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Part II

Department of Labor

Office of the Secretary

29 CFR Part 37

**Implementation of the Nondiscrimination
and Equal Opportunity Provisions of the
Workforce Investment Act of 1998; Final
Rule**

DEPARTMENT OF LABOR**Office of the Secretary****29 CFR Part 37**

RIN 1291-AA29

Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998

AGENCY: Office of the Secretary, Labor.

ACTION: Interim final rule; Request for comments.

SUMMARY: This Interim Final Rule implements Section 188 of the Workforce Investment Act of 1998 (WIA), which contains the statute's equal opportunity and nondiscrimination provisions. The Workforce Investment Act supersedes the Job Training Partnership Act (JTPA) as the Department of Labor's primary mechanism for providing financial assistance for a comprehensive system of job training and placement services for adults and eligible youth. With limited substantive changes described in Section III of this preamble, this rule generally carries over the policies and procedures found in 29 CFR part 34, which implements the nondiscrimination and equal opportunity provisions of JTPA. Section 188(e) of WIA mandates that the Department issue regulations implementing the section within one year of the passage of WIA.

DATES: *Effective Date:* This Interim Final Rule will become effective on November 12, 1999.

Comment Period: Comments must be received on or before December 13, 1999.

ADDRESSES: Comments should be sent to Annabelle T. Lockhart, Director of the Civil Rights Center (CRC), by regular mail at the US Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210, or by e-mail at CRC-WIA@dol.gov. Brief comments (maximum of five pages) may be submitted by facsimile machine (FAX) to (202) 219-5658. Receipt of submissions, whether by U.S. mail, e-mail, or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center at (202) 219-8927 (VOICE) or (202) 219-6118 or (800) 326-2577 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids

such as readers or print magnifiers. Copies of this Interim Final Rule will be made available in the following formats: large print, electronic file on computer disk, and audio tape. To schedule an appointment to review the comments and/or to obtain the Interim Final Rule in an alternate format, contact CRC at the telephone numbers and addresses listed above.

FOR FURTHER INFORMATION CONTACT: Bud West, Senior Policy Advisor, Civil Rights Center, US Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210, CRC-WIA@dol.gov, telephone (202) 219-8927 (VOICE), or (202) 219-6118 or (800) 326-2577 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The preamble to these regulations is organized as follows:

- I. Background—provides a brief description of the development of these proposed regulations.
- II. Authority—cites the statutory provisions supporting these regulations, Departmental redelegation authority, and Interagency coordination authority.
- III. Overview of the Regulations—summarizes pertinent aspects of the regulatory text and describes its purposes and application.
- IV. Regulatory Procedure—sets forth the applicable regulatory requirements and requests comments on specific issues.

I. Background

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA), comprehensive reform legislation that supersedes JTPA. Both WIA and JTPA contain nondiscrimination and equal opportunity provisions. The JTPA nondiscrimination provisions are contained in Section 167 of that statute, and in its implementing regulations codified in 29 CFR part 34. These regulatory provisions generally are carried over in the nondiscrimination and equal employment opportunity provisions of WIA's implementing regulations. The latter regulations are contained in this Interim Final Rule, to be codified in 29 CFR part 37.

This Interim Final Rule prohibits WIA Title I-financially assisted grant applicants and recipients, as defined in Section 37.4, from discriminating on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief. It also protects any beneficiary (person intended by Congress to receive WIA Title I-financially assisted aid, benefits, services, or training) from discrimination based on either that beneficiary's citizenship, or his or her participation in any WIA Title I-

financially assisted program or activity. The rule provides procedures for determining and enforcing compliance.

Although the Department wishes to emphasize that it considers the reforms embodied in WIA to be significant, and not "business as usual," the nondiscrimination and equal employment opportunity principles embodied in this Act are substantially similar to those contained in JTPA. Accordingly, there are only limited substantive differences between 29 CFR part 34, implementing the nondiscrimination and equal opportunity provisions of JTPA, and 29 CFR part 37, implementing the similar provisions of WIA. Those substantive changes that have been made are based on the experience of the Civil Rights Center (CRC), the Departmental agency responsible for administering the nondiscrimination provisions of JTPA and WIA, and on feedback provided to CRC by grant applicants and recipients regarding their work with the nondiscrimination and equal opportunity provisions of JTPA and part 34. These substantive changes are described in detail in Section III of this preamble.

Most of the changes the Department has made to the provisions contained in part 34 have been structural, stylistic, and phrasing changes. The changes have been made to enhance the readability of the rule for, and its utility to, recipients who receive financial assistance under WIA Title I; grant applicants who wish to receive such assistance; individuals who wish to file discrimination complaints under WIA Section 188; and other interested parties. The Department seeks specific comments on the enhancements to the rule, and suggestions for improving the rule.

The alterations to the rule fall into two categories: (1) Changes making the rule's obligations consistent with other regulatory obligations WIA Title I recipients might be under; and (2) Changes reducing the "legalese" of the JTPA regulations. Generally, neither type of modification is meant to change the substantive content of the underlying rule.

As an example of the first category, the section of the rule regarding recipients' obligations to individuals with disabilities has been amended to follow generally the regulations implementing Title II of the Americans with Disabilities Act of 1990, as amended (ADA). These regulations are found at 28 CFR part 35. This change is not intended to provide a substantive change from the regulations implementing JTPA. It is intended only to clarify the regulations.

The second category of changes was prompted by the June 1, 1998, Presidential Memorandum on Plain Language, which instructed Federal Departments and Agencies to write new regulations in language understandable to most people. The Department has met the intent of the President's memorandum by incorporating stylistic changes into the language and format of these regulations to facilitate their readability without changing their substantive content. An example of such a change is the rewording of subsection topic header statements into the form of questions.

Other examples:

- Some sections have been subdivided, to make the content of individual sections more homogeneous.
- Some sections have been more logically reordered.
- Terminology has been adjusted to use plain language terms. As a result, the term "shall" has been replaced in this rule by the terms "must," "will," "is/are," or similar terms, as appropriate. The term "must" connotes an obligation, while the term "will" indicates a future action. Similarly, the term "prior to" has been replaced by the term "before"; "pursuant to" has been replaced, as appropriate, by "under," "by," or "authorized by"; and "is deemed" or "will be deemed" has been replaced, as appropriate, by "is/are considered" or "become(s)."

Again, these changes are not intended to alter the meaning of the regulations. Rather, the changes are intended to create a more readable document.

CRC maintains a close relationship and regular contact with the regulated community. The agency holds an annual national conference on equal opportunity, attended by several hundred officials and staff of the State and local agencies that are responsible for ensuring nondiscrimination in the programs receiving financial assistance under JTPA and/or WIA Title I. At this conference, and through other in-person and telephone contacts with CRC, these officials and staff have discussed directly with CRC staff members the effect that the JTPA nondiscrimination regulations have had upon their agencies' operations. Many of the changes, both substantive and stylistic, that were incorporated in this Interim Final Rule resulted from this input. For example, because some of these officials told CRC that the 60-day period provided in the JTPA regulations for recipients to process discrimination complaints was insufficient, the rule extends the relevant time period to 90 days.

The Department is particularly interested in receiving comments regarding any aspects of the Rule that affect the relationship between the Federal government and the States.

II. Authority

A. Statutory Authority

The statutory authorities for this Interim Final Rule are: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, Pub. L. 105-220, 12 Stat. 936 (29 U.S.C. 2801 *et seq.*); Title VI of the Civil Rights Act of 1964, as amended, Pub. L. 88-352, 78 Stat. 252 (42 U.S.C. 2000d, *et seq.*); Section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93-112, 87 Stat. 390 (29 U.S.C. 794); the Age Discrimination Act of 1975, as amended, Pub. L. 94-135, 89 Stat. 728 (42 U.S.C. 6101); and Title IX of the Education Amendments of 1972, as amended, Pub. L. 92-318, 86 Stat. 373 (20 U.S.C. 1681).

B. Departmental Authorization

Secretary's Order 2-81, Section 5a(2), authorized the Assistant Secretary for Administration and Management, working through the Director, Office of Civil Rights, to establish and formulate all policies, standards, and procedures for, as well as to issue rules and regulations governing, the enforcement of statutes applying nondiscrimination and equal opportunity requirements to programs and activities receiving financial assistance from DOL. On October 12, 1986, the Office of Civil Rights was redesignated the Directorate of Civil Rights by the Assistant Secretary. Effective December 12, 1995, the Assistant Secretary redesignated the Directorate of Civil Rights as the Civil Rights Center (CRC). CRC is authorized to monitor and enforce all nondiscrimination and equal opportunity regulations regarding programs receiving financial assistance from DOL, including Section 188 of WIA.

C. Interagency Coordination

The Department of Justice (DOJ), under Section 1-201 of Executive Order 12250 (45 FR 72995, November 4, 1980), is responsible for coordinating Federal enforcement of most nondiscrimination laws that apply to federally-assisted programs and activities. Executive Order 12067 (43 FR 28967, July 5, 1978) requires consultation with the Equal Employment Opportunity Commission (EEOC) about regulations that involve equal employment opportunity. The Age Discrimination Act of 1975, as

amended, assigns the Secretary of Health and Human Services the responsibility for coordinating the Federal enforcement effort of that Act. This Interim Final Rule has been coordinated with the Department of Justice and the Equal Employment Opportunity Commission, as well as the Department of Health and Human Services.

In addition, the Rule has been coordinated with other appropriate Federal grantmaking agencies, including the Departments of Education and Housing and Urban Development.

III. Overview of the Rule

Subpart A—(a) outlines the purpose and application of part 37; (b) provides definitions; (c) outlines prohibited grounds for and forms of discrimination; and (d) establishes enforcement authority and obligations.

Subpart B—sets forth the affirmative obligations of recipients of, and grant applicants for, financial assistance under WIA Title I.

Subpart C—describes a Governor's responsibilities to implement the nondiscrimination and equal opportunity provisions of WIA and this part.

Subpart D—describes procedures for compliance reviews and complaint processing.

Subpart E—describes the procedures for effecting compliance, including (a) actions the Department will take upon making a finding of noncompliance for which voluntary compliance cannot be achieved; (b) the rights of parties upon such a finding; and (c) hearing procedures, sanctions, and post-termination procedures.

Subpart A—General Provisions

The individual sections in this subpart are largely identical to their corresponding sections within the same subpart in part 34. Consistent with plain-language guidelines, one section has been subdivided into separate sections treating different topics. These changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Section 37.1 What is the purpose of this part?

This section is identical to 29 CFR 34.1(a), except that references to JTPA, and to its Section 167, have been changed to refer to WIA and its Section 188.

Section 37.2 To whom does this part apply, and what is the scope of this part?

This section contains requirements similar to those in 29 CFR 34.1(b) and (d). The references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule, and references to JTPA have been changed to refer to WIA. Also, some of the material has been presented in outline form to improve its readability. None of these changes is intended to alter the meaning of the section.

Language has been added to paragraph 37.2(a) to clarify that the requirements in this part apply to programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in WIA Section 121(b), including those partners financially assisted by grantmaking agencies other than the Department of Labor, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system. The requirements in 29 CFR part 34 continue to apply to programs and activities that are implemented under and authorized by JTPA.

In those cases in which States that have opted to implement WIA before July 1, 2000, are operating WIA Title I programs and activities simultaneously with programs and activities under JTPA, the WIA Title I programs and activities must comply with the requirements in this part, while the JTPA programs and activities must comply with the requirements in 29 CFR part 34.

Section 37.3 How does this part affect a recipient's other obligations?

