410.30	\$ 46,914.87	\$ 674,652.13	0	129.86%	6.50%	100.00%	\$ -	
501/502	DW	\$ 353,892.00	\$ 35,389.20	\$ 318,502.80	\$ 35,389.20	\$ 318,502.80	0	125.00%	10.00%	100.00%	\$ -	
WSD15-08 WAIVED 80% Obligation Requirement for PY 2017/2018												
K9110024 YOA 2018: PY 2018/2019												
Grant Code	Grant	Total Allocation	Allowable Admin	Allowable Program Funding 90%	Adm: Expenditures and Obligations	Pgm: Expenditures and Obligations	Additional Program Expenditures and Obligations Needed by June 30, 2019	% of Pgm (80%) Utilized	% of Admin Utilized	Total % Expended /Obligated	Balance Remaining (not including PO's)	
201/202	Adult	\$ 952,228.00	\$ 95,222.80	\$ 857,005.20	\$ 45,868.65	\$ 882,895.53	0	128.78%	4.82%	97.54%	\$ 23,443.82	
301/203	Youth	\$ 751,097.00	\$ 75,109.70	\$ 675,987.30	\$ 15,150.95	\$ 449,335.91	\$ 91,453.93	83.09%	2.02%	61.84%	\$ 369,891.04	
501/502	DW	\$ 399,412.00	\$ 39,941.20	\$ 359,470.80	\$ 11,450.00	\$ 103,050.00	\$ 184,526.64	35.83%	2.87%	28.67%	\$ 284,912.00	
WSD15-08 WAIVED 80% Obligation Requirement for PY 2018/2019												

Note: Transfer #02 from DW to Adult is not yet reflected in above information. Will be adjusted once it is entered by FMU into CalJobs allocations.