This section generally contains the same requirements as 29 CFR 34.1(c). The language of 29 CFR 34.1(c)(6), which dealt with retroactivity, is inapplicable to this Interim Final Rule, and has been omitted; in addition, references to JTPA have been changed to refer to WIA. Other differences between this section and the corresponding paragraphs of the JTPA regulations are listed below.

Paragraph 37.3(b): This paragraph has been amended to incorporate by reference the provisions of Subparts B and C and Appendix A of 29 CFR part 32, which implement the requirements of Section 504 pertaining to employment practices, employment-related training, program accessibility, and accommodations. As a result, the language from 29 CFR 34.1(c)(2) that stated that part 34 did not affect

recipients' obligations to comply with those provisions has been omitted.

It is important to understand the distinction between the concept of "program accessibility," referred to in this paragraph, and the separate concept of architectural accessibility, both of which a recipient is required to provide under Subpart C.

The requirement of program accessibility means that when viewed in its entirety, the program or activity provided by the recipient must be readily accessible to qualified individuals with disabilities. 29 CFR 32.27. The recipient must ensure that participants with various physical and mental disabilities will have access to the program or activity. This obligation to make the program or activity accessible in advance exists independent of a request for a particular accommodation by a specific individual. Therefore, even if an individual with a disability requests an accommodation that would impose an undue hardship on the recipient, the recipient still has an overall obligation to make the program or activity accessible.

Architectural accessibility, by contrast, relates to the construction and design of facilities. 29 CFR 32.28. Architectural accessibility standards are similar to building codes. A recipient must comply with the architectural accessibility standards whether or not a particular individual with a disability has requested a reasonable accommodation. 29 CFR 32.13(d). A recipient's obligation to comply with the architectural accessibility standards is also independent of its program accessibility obligations.

Paragraph 37.3(d): This paragraph has been added to parallel Paragraph 37.3(c), and to emphasize that recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA have additional obligations imposed by that title.

Paragraph 37.3(e)(9): This paragraph, which refers to the anti-discrimination provision of the Immigration and Nationality Act, has been added at the request of the Department of Justice. This provision prohibits: (a) Discrimination on the basis of citizenship status and national origin with respect to hiring, firing, or recruitment or referral for employment for a fee; and (b) unfair documentary practices with respect to verification of employment eligibility.

Section 37.4 What definitions apply to this part?

To the extent possible, the definitions contained in this section are consistent

with similar terms used in regulations implementing other civil rights legislation that applies to recipients of Federal financial assistance. Similarly, where feasible, this Interim Final Rule uses the terms contained in the proposed WIA program regulations issued by the Department's Employment and Training Administration (ETA). However, because this regulation must be compatible with civil rights enforcement on a broad scale as well as with ETA's WIA program, this rule defines and uses certain terms, such as "qualified interpreter," "recipient," "registrant," and "applicant," as terms of art, not necessarily identical to the definitions that are used elsewhere for the same terms.

The following list explains the definitions that differ in substantive ways, either from their counterparts in 29 CFR 34.2, from ETA's program regulations, or from regulations that implement the nondiscrimination provisions of other legislation providing Federal financial assistance. It also lists definitions that have been borrowed from other civil rights regulations, and explains certain definitions that might appear to differ substantively from their counterparts in 29 CFR 34.2, but that have not been substantively changed. Definitions that obviously would not be substantively different from those in Section 34.2, but that simply would substitute references to WIA for references to JTPA, are not listed.

This list also contains definitions of terms that are not defined in the regulations implementing other civil rights legislation that applies to recipients of Federal financial assistance, or in WIA's program regulations. Generally, these terms either are used solely within this part, or have greater significance within this part than they do within other regulatory systems. With regard to these terms, the list explains the reason each term has been defined, and/or the source of the definition.

Aid, benefits, services, or training: In 29 CFR 34.5, this phrase is used to convey to the reader the comprehensive nature of the areas in which a JTPA-assisted program or activity could not discriminate on the basis of disability. For consistency, the phrase has been adopted throughout part 37; generally, it replaces the phrase "financial aid, service, or benefit," which was used intermittently in part 34, and which has a similar meaning. No substantive change is intended by the use of the phrase.

Section (1) of this definition uses the phrase "core and intensive services." These terms are used in WIA to describe

two of the three general types of employment and training services that are provided to participants under the WIA program (the third type is training services). The terms are defined at length in the WIA statute: a list of "core services" is provided in Section 134(d)(2), and a similar list of "intensive services" is provided in Section 134(d)(3)(C). Briefly, "core services" are those services available at a baseline level to all participants, while "intensive services" are those services available to individuals who are assessed as needing additional assistance in order to find or retain employment. Compare Section 134(d)(2) with Section 134(d)(3)(A).

Section (4) of this definition refers to "work opportunities." This term is intended to encompass On-the-Job Training, subsidized work, internships, or work experience that a participant obtains through a WIA Title I-financially assisted program or activity. See the discussion of the definition of "On-the-Job Training" later in this section.

Applicant: The passage of WIA has altered the method by which individuals seeking federally-assisted aid, benefits, services, or training enter the system. The definition of the term "applicant" has been changed accordingly, to signify that, for purposes of this part, an individual is considered an "applicant" at the point at which s/he submits personal information in response to a request by the recipient for such information. Because ETA's program regulations that implement other provisions of WIA refer to the "registration" process, rather than the application process, this part uses the term "registrant" interchangeably with "applicant." CRC is particularly interested in receiving comments on this definition and its effect, if any, on the data collection obligations of recipients.

Departmental grantmaking agency: This definition was added in order to help readers distinguish between the meaning of this term and of the terms "grantmaking agency" and "Federal grantmaking agency" as used in this part. See the discussion of the definitions of the latter terms elsewhere in this section of the preamble.

Discrimination on the ground of citizenship: This definition is identical to the definition of the same term in Section 34.2, except that the term "asylee" has been inserted into the list of immigration statuses that are protected against discrimination. In addition, the phrase "other individuals authorized by the Attorney General to work in the United States" has been

amended to "other immigrants authorized * * *." These changes have been made for consistency with the language of Section 188(a)(5) of WIA.

These regulations are concerned with nondiscrimination and equal opportunity only. They do not limit eligibility or impose preferences for services on the basis of citizenship.

Employment practices: This definition has been moved to the definition section from 29 CFR 34.7(a). Consistent with plain-language guidelines, the definition also has been slightly rewritten, and has been presented in outline form to improve its readability. None of these changes is intended to alter the meaning of the definition.

Employment-related training: This definition has been included in response to questions from a number of recipients who were familiar with the term as it was defined under the Comprehensive Employment and Training Act (CETA), the predecessor statute to JTPA. Under WIA, the term is defined more broadly than it was under CETA.

Entity: This definition is expanded from the definition in 29 CFR 34.2, to encompass current and potential changes in business structures, and to emphasize that such entities as Indian tribes or tribal organizations and Native Hawaiian organizations, all of which are eligible to receive financial assistance under WIA Title I, are included within the definition. See WIA Section 166, "Native American Programs."

Facility: This definition is expanded from the definition in 29 CFR 34.2, in order to follow generally the definition of the same term set forth in 28 CFR 35.104, in the regulations implementing Subtitle A of Title II of the ADA. That subtitle prohibits discrimination on the basis of disability by public entities.

The reference to "indoor constructs" such as office cubicles and computer kiosks has been added in order to clarify that recipients may be required to alter such constructs to make them accessible to and usable by individuals with disabilities. See paragraph (2)(i) of the definition of "reasonable accommodation" in Section 37.4.

Federal grantmaking agency: This definition was added in order to help readers distinguish between the meaning of this term and of the terms "grantmaking agency" and "Departmental grantmaking agency" as used in this part. See the discussion of the definitions of the latter terms elsewhere in this section of the preamble.

Financial assistance and Financial assistance under Title I of WIA: As with

the term "applicant," the passage of WIA has altered the type of financial assistance that will be provided under the WIA program, and the way in which that assistance will be provided. The definitions of "financial assistance" and "financial assistance under WIA Title I" have been drafted accordingly. The Department is particularly interested in receiving comments on these new definitions.

The new definitions have been modeled on the definitions of the term "financial assistance" provided in various Federal regulations that also deal with nondiscrimination in programs and activities receiving Federal financial assistance. Examples include the Office of Personnel Management regulations at 5 CFR 900.403(c); the Department of Justice regulations at 28 CFR 42.613(e); and the Department of Health and Human Services regulations at 45 CFR 86.2(g) and 1203.3(c).

Paragraph (5) of the definition of "financial assistance under WIA Title I" includes "[a]ny other agreement, arrangement, contract, or subcontract * * * or other instrument that has as one of its purposes the provision of assistance or benefits under WIA Title I." Under this paragraph, "financial assistance under WIA Title I" includes such "agreements or arrangements" as the Memoranda of Understanding (MOUs) required by Section 121(c) of WIA, and inclusion on a list of eligible training providers. See the discussion of the definition of "recipient" later in this section.

Fundamental alteration: This definition is derived from the Supreme Court's interpretation of the term in the ADA Title II case of *Olmstead v. Zimring*, 119 S.Ct. 2176, 67 USLW 3683, 67 USLW 4567, 1999 WL 407380 (U.S., June 22, 1999), at 12-13 and n.16.

Grantmaking agency: This term replaces the term "granting agency" that was used in 29 CFR part 34. See the discussion of the definitions of "Departmental grantmaking agency" and "Federal grantmaking agency" elsewhere in this section.

Individual with a disability: The definition of this term is identical to the definition of the same term in Section 34.2, with the following exceptions:

(1) The reference to homosexuality or bisexuality has been deleted. This change is not a substantive change, since Section 1(ii) of the definition of the term "disability" retains the explanation that the term "impairment" does not include homosexuality or bisexuality. The deletion was made merely to eliminate unnecessary redundancy in the rule.

(2) The list of the individuals to whom the term "individual with a disability" does not apply has been expanded to clarify that with regard to employment, there would exist two circumstances under which the term would not apply to an individual who has a currently contagious disease or infection. Such an individual would not be an "individual with a disability" either if that disease or infection prevents him or her from performing the duties of the job in question, or if his or her employment, because of that disease or infection, would constitute a direct threat to the health and safety of others. This change has been made for consistency with the definition of "individual with a disability" enacted by Congress in Title IV, Section 403 of WIA, the Rehabilitation Act Amendments of 1998, 29 U.S.C. 701, Pub.L. 105-220, Title IV, Section 401 *et seq.*, Aug. 7, 1998, 112 Stat. 1092.

Labor market area: The definition of this term, which appears in the definition of "population eligible to be served," is taken directly from Section 101(18) of WIA.

Local Workforce Investment Area (LWIA) grant recipient: This term is new under WIA. The term describes the entity that receives WIA Title I financial assistance from a Governor. It replaces the terms "SDA grant recipient" and "substate grantee" that were used under JTPA.

National Programs: This definition has been rewritten to encompass entities receiving financial assistance under Title I, Subtitle D of WIA, and to clarify that Job Corps is a National Program under the definition.

On-the-Job Training: This definition is taken directly from Section 101(31) of WIA. Three words have been added to the definition in order to clarify that such training is "provided to a paid participant while *the participant* is engaged in productive work."

Participant and participation: The definitions of these terms contain the same elements as the definition of the single term "participant" in 29 CFR 34.2. The rule defines the term "participation" separately in order to help readers better understand both terms. Also, the new definitions of the terms "participant" and "participation" clarify that the terms encompass individuals who are receiving aid, benefits, or training under WIA Title I, as well as the "services" included in the definition in 29 CFR 34.2. In addition, because the term "aid, benefits, services, or training" is defined as including work opportunities obtained through a WIA Title I—financially assisted program or activity, an individual who

obtains such opportunities is a "participant" under this definition. See the discussion of the definition of "aid, benefits, services, or training" earlier in this section.

The definition of "participant" in part 34 excluded individuals receiving "post-termination and follow-up services." However, Section 134(d)(2)(K) of the WIA statute includes follow-up services among the list of "core services" that participants may receive; as a result, this language has been deleted from the definition of "participant" in Section 37.4. It should be noted that this definition differs from the definition of the term that is included in ETA's regulations implementing other provisions of WIA.

The definition in Section 37.4 clarifies that the term "participant" includes, but is not limited to, applicants receiving any services under state Employment Service programs, and claimants receiving any services under state Unemployment Insurance programs. Because the definition of the term in the JTPA nondiscrimination regulations also encompassed such individuals, this clarification is not a substantive change. Rather, the clarifying language was included simply to recognize that different recipients may use different terminology to refer to individuals who receive benefits or services under their programs.

It is important to recognize that under the One-Stop system introduced by WIA, various programs and activities that are authorized by Federal laws other than WIA may be part of a One-Stop center that also provides WIA Title I—financially assisted programs and activities. In such cases, any individual who receives aid, benefits, services, or training from the One-Stop center is a participant for purposes of the nondiscrimination and equal opportunity provisions of WIA and this part.

For example, a One-Stop center may include an Employment Services program authorized and financially assisted under the Wagner-Peyser Act, 29 U.S.C. 49, as well as core and intensive service programs authorized under WIA Title I. Under these circumstances, an individual who receives Wagner-Peyser employment services from the One-Stop center will fit the definition of "participant" in Section 37.4.

Parties to a hearing: This definition has been amended to clarify that in certain cases, a Governor may be a party to a hearing.

Population eligible to be served: This term is used in the section of this rule that explains recipients' obligations

regarding individuals with limited English skills. See the discussion of Section 37.35 in this preamble.

Qualified individual with a disability: This definition has been amended for a number of reasons. First, the definition has been restructured in order to incorporate the term of art "aid, benefits, services, or training," which is introduced and defined in this Interim Final Rule. The term is used in the definition of "qualified individual with a disability" to encompass most, if not all, of the circumstances (other than employment) in which a recipient might need to determine the qualifications of an individual with a disability to receive WIA Title I—financially assisted services, financial or other aid, or benefits. See the definition of "aid, benefits, services, or training" in Section 37.4, and the discussion in this preamble about that definition.

Second, the definition as amended is intended to underscore the distinction between the test for determining whether an individual with a disability is qualified for such aid, benefits, services, or training—including employment-related training—and the test for determining whether such an individual is qualified for employment. Under paragraph (1) of the definition, such an individual is qualified for employment if, with or without reasonable accommodation, he or she is capable of performing "the essential functions of the job." The definition of the term in 29 CFR 34.2 applied the same test to employment-related training. However, employment-related training programs are not "employment," and therefore the focus in determining whether an individual with a disability is "qualified" for such a program should be upon whether the individual meets the essential eligibility requirements for the program. Paragraph (2) of the definition, which relates to aid, benefits, services, or training, has been amended accordingly.

Third, the amended definition is intended to clarify that an individual with a disability who is seeking aid, benefits, services, or training is qualified if he or she meets the essential eligibility requirements for receiving such aid, benefits, services, or training, *with or without reasonable accommodation or modification*. The reference to "reasonable accommodation or reasonable modification" has been added in order to clarify that the definition is intended to encompass "situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified (individuals with disabilities) of an

opportunity to participate in a covered program." *Brennan v. Stewart*, 834 F.2d 1248, 1261 (5th Cir. 1988) (discussing Section 504).

Qualified interpreter: This definition is based on the definition of the same term contained in 28 CFR 35.104, the regulations implementing Title II of the ADA. In this Interim Final Rule, however, the term is used in a broader context, to implement the prohibition of discrimination based on national origin as well as the prohibition of discrimination against qualified individuals with disabilities. In this Rule, the term encompasses the interpretation of spoken and written languages, such as Spanish, for individuals with limited English skills, as well as interpretation of spoken and written languages into symbolic languages, such as American Sign Language, for individuals with disabilities.

Reasonable accommodation: This definition is based on the definition of the same term contained in 29 CFR 1630.2, in the regulations implementing Title I of the Americans with Disabilities Act. Although Title I and its implementing regulations apply the concept of "reasonable accommodation" only in the context of employment, this Interim Final Rule requires recipients to provide "reasonable accommodation" in the additional contexts of aid, benefits, services, and training. See Section 37.8.

Under the requirements of Section 188 of WIA and this part, as well as under other Federal civil rights laws and their implementing regulations, a recipient must provide both accessible facilities (that is, both program accessibility and architectural accessibility) and reasonable accommodation for individuals with disabilities. It is important to understand the difference between these two requirements.

Providing accessible facilities requires a recipient to take advance actions, in order to be ready when persons with disabilities seek aid, benefits, services, training, or employment from that recipient at some point in the future. See the discussion of "program accessibility" and "architectural accessibility" in the discussion in this preamble about Paragraph 37.3(b).

By contrast, providing reasonable accommodation for an individual with a disability requires the recipient to make efforts to meet the specific needs of the particular individual who is currently seeking aid, benefits, services, training, or employment from the recipient. Reasonable accommodation may require making specific structural or other

modifications to meet the needs of a particular individual for access.

Recipient: This definition has been amended to clarify that where a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him/her under WIA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, JTPA-related terminology (such as references to SDA and Substate grant recipients) has been replaced by WIA-related terminology (such as references to LWIA grant recipients), and the list of examples of recipients has been numbered and presented vertically, rather than in paragraph form, for greater ease of reading. Finally, paragraphs (10) and (11) of the definition, "outreach and admissions agencies" and "placement agencies," have been amended to clarify that Job Corps contractors that perform these functions are also recipients.

For purposes of this part, entities that participate as partners in a One-Stop delivery system are treated as "recipients," and are subject to the nondiscrimination and equal opportunity obligations of this part, to the extent that they participate in the One-Stop system. Such partners may include, but are not limited to, mandatory and additional partners listed in WIA section 121(b), such as entities providing employment and training activities carried out under the Community Service Block Grant Act (42 U.S.C. 9901 *et seq.*), or programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4)), if these entities participate as partners in the One-Stop delivery system.

With regard to issues involving nondiscrimination and equal opportunity, the One-Stop-related programs and activities operated by such partners may fall under the jurisdiction of both CRC and the equal opportunity office of the Federal grantmaking agency. See Section 37.85(c) and the discussion thereof in this preamble. As a result, local Workforce Investment Boards, when developing and entering into MOUs with One-Stop partners pursuant to the requirements of WIA Section 121(c), should include attention to equal opportunity issues that may affect the One-Stop partners or the delivery system. Such issues include how discrimination complaints will be handled and how the cost of reasonable accommodations will be shared. For its part, CRC is in the process of developing MOUs with other Federal grantmaking agencies that provide financial

assistance to programs and activities in the One-Stop delivery system, to ensure the consistent application of Federal civil rights law.

The Department is particularly interested in receiving comments regarding the effect of this part upon One-Stop partners.

Registrant: See the explanation of the term "applicant" in this section.

Sectarian activities: This term appears in Section 37.6(f), which implements Section 188(e) of WIA. With certain exceptions, that statutory section bars participants from being employed to carry out the construction, operation, or maintenance of any part of any facility that is or will be used for sectarian instruction or religious worship.

Service provider: Language has been inserted into this definition to clarify that the term encompasses any "provider of aid, benefits, services, or training to" any WIA Title I—financially assisted program or activity. The definition of the same term in 29 CFR 34.2 referred only to the "operator" of a JTPA-funded program or activity. This change is not a substantive change; it was made only to clarify the definition.

Additional language has been added to the definition to clarify that organizations that are selected and/or certified as eligible providers of training services under WIA are service providers under this Interim Final Rule, regardless of whether any participants actually select the organization to provide them with training.

Small recipient: This definition contains the same requirements as the definition in 29 CFR 34.2. The definition has been rewritten to explain that such a recipient both (a) serves a total of fewer than 15 beneficiaries during the entire grant year, and (b) employs fewer than 15 employees on any given day during the grant year. Again, this alteration is not intended as a substantive change; it was made only to clarify the definition.

State Programs: This definition adds language explaining that the term includes State Employment Service agencies, and/or State unemployment compensation agencies, that operate independently of a SESA. Again, this change has been included solely to clarify the definition.

Supportive services: This definition is taken directly from WIA Section 101(46).

Terminee: This definition has been rewritten to explain that the term refers to a participant whose participation in the program terminates, voluntarily or involuntarily, during the applicable program year. Again, this change has

been included solely to clarify the definition.

Undue hardship: As the definition itself notes, the meaning of this term differs, depending upon the context in which it is used. The first part of the definition explains the meaning of the term in the context of reasonable accommodation for individuals with disabilities. This part of the definition, like the definition of "reasonable accommodation," is based on the definition of "undue hardship" contained in 29 CFR 1630.2, in the regulations implementing Title I of the Americans with Disabilities Act. As explained above in the discussion of the definition of "reasonable accommodation," this Interim Final Rule requires recipients to provide reasonable accommodation to qualified individuals with disabilities with regard to aid, benefits, services, and training, as well as employment, except where such accommodation would cause undue hardship. See Section 37.7.

The second part of the definition explains the meaning of the term in the context of religious accommodations. This part of the definition is based on Supreme Court decisions, most notably the leading case of *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 81, 84 (1977).

WIA Title I—financially assisted program or activity: This definition contains the same elements as the definition of the term "JTPA-funded program or activity" in 29 CFR 34.2. The definition has been presented in outline form to improve its readability.

The remainder of the definitions in Section 37.4 are either unchanged from their counterparts in 29 CFR 34.2, or have been changed merely to refer to WIA rather than JTPA.

Section 37.5 What forms of discrimination are prohibited by this part?

This section is identical to 29 CFR 34.3, except that references to JTPA have been changed to refer to WIA.

Section 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?

This section contains the same requirements as 29 CFR 34.4. Differences between this regulation and the JTPA regulation are explained below.

Paragraph 37.6(a): This paragraph is identical to the first sentence of 29 CFR 34.4(a), except that references to JTPA have been changed to refer to WIA.

Paragraph 37.6(b): This introductory paragraph is identical to the second sentence of 29 CFR 34.4(a).

Paragraphs 37.6(b)(1)–(7): These paragraphs are identical to 29 CFR 34.4(a)(1)–(7), with the following exceptions:

(1) references to "service, financial aid, or benefit" have been changed to "aid, benefits, services, or training," as explained in the discussion of the definition of the latter term in Section 37.4 above; and

(2) references to JTPA have been changed to refer to WIA.

Paragraph 37.6(b)(8): This paragraph is identical to 29 CFR 34.4(a)(10), except that a reference to WIA Title I has been inserted.

Paragraphs 37.6(c)(1)–(2): These paragraphs contain requirements similar to those in 29 CFR 34.4(a)(8) and (9). Paragraph 37.6(c)(1) signifies that a recipient must not provide significant assistance under any circumstances to any agency, organization, or person that discriminates on a prohibited ground. Similarly, Paragraph 37.6(c)(2) signifies that except where doing so would cause undue hardship, a recipient may not refuse to accommodate an individual's religious practices or beliefs, even if the refusal is not based on dislike of or disagreement with the individual's religion. Again, this alteration is not intended as a substantive change from the regulations implementing JTPA; the change was made only to clarify the intent of the regulations.

As in other paragraphs, references to JTPA have been changed to refer to WIA.

Paragraph 37.6(d): This paragraph contains the same requirements as 29 CFR 34.4(b). Consistent with plain-language guidelines, the paragraph has been organized slightly differently from the JTPA paragraph, and presented in outline form to improve its readability. Also, the word "outreach" has been added to the list of examples of the types of administrative determinations in which discrimination is prohibited. Because the list, both in the corresponding JTPA regulation and in this paragraph, is exemplary rather than restrictive, the addition of this word makes no substantive change in the paragraph.

For consistency with the language of Section 37.7, the reference to "standards, procedures or criteria" has been changed to "standards, procedures, criteria, or administrative methods." See the discussion in this preamble about Paragraph 37.7(e). Similarly, the paragraph has been reworded to prohibit practices that defeat or substantially impair accomplishment of

the objectives of "the nondiscrimination and equal opportunity provisions of WIA and this part," as well as those of the program or activity in question.

As in other paragraphs, references to JTPA have been changed to refer to WIA.

Paragraph 37.6(e): This paragraph contains the same requirements as 29 CFR 34.4(c). Again, consistent with plain-language guidelines, the paragraph has been organized slightly differently from the JTPA paragraph, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA.

Paragraph 37.6(f): This paragraph prohibits participants in a WIA Title I—financially assisted program or activity from being employed or trained to construct, operate, or maintain any part of a facility that is or will be used primarily for sectarian instruction or religious worship. This paragraph is directly based on, and implements, Section 188(a)(3) of WIA.

Paragraph 37.6(g): This paragraph is identical to 29 CFR 34.4(d).

Section 37.7 What specific discriminatory actions based on disability are prohibited by this part?

This section contains the same requirements as 29 CFR 34.5, with additional material modeled on the regulations implementing Title II of the ADA. Differences between this section and the corresponding sections of the JTPA nondiscrimination regulations or ADA regulations are discussed below.

Paragraphs 37.7(a)(1)–(3): These paragraphs are identical to 29 CFR 34.5(a)(1)–(3), except that references to JTPA have been changed to refer to Title I of WIA.

Paragraph 37.7(a)(4): This paragraph is identical to 29 CFR 34.5(a)(4), with the following exceptions:

(1) The paragraph specifies that, except when necessary to accommodate a qualified individual with a disability, a recipient may not provide "segregated" aid, benefits, services, or training to individuals with disabilities. This addition is intended to clarify and emphasize that a recipient may provide special programs or activities designed for and limited to individuals with disabilities, but may not require that individuals with disabilities attend only such programs or activities. In other words, qualified individuals with disabilities must be offered the option of participating in the same programs or activities that are offered to non-disabled individuals. This change is not intended to provide a substantive change from the JTPA

nondiscrimination regulations. It was inserted only to clarify the intent of the regulations.

(2) The beginning of 29 CFR 34.5(a)(4) prohibits recipients from providing different or separate "aid, benefits, or services" to individuals with disabilities; the end of the same paragraph refers to "aid, benefits, services or training." For consistency, the paragraph has been modified to refer to "aid, benefits, services, or training" in both places. Again, this change is not intended to provide a substantive change from the meaning of the regulations implementing JTPA.

Paragraphs 37.7(a)(5)-(6): These paragraphs are identical to 29 CFR 34.5(a)(6)-(7), except that references to JTPA have been changed to refer to Title I of WIA.

Paragraph 37.7(b): This paragraph tracks the language of 29 CFR 34.5(a)(5). Like Paragraph 37.6(c)(1), it has been placed in a separate paragraph to clarify that a recipient must not provide significant assistance to any agency, organization, or person that discriminates on the basis of disability, even if the recipient has no discriminatory motivation in providing the assistance.

Paragraphs 37.7(c)-(d): These paragraphs are identical to 29 CFR 34.5(b)-(c), except that references to JTPA have been changed to refer to Title I of WIA.

Paragraph (d) requires recipients to administer WIA Title I-financially assisted programs and activities in "the most integrated setting appropriate to the needs of qualified individuals with disabilities." This language means that the recipient must provide programs or activities in a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.

Paragraph 37.7(e): This paragraph contains the same requirements as 29 CFR 34.5(d). Differences between the paragraph and the corresponding paragraphs of the JTPA nondiscrimination regulations are explained below.

(1) Consistent with plain-language guidelines, the word "utilize" in Paragraph 34.5(d) has been replaced by "use."

(2) For consistency with the language of Section 37.6(d), the reference to "criteria or administrative methods" has been changed to "standards, procedures, criteria, or administrative methods." See the discussion in this preamble about Paragraph 37.6(d).

(3) Paragraph 34.5(d)(1) prohibited the use of such methods that have "the effect of" discriminating against

qualified individuals with disabilities. This wording has been changed to prohibit methods that have "the purpose or effect of" such discrimination. This addition was made for two reasons:

(a) because WIA Section 188 makes clear that *purposeful* discrimination against qualified individuals with disabilities is also prohibited; and

(b) to make the language of Paragraph 34.5(d)(1) consistent with the language of the remaining paragraphs in the section, which prohibit activities that have "the purpose or effect of" discrimination.

(3) References to JTPA have been changed to refer to Title I of WIA.

None of these changes is intended to alter the meaning of the paragraphs from the meaning of the corresponding paragraphs in the JTPA nondiscrimination regulations.

Paragraph 37.7(f): This paragraph contains the same requirements as 29 CFR 34.5(e). Consistent with plain-language guidelines, the paragraph has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA.

Paragraphs 37.7(g)-(h): These paragraphs are based on 28 CFR 35.130(b)(5)-(6), from the regulations implementing Title II of the ADA. Differences between the paragraphs and the corresponding paragraphs of the ADA Title II regulations are explained below.

(1) Two changes have been made in order to tailor the regulations to the requirements of the WIA program:

(a) The reference in Paragraph 37.7(g) to "procurement contractors" has been changed to "contractors"; and

(b) References to "public entity" have been changed to "recipient"; and

(2) References to the ADA have been replaced by references to WIA.

These provisions have been modeled upon the ADA Title II regulations in order to ensure that requirements under Section 188 of WIA follow generally the requirements of ADA Title II. Many recipients of WIA Title I financial assistance are also subject to the requirements of Title II, which applies to public entities including State and local governments and their departments, agencies, and instrumentalities. See 42 U.S.C. 12131. Modeling the WIA regulations on the ADA Title II regulations ensures that these recipients are subject to similar obligations and responsibilities under both laws.

Paragraph 37.7(h), which discusses licensing and certification programs, gives CRC jurisdiction only over recipients of WIA Title I financial assistance. For example, a state electrician certification program run by a State agency that does not benefit from WIA Title I financial assistance would not be required to comply with this paragraph. Such an agency would, however, be required to comply with the similar requirements set forth in 28 CFR 35.130(b)(6), in the ADA Title II regulations.

Paragraphs 37.7(i)-(l): These paragraphs are based on 28 CFR 35.130(b)(8), (c), (f), and (g), from the regulations implementing Title II of the ADA. Differences between the paragraphs and the corresponding paragraphs of the ADA Title II regulations are explained below.

(1) References to "public entity" have been changed to "recipient"; and

(2) References to "service(s)" have been changed to "aid, benefits, services, or training."

Both of these changes have been made in order to tailor the regulations to the requirements of the WIA program. Neither change is intended to alter the meaning of the paragraphs.

Paragraph 37.7(m): This paragraph is identical to 29 CFR 34.5(g), except that additional punctuation has been added to improve the material's clarity.

Paragraph 37.7(n): This paragraph contains the same requirements as 29 CFR 34.5(h). The paragraph has been presented in outline form to improve its readability.

Paragraph 37.7(o): This paragraph is based on 28 CFR 35.130(e), from the regulations implementing Title II of the ADA, except that references to the ADA have been replaced by references to WIA. This change is not intended to alter the meaning of the paragraph.

Section 37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?

This section is based on 28 CFR 35.130(b)(7), which requires public entities to make "reasonable modifications" in "policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability." To this requirement has been added the obligation that in providing aid, benefits, services, training, or employment, a recipient must make "reasonable accommodation" for qualified individuals with disabilities.

The two concepts are similar in that they both require a recipient to consult

with each individual with a disability who requests an accommodation(s) or modification(s); to make an individual determination about the alterations necessary in each case; and to take appropriate action based upon that determination. The concepts differ, however, in the standards used to determine "reasonableness." An accommodation is "reasonable" unless providing the requested accommodation would cause the recipient undue hardship. A modification, by contrast, is "reasonable" unless making the modification would require a fundamental alteration in the nature of the service, program, or activity that the recipient is providing. See the definitions of "fundamental alteration," "reasonable accommodation," and "undue hardship" in Section 37.4.

The EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act may help recipients and others understand these concepts, particularly as applied in the employment context. The Guidance is available from EEOC or through EEOC's web site at www.eeoc.gov.

The procedures, set forth in paragraphs 37.8(a)(1)-(2) and (b)(1)-(2), that a recipient must follow in determining whether a requested accommodation would cause undue hardship, or a requested modification would result in a fundamental alteration, are derived from the procedures set forth in 29 CFR 34.6(f)(1)-(3) for making similar determinations with regard to communications with individuals with disabilities. See the discussion in this preamble about Paragraphs 37.9(f)(1)-(3).

Section 37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?

Generally, this section contains the same requirements as 29 CFR 34.6. Differences between the section and the corresponding section of the JTPA nondiscrimination regulations are described below.

Paragraph 37.9(a): This paragraph requires recipients to ensure that communication with certain groups of individuals with disabilities are as effective as communications with others. The paragraph is identical to Paragraph 34.6(a), except that the term "registrants" has been added to the list of such groups. The addition is necessary in order to tailor the regulations to the requirements of the WIA program. This change is not intended to alter the meaning of the paragraph.

Paragraph 37.9(b): Two words have been added to this paragraph in order to clarify its meaning. The first sentence of the paragraph requires a recipient to "furnish appropriate auxiliary aids or services when necessary" to give individuals with disabilities an equal opportunity to participate in the program or activity that receives Federal financial assistance. However, the second sentence of 29 CFR 34.6(b) referred only to a recipient's obligation to determine what auxiliary aids or services are "necessary." In order to eliminate confusion, the phrase "appropriate and" has been added to the second sentence, so that it now refers to a recipient's obligation to determine what auxiliary aids or services are "appropriate and necessary."

Paragraph 37.9(c): The JTPA counterpart to this paragraph is 29 CFR 34.6(c). That paragraph was written in the passive voice. The paragraph has been shifted to the active voice, to clarify that the recipient has the responsibility of using telecommunications devices for individuals with hearing impairments, or other equally effective communications systems, in order to communicate by telephone with such individuals. Additionally, the acronym "TTY," which is occasionally used as an alternative to the acronym "TDD" for such communications systems, has been added.

The phrase "telephone relay services," which has been added as an example of an "equally effective communications system," refers to services established under Title IV of the ADA to permit communications between individuals who communicate by TDD/TTY and individuals who communicate by the telephone alone. These relay services involve a relay operator using both a standard telephone and a TDD/TTY to type the voice messages to the TDD/TTY user and read the TDD/TTY messages to the standard telephone user. Where such relay services are available, a recipient may use these services to meet the requirements of this section. However, where the recipient has extensive telephone contact with the public, or where the provision of telephone services is a major function of the recipient, the recipient should use TDDs/TTYs to ensure more immediate access.

Paragraph 37.9(d): This paragraph is identical to 29 CFR 34.6(d), except that, consistent with plain language principles, the term "shall" has been replaced by "must."

Paragraphs 37.9(e)(1) and (2): These paragraphs generally contain the same information as 29 CFR 34.6(e). The information has been presented in outline form to improve its readability. In addition, two sentences have been added to Paragraph 37.9(e)(1) to emphasize that "signage" is a term of art and to explain the standards that signage must meet under the regulations.

Paragraphs 37.9(f)(1)-(3): These paragraphs, which deal with circumstances in which a recipient believes that a particular action would result in a fundamental alteration to the nature of a service, program, or activity, contain the same requirements as 29 CFR 34.6(f)(1)-(3). Because the Interim Final Rule (unlike the JTPA nondiscrimination regulations) includes a definition of "fundamental alteration" that incorporates the concept of "undue financial and administrative burdens," that phrase is now redundant, and has been omitted from the paragraphs. See the discussion in this preamble about the definition of "fundamental alteration" in Section 37.4. In addition, references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of these paragraphs.

Section 37.10 To what extent are employment practices covered by this part?

This section contains information similar to that in 29 CFR 34.7(b)-(g). References to JTPA have been changed to refer to WIA. In addition, the reference to Equal Employment Opportunity Commission "guidelines" has been changed to "guidance," and the material in 29 CFR 34.7(a), which defines the term "employment practices," has been moved to the definition section (Section 37.4) in this Interim Final Rule. These changes are not intended to alter the meaning of the section.

Paragraph 37.10(a)(1) and (2): These paragraphs contain information similar to that in 29 CFR 34.7(b). Language has been added to this paragraph to clarify that the section applies to the employment practices of any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system. In addition, the information has been presented in outline form to improve its readability.

Paragraph 37.10(d): The corresponding paragraph in the JTPA nondiscrimination regulations, 29 CFR

34.7(e), stated that part 34 did not affect recipients' obligations to comply with the provisions of Subparts B and C and Appendix A of 29 CFR part 32. As noted in the discussion in this preamble about Paragraph 37.3(b), that paragraph has been amended to incorporate the cited provisions by reference. This paragraph has been amended accordingly.

Paragraph 37.10(f): This paragraph, which notes that recipients should be aware of their obligations to comply with the anti-discrimination provisions of the Immigration and Nationality Act, has been added at the request of the Department of Justice. See the discussion in this preamble about Paragraph 37.3(c)(9).

Section 37.11 To what extent are intimidation and retaliation prohibited by this part?

This section contains the same requirements as 29 CFR 34.8. Consistent with plain-language guidelines, the section has been organized slightly differently from the JTPA section, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of the section.

Section 37.12 What Department of Labor office is responsible for administering this part?

This section contains the same requirements as 29 CFR 34.9(a). The section refers to the Civil Rights Center, or CRC, which was known as the Directorate of Civil Rights, or DCR, at the time the JTPA nondiscrimination regulations were promulgated. Also, references to JTPA in the previous section have been changed in this section, where appropriate, to refer to WIA. Neither of these changes is intended to alter the meaning of this section.

Some recipients have expressed confusion about which Department of Labor agency they should contact for answers to questions about the nondiscrimination and equal opportunity requirements of the JTPA and WIA programs. This confusion is understandable: the Department's Employment and Training Administration (ETA) is responsible for, and has expertise about, most aspects of the JTPA and WIA programs. As a result, recipient staff members are accustomed to approaching ETA personnel for answers to JTPA- and WIA-related questions. However, CRC, rather than ETA, is responsible for, and has expertise about, the particular aspects of the JTPA and WIA programs relating to nondiscrimination and equal

opportunity. Recipients will therefore be able to receive more expeditious answers to questions about these aspects of the programs by contacting CRC directly.

Section 37.13 Who is responsible for providing interpretations of this part?

This section is identical to 29 CFR 34.9(b), except that the reference to JTPA has been changed to refer to WIA. This change is not intended to alter the meaning of this section. See the discussion of Section 37.12 above.

Section 37.14 Under what circumstances may the Secretary delegate responsibility under this part?

This section is identical to 29 CFR 34.12(a) and (b), with the following exceptions:

- (1) The references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule; and
- (2) References to JTPA have been changed to refer to WIA.

Neither of these changes is intended to alter the meaning of this section.

Section 37.15 What are the Director's responsibilities to coordinate with other civil rights agencies?

This section generally contains the same requirements as 29 CFR 34.12(c). At the request of the Department of Justice, a reference to the anti-discrimination provision of the Immigration and Nationality Act has been added to the list of laws with regard to which the Director must coordinate with other Federal civil rights agencies. See the discussion in this preamble about Paragraph 37.3(c)(9).

In addition, consistent with plain-language guidelines, this section has been organized slightly differently from the JTPA section, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA. Neither of the latter changes is intended to alter the meaning of this section.

Section 37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?

Paragraphs (a) and (b) of this section are identical to the corresponding paragraphs in 29 CFR 34.11, except that references to JTPA have been changed to refer to WIA. This change is not intended to alter the meaning of the paragraphs.

Paragraph (a) of this section means that a recipient is not excused from complying with the nondiscrimination and equal opportunity provisions of

WIA and this part, even if a State or local law requires the recipient to discriminate on a prohibited ground.

Similarly, paragraph (b) of this section means that no rule or regulation of a private organization, club, league, or association that requires a recipient to discriminate on a prohibited ground excuses a recipient from complying with the nondiscrimination and equal opportunity provisions of WIA and this part.

Paragraph (c) of this section contains the same requirements as 29 CFR 34.11(c). It has been rewritten to improve its clarity. The paragraph bars recipients, while recruiting, selecting, or placing individuals in programs or activities, from considering whether job opportunities in any particular occupation or profession will be open to qualified individuals with disabilities, or to persons of a certain race, color, religion, sex, national origin, age, political affiliation or belief, or citizenship. For example, a recipient operating a WIA Title I—financially assisted training program must not steer women away from training programs for construction work because the recipient believes that women will have difficulty finding jobs in construction. This paragraph does not change the recipient's general obligation under WIA to assure that training is focused on occupations that are in demand.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

The requirements in this subpart are generally similar to the requirements in Subpart B of part 34. Consistent with plain-language guidelines, some of the sections within the subpart have been rearranged in a more logical order, and lengthy sections have been divided into shorter sections treating narrower topics. These changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Assurances

Section 37.20 What is a recipient's obligation to provide a written assurance?

This section contains the same requirements as 29 CFR 34.20(a) and (b). Differences between this section and the corresponding section of the JTPA nondiscrimination regulations are described below.

Paragraph 37.20(a)(1): In this paragraph, the introductory paragraph has been rewritten to eliminate redundancy, and the required assurance has been rewritten consistent with plain-language guidelines. These

changes are not intended to alter the meaning of the assurance or the paragraph.

The rewritten assurance states that the recipient must not discriminate on the basis of "citizenship/status as a lawfully admitted immigrant authorized to work in the United States." This change has been made to convey more accurately the definition of "discrimination on the ground of citizenship" contained in Section 37.4.

Paragraphs 37.20(a)(2): These paragraphs are identical to 29 CFR 34.20(a)(2) and (b), with the following exceptions:

- (1) The references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule; and
- (2) References to JTPA have been changed to refer to WIA.

Neither of these changes is intended to alter the meaning of these paragraphs.

Section 37.21 How long will the recipient's obligation under the assurance last, and how broad is the obligation?

This section contains the same general requirements as 29 CFR 34.20(c). References to JTPA have been changed to refer to Title I of WIA, and the material has been presented in outline form to improve its clarity. In addition, two new clauses have been added. The first clause extends the obligation for the period during which the property is used "for another purpose involving the provision of * * * services or benefits" that are similar to those provided under WIA Title I. This clause has been added for consistency with other Federal regulations involving Federally-assisted programs. See, e.g., 28 CFR 42.105(a)(1) (implementing Title VI); 34 CFR 100.4(a)(1) (applying Title VI to programs assisted through the Department of Education).

The second new clause extends the obligation under the assurance to a transferee for the period until the transferee has compensated the Departmental grantmaking agency for the fair market value of the property transferred. This clause has been added in order to ensure that a transferee may not benefit from a transfer of property under the WIA Title I program without being subjected to the nondiscrimination and equal opportunity obligations of WIA and this part.

Section 37.22 How must covenants be used in connection with this part?

Generally, this section contains the same requirements as 29 CFR 34.20(d). References to JTPA have been changed

to refer to Title I of WIA. In addition, paragraph (a) has been amended to require that the covenant must assure compliance with the nondiscrimination and equal opportunity provisions for the period described in Section 37.21. Additionally, the clause, described in the discussion of Section 37.21, that extends the obligation for the period during which the property is used "for another purpose involving the provision of similar services or benefits" has been added to this section as well. See the discussion of Section 37.21 above.

Equal Opportunity Officers

Section 37.23 Who must designate an Equal Opportunity Officer?

This section is based on the first sentence of 29 CFR 34.22(a). The section is not intended to alter the requirements of the corresponding JTPA regulation with regard to the entities that are required to designate Equal Opportunity Officers ("EO Officers").

Section 37.24 Who is eligible to serve as an Equal Opportunity Officer?

The material in this section is new. It is intended to clarify and emphasize the significance and level of authority that recipients must give to the Equal Opportunity Officer position, and to the individual who holds that position. Much (though by no means all) of the responsibility for a recipient's nondiscrimination and equal opportunity program rests on the shoulders of the EO Officer. CRC's experience has demonstrated that in order for such programs to function fairly and effectively, the EO Officer must be a senior-level employee whose responsibilities in the position present no conflicts of interest with his or her other responsibilities. In addition, the recipient must establish clear lines of authority and accountability for the program, and must provide the EO Officer with appropriate levels of support. See the discussion of Sections 37.25 and 37.26 below.

As with part 34, this section does not require that recipients designate a separate or additional EO Officer to implement the nondiscrimination obligations imposed by WIA and this part. Nor is this section intended to require that the WIA EO Officer be employed in that position full-time. Recipients may still use their existing EO Officer and staff (assuming that the EO Officer meets the requirements of this section), or assign additional, non-WIA-related duties to a newly-appointed EO Officer, so long as the EO Officer is able to give top priority to, and to adequately accomplish all of, his/her responsibilities under the

nondiscrimination and equal opportunity provisions of WIA and this part.

Section 37.25 What are the responsibilities of an Equal Opportunity Officer?

This section consolidates and clarifies the responsibilities that were conferred on EO Officers under 29 CFR part 34. The source of each proposed paragraph is set forth below.

The list of responsibilities provided in this section is not intended to be exclusive. The EO Officer must also perform any additional duties that may arise from his/her administration of the recipient's nondiscrimination and equal opportunity obligations under WIA and this part.

Paragraph 37.25(a): This paragraph, which requires the EO Officer to serve as the recipient's liaison with CRC, contains one of the recipients' responsibilities listed in 29 CFR 34.22(a). Other responsibilities listed in that paragraph of the JTPA nondiscrimination regulations are discussed in appropriate sections below.

This paragraph of the Interim Final Rule signifies that the EO Officer and his/her staff will serve as the point of contact for all recipient personnel who have questions about WIA's nondiscrimination and equal opportunity program. The EO Officer will have both expertise in the subject and an ongoing relationship with CRC staff. Because of that expertise, the EO Officer may be able to answer recipient staff members' questions based on his or her own knowledge of the program.

In addition, CRC has found this requirement to be a significant component of a program with clear lines of authority and accountability, as discussed in Section 37.24 above. Having a single point of contact, at both the recipient and departmental levels, helps to ensure a consistent interpretation and application of the requirements of the nondiscrimination and equal opportunity provisions of WIA and this part. See the discussion above about Section 37.12.

Paragraphs 37.25(b)-(c): These paragraphs require the EO Officer to monitor the activities of the recipient and its recipients to ensure that the recipients' nondiscrimination and equal opportunity obligations are not being violated, and to review their written policies to ensure that those policies are nondiscriminatory. CRC's experience has demonstrated that these two responsibilities are an integral part of the most effective equal opportunity programs of recipients under JTPA.

These paragraphs are not intended to impose additional responsibilities upon recipients or their EO Officers. The paragraphs are intended merely to clarify the responsibilities that were already imposed under the JTPA program, and to emphasize that the EO Officer should take a leadership role in the operation of the recipient's nondiscrimination and equal opportunity programs.

Paragraph 37.25(d): This paragraph, which requires the EO Officer to adopt, publish, and oversee the recipient's procedures for processing discrimination complaints, contains the same requirements as 29 CFR 34.42(b).

Paragraphs 37.25(e)-(g): These paragraphs contain the responsibilities of EO Officers that are listed in 29 CFR 34.22(a). Other responsibilities listed in that paragraph of the JTPA nondiscrimination regulations belong to recipients and are listed above, in Paragraph 37.25(a), or below, in Section 37.26.

Section 37.26 What are a recipient's obligations relating to the Equal Opportunity Officer?

This section consolidates and clarifies the obligations that were conferred on recipients under 29 CFR part 34 regarding their EO Officers. The source of each paragraph is set forth below.

Paragraph 37.26(a): This paragraph, which requires recipients to publicize the EO Officer's name and contact information, contains the same requirements, in a more detailed form, as the last sentence of 29 CFR 34.22(a).

Paragraph 37.26(b): This paragraph clarifies that where a recipient provides internal and external notice about its nondiscrimination and equal opportunity programs, it must also provide information about ways to contact its EO Officer. See 29 CFR 34.23(a) and (b), and the discussion of Sections 37.29 through 37.31, 37.34, and 37.36 below.

Paragraph 37.26(c): This paragraph is based on 29 CFR 34.22(b). It has been rewritten to emphasize that, as explained in the discussion of Section 37.24 above, the success of a recipient's nondiscrimination and equal opportunity program depends heavily upon the tangible and intangible support that the recipient provides to its EO Officer, and that the recipient's top management should provide a significant percentage of that support.

Paragraph 37.26(d): This paragraph requires a recipient to ensure that the EO Officer and his/her staff are afforded the opportunity to receive the training necessary and appropriate to maintain competency. This requirement is based

on the language 29 CFR 34.22(a) which required the recipient to pay for any training that the Director required its EO Officer and staff to take. The requirement has been rewritten to emphasize that the recipient is responsible for ensuring that its EO Officer and staff maintain the level of knowledge, skills, and abilities necessary to carry out their responsibilities fully and effectively, and that the training needed to maintain this level of competency in a particular case, or for a particular recipient, may be more extensive than the training that the Director requires.

Section 37.27 What are the obligations of small recipients relating to Equal Opportunity Officers?

This section contains the same requirements as 29 CFR 34.22(c). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, the reference to other regulatory sections within part 34 has been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of this section.

Section 37.28 What are the obligations of service providers relating to Equal Opportunity Officers?

This section contains the same requirements as 29 CFR 34.22(d). As with Section 37.27, the section has been slightly rewritten, and the reference to another regulatory section within part 34 has been changed to reflect the numbering of this Interim Final Rule. Also, JTPA-related terminology (the references to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the reference to LWIA grant recipients). Again, these changes are not intended to alter the meaning of this section.

Notice and Communications

Section 37.29 What are a recipient's obligations to disseminate its equal opportunity policy?

This section contains the same requirements as 29 CFR 34.23(a)(1), with the addition of related material from 34.23(a)(7). Consistent with plain-language guidelines, the section has been organized slightly differently from 29 CFR 34.23(a)(1), and has been presented in outline form to improve its readability. Also, WIA-related terminology (the reference to "registrants") has been added where appropriate, and the reference to another regulatory section within part 34 has been changed to reflect the

numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of this section.

Section 37.30 What specific wording must the notice contain?

This section contains the same requirements as 29 CFR 34.23(a)(5). Both the introductory language and the notice have been rewritten consistent with plain-language guidelines. Also, references to JTPA have been replaced by references to WIA Title I, and the time frame within which a recipient must process a complaint has been extended to 90 days, consistent with the changes included in this Interim Final Rule. See the discussion of Section 37.76 in this preamble; see also the notice in Section 37.30 of the Interim Final Rule.

The rewritten notice states that the recipient must not discriminate on the basis of "citizenship/status as a lawfully admitted immigrant authorized to work in the United States." This change has been made to convey more accurately the definition of "discrimination on the ground of citizenship" contained in Section 37.4.

The notice contains references to a document entitled a "Notice of Final Action." As discussed in Section 37.76 of this preamble, the "Notice of Final Action" is merely a formal name for a document that a recipient was required under part 34 to issue when it finished processing a discrimination complaint. Therefore, the reference to a "Notice of Final Action" is not a substantive change to the notice required by this section.

Section 37.31 Where must the notice required by Sections 37.29 and 37.30 be published?

This section contains the same requirements as 29 CFR 34.23(a)(2) and (3). Consistent with plain-language guidelines, the section has been organized slightly differently from the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Also, the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

A reference to "electronic communications" has been added to Section 37.31(a)(2), to reflect the growth in computer technology, and the related expansion of electronic communications, that have taken place since the JTPA nondiscrimination regulations were promulgated in 1992.

Section 37.32 When must the notice required by Sections 37.29 and 37.30 be provided?

This section contains the same requirements as 29 CFR 34.23(a)(4). Consistent with plain-language guidelines, the section has been organized slightly differently from the JTPA nondiscrimination regulations. Also, the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of the paragraph.

Section 37.33 Who is responsible for meeting the notice requirement with respect to service providers?

This section contains the same requirements as 29 CFR 34.23(a)(6). JTPA-related terminology (the references to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the references to the LWIA grant recipient). Also, the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of the section.

Section 37.34 What type of notice must a recipient include in publications, broadcasts, and other communications?

This section contains the same requirements as 29 CFR 34.23(b). Differences between the section and the corresponding paragraph of the JTPA nondiscrimination regulations are described below.

Paragraph 37.34(a): Consistent with plain-language guidelines, this paragraph has been organized slightly differently from 29 CFR 34.23(b)(1), the corresponding paragraph in the JTPA nondiscrimination regulations. To reflect the growth in computer technology, and the related expansion of electronic communications, a reference to "materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper," has been added. Also, because materials that "describe programs funded under [Title I of WIA] or the requirements for participation by recipients and participants" are frequently distributed to staff and clients, as well as to the public, a reference to those two groups has been added. In addition, the acronym "TTY," which, as previously noted, is occasionally used as an alternative to the acronym "TDD," has been added. Finally, references to JTPA have been replaced by references to WIA Title I,

and the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule.

Paragraph 37.34(b): The reference to recipients "required by law or regulation to" publish or broadcast information in the news media has been deleted, in order to clarify that all recipients must include the required notice in written and electronic publications and broadcasts, regardless of whether those publications or broadcasts are required. Also, references to JTPA have been replaced by references to WIA Title I.

Paragraph 37.34(c): The language contained in 29 CFR 34.23(c) that prohibited a recipient from "us[ing] or distribut[ing] a publication of the type described in paragraph (b) of this section" has been replaced by language prohibiting a recipient from "communicating any information." As with other changes described above, this change was made to reflect the growth of electronic communication. Recipients now may reach staff, clients, or the general public through e-mail and Internet Web sites, as well as through the traditional publications on paper that were contemplated by the JTPA nondiscrimination regulations.

Additionally, references to JTPA have been replaced by references to WIA Title I, and the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule.

Section 37.35 What are a recipient's responsibilities to provide services and information in languages other than English?

The requirements in this section are authorized by the provision in Section 188 of WIA that bars recipients from discriminating on the basis of national origin. *Cf. Lau v. Nichols*, 414 U.S. 563 (1974) (school system required to provide English language instruction to students of Chinese ancestry who do not speak English under Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d, which bans discrimination based on national origin in programs or activities receiving Federal financial assistance).

Paragraph (a) of this section contains the same requirements as 29 CFR 34.23(c). Consistent with plain-language guidelines, this paragraph has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Also, references to JTPA have been replaced by references to WIA Title I, and the

references to other regulatory paragraphs within part 34 have been changed to reflect the numbering of this Interim Final Rule.

Paragraph (b) has been added in order to clarify the responsibilities of recipients to provide services and information to individuals with limited English-speaking skills where the number or proportion of such persons in the community served by the recipient does not reach the levels described in paragraph (a). In such circumstances, a recipient should make reasonable efforts to meet the particularized needs of any such individuals who seek services or information from that recipient.

The differences between paragraphs (a) and (b) of this section may be explained as follows: Paragraph (a) requires a recipient to take certain actions before individuals with limited English skills seek assistance from the recipient. Under this paragraph, the recipient must assess the scope of its program or activity and the size and concentration of the population it serves, and establish and carry out a plan to provide services and information in the language (or languages) used by a significant number or proportion of members of that population. Depending upon the combination of these factors, that plan may include printing materials in the language used by the "significant number or proportion of the population," hiring permanent staff members who are qualified interpreters in that language, or various other options.

Under paragraph (b), by contrast, a recipient is not required to take action in advance. However, when an individual with limited English skills—who does not speak a language spoken by a "significant number or proportion of the population"—seeks services or information from the recipient, the recipient should then make reasonable efforts to meet the particularized needs of that individual. Such efforts may include, but are not limited to, locating and temporarily employing a qualified interpreter who can communicate in the appropriate language.

As technology advances, various options for complying with the requirements of this section, such as computerized and/or on-line translation services, are becoming increasingly available to recipients, and the cost of these options is decreasing.

Section 37.36 What responsibilities does a recipient have to communicate information during orientations?

This section contains the same requirements as 29 CFR 34.23(d).

Consistent with plain-language guidelines, the section has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations. Also, references to JTPA have been replaced by references to WIA Title I. In addition, because recipients may provide orientations for the general public as well as for their new participants and/or employees, a reference to the general public has been added.

Data and Information Collection and Maintenance

Section 37.37 What are a recipient's responsibilities to collect and maintain data and other information?

This section contains the same requirements as 29 CFR 34.24(a), (a)(1), and (a)(2), with additional, related material included from 29 CFR 34.24(a)(3)(iii), (a)(7), and (e). Differences between this section and the corresponding paragraphs of the JTPA nondiscrimination regulations are described below.

Paragraph 37.37(a): This paragraph is identical to 29 CFR 34.24(a), except that references to JTPA have been replaced by references to WIA. This change is not intended to alter the meaning of the paragraph.

Paragraph 37.37(b)(1): The first sentence of this paragraph contains the same requirements as 29 CFR 34.24(a)(1); references to JTPA have been replaced by references to WIA. The second sentence has been added to explain that the manner in which the records and data are kept must allow the Governor and CRC to monitor the recipient's compliance by conducting statistical and other quantifiable data analyses. This provision is not a new requirement; it merely clarifies and codifies CRC's current practices. Compare 29 CFR 34.24(a)(1).

Paragraph 37.37(b)(2): Generally, this paragraph contains the same requirements as 29 CFR 34.24(a)(2). Consistent with plain-language guidelines, the paragraph has been slightly rewritten to improve its clarity. Also, references to JTPA have been replaced by references to WIA, and WIA-related terminology (the references to "registrants" and to "eligible applicants/registrants") has been added where appropriate. None of these changes is intended to alter the meaning of the paragraph.

In addition, the last line of the paragraph has been amended to permit the data and information collected under paragraph (b) of this section to be used for such "other use authorized by law." This change has been made to

clarify that this Interim Final Rule does not prohibit recipients from cooperating with Federal, State, and local agencies that, for law enforcement purposes, seek access to the data and information collected.

This section does not require recipients to obtain, or to maintain records regarding, the citizenship status of applicants or participants.

Paragraph 37.37(c): This paragraph contains the same general requirements as 29 CFR 34.24(a)(3)(iii). In response to questions that have arisen about whether recipients must provide the required log of complaints to CRC when requested to do so, the first sentence has been amended to clarify that recipients must "submit [the log] to CRC upon request." Because 29 CFR 34.24(a)(4) already required that grant applicants and recipients provide, "[a]t the discretion of the Director, . . . such information and data" that the Director considered necessary to determine whether the entity was complying with the nondiscrimination and equal opportunity requirements, this addition was made solely to clarify the regulations. Also, the paragraph has been slightly rewritten to clarify that a complaint may be based upon more than one prohibited ground, that every prohibited ground upon which a particular complaint is based must be recorded in the log, and that information in the log that could lead to the identification of a particular individual as having filed a complaint must be kept confidential.

29 CFR 34.24(a)(3)(iii) contained two identical lists of prohibited grounds upon which complaints recorded in the required log might have been filed. For conciseness, the second list of prohibited grounds has been eliminated. Finally, references to JTPA have been replaced by references to WIA Title I. Neither of these two changes is intended to alter the meaning of the paragraph.

Section 37.37(d): This paragraph is identical to 29 CFR 34.24(e). The current guidelines may be found in 62 FR No. 210, Thursday, October 30, 1997, at 58782, 58790. They may also be found at 28 CFR 42.402(e). In following these guidelines, recipients should use the combined format for collection and reporting of data.

Section 37.37(e): This paragraph is identical to 29 CFR 34.24(a)(7), except that JTPA-related terminology (the reference to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the reference to the LWIA grant recipient). This change is not intended to alter the meaning of the paragraph.

Section 37.38 What information must grant applicants and recipients provide to CRC?

This section consolidates 29 CFR 34.24(a)(3)(i) and (ii), (a)(4), (a)(5), (a)(6), and (e). Requirements regarding information that grant applicants and recipients must provide to CRC have been grouped together. Differences, if any, between the section and the corresponding paragraphs of the JTPA nondiscrimination regulations are described below.

Paragraph 37.38(a): This paragraph contains the same general requirements as 29 CFR 34.24(a)(3)(i). References to JTPA in the paragraph have been replaced by references to WIA Title I. In addition, the language requiring grant applicants and recipients to promptly notify the Director "of any administrative enforcement actions or lawsuits filed against it" has been changed to require such notification "when any" such actions or lawsuits "are filed." This change was made because of CRC's judgment that grant applicants and recipients needed guidance about the precise meaning of the requirement that the notification be made "promptly." The new language emphasizes that the grant applicant or recipient must notify the Director at the time that enforcement actions or lawsuits are filed; it also makes the paragraph more readable.

Also, language that specifies the information that the notification must contain has been added to this paragraph. The added language is based upon part of 29 CFR 34.24(a)(3)(ii); the requirements are the same as those in Section 37.38(b)(2)(i)-(iii).

Paragraph 37.38(b): This paragraph requires grant applicants, as part of their applications for assistance, and recipients, as part of a compliance review or monitoring activity conducted by the Director, to provide the Director with information about any of the following occurrences from the two years before the application, compliance review, or monitoring activity:

- (1) The names of any other Federal agencies that found the grant applicant or recipient to be in noncompliance with civil rights requirements; and
- (2) Information about any administrative enforcement actions or lawsuits that:

- (a) were filed during those two years; and
- (b) alleged discrimination on any protected ground.

This paragraph contains the same requirements as 29 CFR 34.24(a)(3)(ii). Consistent with plain-language guidelines, this paragraph has been

organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Also, references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the paragraph.

Paragraph 37.38(c): This paragraph is based upon 29 CFR 34.24(a)(4). It requires grant applicants and recipients to provide CRC with the data and information necessary to investigate complaints and conduct compliance reviews. References to JTPA have been replaced by references to WIA; and the phrase "in a timely manner" has been inserted. This phrase was added in order to emphasize the need for grant applicants and recipients to respond promptly to the Director's requests for information. Because the corresponding paragraph in part 34 already required grant applicants and recipients to provide information "at the discretion of the Director," and the scope of Director's discretion includes the discretion to determine when information must be submitted, the latter change is intended merely to clarify the meaning of the paragraph.

The corresponding paragraph in the JTPA nondiscrimination regulations specified that the requirement applied to complaints and compliance reviews "on grounds prohibited under the nondiscrimination and equal opportunity provisions of JTPA and this part, other than race/ethnicity, sex, age, and disability." Because 29 CFR 34.24(a)(2) and (3) already required grant applicants and recipients to record and submit the race/ethnicity, sex, age, and disability of certain categories of persons, the paragraph was written this way to emphasize that grant applicants and recipients were required to provide CRC with records and data about additional prohibited grounds. However, grant applicants and recipients found the paragraph confusing. The paragraph therefore has been rewritten to clarify that they may be requested to submit data and information necessary to investigate complaints and/or conduct compliance reviews on any ground prohibited by the nondiscrimination and equal opportunity provisions of WIA and this part.

Paragraph 37.38(d)-(e): These paragraphs require grant applicants and recipients to submit certain specified information at the discretion of the Director. These paragraphs are identical to 29 CFR 34.24(a)(5)-(6), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA; and

(2) In each paragraph, the phrase "in a timely manner" has been inserted. This phrase was added in order to emphasize the need for grant applicants and recipients to respond promptly to the Director's requests for information. As with Paragraph 37.38(c), because each corresponding paragraph in part 34 already required grant applicants and recipients to provide information "at the discretion of the Director," and the scope of Director's discretion includes the discretion to determine when information must be submitted, these changes clarify the meaning of these paragraphs.

Paragraph 37.38(f): This paragraph provides that where designation of persons by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used. The paragraph is identical to 29 CFR 34.24(e), and appears in Section 37.37 as well. It was repeated in this section to clarify that its provisions apply to information provided to and collected by CRC, as well as to data and information collected by grant applicants and recipients. The current guidelines may be found in 62 FR. No. 210, Thursday, October 30, 1997, at 58782, 58790. They may also be found at 28 CFR 42.402(e). In following these guidelines, recipients should use the combined format for collection and reporting of data.

Because this paragraph was applicable to 29 CFR 34.24(a)(4)-(6), its inclusion in this section does not impose additional responsibilities upon grant applicants or recipients.

Section 37.39 How long must grant applicants and recipients maintain the records required under this part?

This section contains the same requirements as 29 CFR 34.24(c), "Record retention requirements." Consistent with plain-language guidelines, this section has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. This change is not intended to alter the meaning of the section.

Section 37.40 What access to sources of information must grant applicants and recipients provide the Director?

This section generally contains the same requirements as 29 CFR 34.24(b), "Access to sources of information." References to JTPA have been replaced by references to WIA. In addition, the sentence "Information obtained

pursuant to the requirements of this part must be used only in connection with compliance and enforcement activities pertinent to the nondiscrimination and equal opportunity provisions of WIA and this part" has been deleted from paragraph (b). As with the change discussed in Section 37.37(b)(2) earlier in this preamble, this change was made to clarify that this Interim Final Rule does not prohibit recipients from cooperating with Federal, State, and local agencies that, for law enforcement purposes, seek access to the data and information collected.

Paragraph (c) contains the same requirements as the last sentence of 29 CFR 34.24(b)(2). Consistent with plain-language guidelines, it has been rewritten to clarify those requirements.

Section 37.41 What responsibilities do grant applicants, recipients, and the Department have to maintain the confidentiality of the information collected?

This section is identical to 29 CFR 34.24(d), "Confidentiality," with the following exceptions:

(a) language has been inserted to clarify that the identity of individuals who file discrimination complaints must be kept confidential; and

(b) the reference to 29 CFR 34.8 has been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this section.

Section 37.42 What are a recipient's responsibilities under this part to provide universal access to WIA Title I—financially assisted programs and activities?

This section notifies recipients of their obligation to ensure universal access for all eligible populations to the aid, benefits, services, and/or training that the recipient offers under its WIA Title I—financially assisted programs and activities. Recipients should take specific actions to reach out to all eligible populations. The rule provides a nonexclusive list of possible actions, such as targeted advertising, notification of schools or community interest groups, and consultation with community service groups, that might be used to enhance community awareness of a recipient's programs and activities.

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIA

The individual sections in this subpart are largely identical to their corresponding sections within the same

subpart in part 34. Consistent with plain-language guidelines, they have been rearranged in a more logical order, and one lengthy section has been divided into shorter sections treating narrower topics. These changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Section 37.50 To whom does this subpart apply?

This section is identical to 29 CFR 34.30, "Application," except that the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. This change is not intended to alter the meaning of this section.

Section 37.51 What are a Governor's oversight responsibilities?

This section contains the same requirements as 29 CFR 34.32(a). References to JTPA have been replaced by references to WIA Title I, and the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of this section. In addition, language has been added to clarify that the Governor must negotiate with a noncomplying recipient "where appropriate."

Section 37.52 To what extent may a Governor be liable for the actions of a recipient s/he has financially assisted under WIA Title I?

This section is identical to 29 CFR 34.32(b) and (c), with the following exceptions:

- (1) References to JTPA have been replaced by references to WIA;
- (2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule; and
- (3) To comply with the rules of grammar, the word "which" in paragraph (a)(2) has been changed to "that."

None of these changes is intended to alter the meaning of this section.

Section 37.53 What are a Governor's oversight responsibilities regarding recipients' recordkeeping?

This section is identical to 29 CFR 34.31, except that the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of this section.

Section 37.54 What are a Governor's obligations to develop and maintain a Methods of Administration?

A "Methods of Administration" (MOA) is a document that describes the actions an individual State will take to ensure that its WIA Title I-financially assisted programs, activities, and recipients are complying, and will comply, with all requirements imposed by or under this part.

This section contains the same general requirements as 29 CFR 34.33(a)–(c). References to JTPA have been replaced by references to WIA, and the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. Also, the list of sections referred to in paragraph 37.54(c)(1) has been expanded to include a description of each section. In addition, consistent with plain-language guidelines, the information in Paragraphs 37.54(c)(1) and (c)(2)(vii) has been presented in outline form to improve its readability. None of these changes is intended to alter the meaning of these paragraphs.

The reasons for additional changes in the section are described below.

(1) 29 CFR 34.33(b)(2) required that the MOA be "[u]pdated periodically as required by the Director." The parallel provision in Section 37.54, paragraph (b)(2), requires that the MOA be "[r]eviewed and updated as required in Section 37.55." The reasons for this change are described below, in the discussion in this preamble about Section 37.55.

(2) Paragraph 37.54(c) has been reserved to give the Department the opportunity to later amend the regulation to insert a reference to guidance that the Director intends to issue regarding the requirements for MOAs.

(2) Paragraph (d)(2)(i) has been added to clarify that the MOA must include a system that will permit the Governor to carry out his/her responsibility of determining whether a grant applicant seeking WIA Title I financial assistance from the State, if funded, or a training provider, if selected and/or certified as eligible, is likely to comply with its nondiscrimination and equal opportunity obligations under WIA and this part. See Section 37.51.

(3) Paragraph (d)(2)(ii) and its subparagraphs are based on 29 CFR 34.33(c)(2)(i). Language has been added to clarify that the Governor must monitor the compliance of the State's recipients by conducting statistical and other quantifiable data analyses of each recipient's records and data, and to

provide the minimum requirements for such monitoring reviews.

(4) Paragraphs (d)(2)(iii) and (d)(2)(iv) are based on 29 CFR 34.33(c)(2)(ii). They have been rewritten to reflect the requirements CRC actually imposes with regard to the types of documents listed in the two paragraphs.

(5) 29 CFR 34.33(c)(2)(iii) required the MOA to include procedures for ensuring that recipients "provide accessibility to individuals with disabilities." The corresponding paragraph, paragraph (d)(2)(v), has been changed to clarify and emphasize that the MOA must include procedures for ensuring that recipients comply with *all* of the requirements of Section 504 and this part with regard to individuals with disabilities, not just those requirements regarding accessibility.

The Department is particularly interested in receiving comments regarding this section of the Interim Final Rule.

Section 37.55 When must the Governor carry out his or her obligations with regard to the Methods of Administration?

Paragraph (a) of this section is similar to 29 CFR 34.33(d), except that it requires the Governor to develop, implement, and submit its first WIA MOA within 180 days of either the date on which this Interim Final Rule is effective, or the date on which the Department gives final approval to the State's Five-Year Plan, whichever is later. If the MOA submitted by the State under JTPA satisfies the requirements listed in Section 37.54, the Governor is required only to submit any necessary updates and/or to certify that no changes are required, as described below.

The remainder of this section is intended to improve the MOA's usefulness as a method for both States and CRC to monitor the compliance of States and their recipients; to initially evaluate discrimination complaints filed against those States and recipients; and to reduce the burden on States and recipients by eliminating unnecessary complaint investigations and/or compliance reviews.

CRC regards the MOA as a baseline instrument for monitoring the compliance of States and their recipients. By reviewing a State's MOA, CRC is able to conduct an initial evaluation of the overall systems and procedures the State has put in place, without the necessity of an extensive compliance review. Similarly, if a complaint filed with CRC alleges that a State's or recipient's nondiscrimination and/or equal opportunity procedures are

unlawful or unfair, the Director may simply compare the complaint with the MOA, to establish whether the procedures described in the complaint are the same ones described in the document submitted by the Governor. If CRC has already reviewed those procedures and determined them to be adequate, the agency may avoid a burdensome and unnecessary complaint investigation.

In order for the MOA to provide an effective method of monitoring compliance, however, it is important that CRC have access to current information regarding a State's practices. The requirements in paragraphs (b) and (c) are intended to provide that current information.

Paragraph (b) requires the Governor to "promptly update" the MOA "whenever necessary." This paragraph means that whenever, in the ordinary course of implementing the MOA, the Governor or the State decides that an amendment to the MOA is appropriate, the Governor must notify CRC of the amendment. The paragraph does not require the Governor or the State to provide CRC with an entirely new MOA under these circumstances. For example, if a State's MOA lists the members of a particular recipient's EO staff, the State is not required to redo its entire MOA when there is turnover on the staff. Rather, the Governor may notify CRC of the change simply by sending a letter listing the names of the departing and incoming staff members, and the contact information for the new staffers.

Paragraph (c) requires that every two years, the Governor must review the MOA and the way in which the State has implemented the document, and to make any necessary changes. As in paragraph (b), the Governor is required to notify CRC about those changes alone; he or she must submit an entirely new MOA to CRC only if he or she decides to replace the previous MOA completely. If, based on the review, he or she determines that no changes are necessary, he or she is required merely to certify to CRC in writing that the previous MOA remains in effect. If this certification is not required, then each time that the Director receives a complaint regarding a particular State, CRC will be forced to contact that State to ask whether its MOA has been changed. In CRC's view, such repeated inquiries would be more burdensome for States than requiring certification every two years.

The Department is particularly interested in receiving comments regarding this section of the Interim Final Rule.

Subpart D—Compliance Procedures

Generally, this subpart contains the same requirements as the corresponding subpart in part 34. The few circumstances in which substantive changes have been made are discussed in the descriptions below of individual sections.

Consistent with plain-language guidelines, the information in this subpart has been rearranged in a more logical order, and lengthy sections have been divided into shorter sections treating narrower topics. The subpart now begins with sections describing the Director's general authority, and continues with sections describing Compliance Reviews, Complaint Investigations, Determinations, and Breaches of Conciliation Agreements. The above changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Section 37.60 How does the Director evaluate compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

In general, this section contains the same requirements as 29 CFR 34.40(a). Consistent with plain-language guidelines, the section has been slightly rewritten and reorganized. Also, references to JTPA have been replaced by references to WIA. Neither of these changes is intended to alter the meaning of this section.

The sentence in 29 CFR 34.40(a) that discusses techniques used in compliance reviews has been moved to Section 37.63, to clarify that in CRC's actual practice, the techniques discussed are used only in post-approval compliance reviews.

A sentence has been added to clarify that pre- or post-approval compliance reviews may focus on one or more specific programs or activities, or one or more issues within a program or activity. The Director has the discretion to determine the scope of a particular compliance review. This addition is intended only to provide notice to grant applicants and recipients that compliance reviews may be narrow as well as broad. It does not alter the Director's authority in any way, but is intended only to clarify the meaning of this section.

Because this section now serves as an introduction to Subpart D, a sentence has also been added that notes that the Director may also investigate and resolve discrimination complaints. Again, this sentence does not alter the Director's authority in any way, and is

not intended to change the meaning of this section.

Section 37.61 Is there authority to issue subpoenas?

This section contains the same requirements as 29 CFR 34.43(g)(4). Consistent with plain-language guidelines, the section has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and presented in outline form to improve its readability. Also, references to JTPA have been replaced by references to WIA.

The section was moved to the beginning of this subpart in order to clarify that the authority to issue subpoenas extends to compliance reviews as well as complaint investigations. Again, this change does not alter the subpoena authority in any way, and is not intended to change the meaning of this section.

Compliance Reviews

Section 37.62 What are the authority and procedures for conducting pre-approval compliance reviews?

This section contains the same requirements as 29 CFR 34.40(b), "Pre-approval reviews," with additional material from 29 CFR 34.47. Differences between this section and the corresponding paragraphs and section of the JTPA nondiscrimination regulations are described below.

Paragraph 37.62(a): This paragraph describes the circumstances under which, and the bases upon which, the Director may conduct a pre-approval compliance review. The paragraph is identical to 29 CFR 34.40(b)(1), with the following exceptions:

- (1) References to JTPA have been replaced by references to WIA; and
- (2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.62(b): This paragraph outlines the Director's responsibilities when s/he determines that a grant applicant might not comply with the nondiscrimination and equal opportunity provisions of WIA and this part. Generally, this paragraph contains the same requirements as 29 CFR 34.40(b)(2) and (4); it also incorporates material from 29 CFR 34.47, which requires the Director to notify the Assistant Attorney General, as well as the grantmaking agency, where a complaint investigation or compliance review results in a finding of noncompliance. The latter requirement

is also contained within the Department of Justice's Title VI coordination regulations at 28 CFR 42.407(d).

Consistent with plain-language guidelines, this paragraph has been organized slightly differently from the corresponding paragraphs in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Because the JTPA nondiscrimination regulations listed these same responsibilities, their inclusion in this paragraph does not alter the Director's authority in any way, and is not intended to change the meaning of this paragraph.

In addition, references to JTPA have been replaced by references to WIA, and the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.62(c): This paragraph describes the Department's responsibilities where a grant applicant agrees to take remedial or corrective actions in order to receive WIA Title I financial assistance. The paragraph is identical to 29 CFR 34.40(b)(3), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA; and

(2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this paragraph.

Section 37.63 What are the authority and procedures for conducting post-approval compliance reviews?

Generally, this section contains the same requirements as 29 CFR 34.40(c), "Post-approval reviews," with one paragraph from 34.40(a). Differences between this section and the corresponding paragraphs of the JTPA nondiscrimination regulations are described below.

Paragraph 37.63(a): This paragraph outlines the circumstances under which, and the bases upon which, the Director may conduct a post-approval compliance review. The paragraph contains the same requirements as 29 CFR 34.40(c)(1). Consistent with plain-language guidelines, the list of examples of possible bases for such reviews has been slightly rewritten to clarify the examples. In addition, references to JTPA have been replaced by references to WIA. These changes are not intended to alter the meaning of the paragraph.

Paragraph 37.63(b): This paragraph outlines the procedures for initiating a post-approval compliance review. The paragraph contains the same information as 29 CFR 34.40(c)(2), and

it incorporates related material from 29 CFR 34.40(c)(4).

References to "data" that a recipient must submit before a post-approval compliance review have been changed to "information, records, and/or data." Like other changes described earlier in this Preamble, this change was made to reflect the growth in computer technology, and the related expansion of electronic communications; the change was intended to incorporate a variety of terms that might be used to refer to material stored in written, electronic, or other forms. Again, this change does not impose any additional obligations upon recipients; it was made merely to clarify the paragraph.

In addition, the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of the paragraph.

Paragraph 37.63(c): This paragraph contains material from 29 CFR 34.40(a) about techniques used in compliance reviews. As discussed in Section 37.60 of this preamble, the sentence was moved to this section to clarify that in CRC's actual practice, the techniques discussed are used only in post-approval compliance reviews. The reference to off-site analyses has been deleted because it refers to internal agency procedure that is more appropriately treated in internal agency guidelines.

Section 37.64 What procedures must the Director follow when CRC has completed a post-approval compliance review?

Generally, this section contains the same requirements as 29 CFR 34.40(c)(3). However, the requirement that the Director inform the recipient of the results of the review within 210 days of the issuance of the Notification Letter has been deleted. This change was made because CRC has decided to establish such internal agency time frames in internal agency guidelines issued by the Director, rather than through rulemaking.

In addition, consistent with plain-language guidelines, the section has been slightly rewritten to clarify it. Also, the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of the paragraph.

Section 37.65 What is the Director's authority to monitor the activities of a Governor?

This section is identical to 29 CFR 34.34(a) and (b), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA; and

(2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this section.

The corresponding paragraphs in the JTPA nondiscrimination regulations were located in Subpart C ("Governor's Responsibilities"). The section was moved to Subpart D and included with procedures about compliance reviews because it deals with the Director's authority to review documents prepared by and actions taken by a Governor under this part. This change was not intended to alter the meaning of the section.

Paragraph (c) of Section 34.34 provided that "[t]he procedures contained in [S]ubpart D" would apply to the Director's monitoring activities. Because the section has been moved to Subpart D, this paragraph has become redundant, and has been deleted.

Section 37.66 What happens if a recipient fails to submit requested data, records, and/or information, or fails to provide CRC with the required access?

This section contains the same general requirements as 29 CFR 34.41(a). The reference to the "Directorate" (the Directorate of Civil Rights, the previous title of the Civil Rights Center) has been updated to "CRC." Also, to help readers find the section of the Interim Final Rule that requires a recipient to provide CRC with access to sources of information, a reference to that section has been added. Neither of these changes is intended to alter the meaning of this section.

In addition, language has been added that specifies that recipients must submit or provide CRC with access to data, records, and/or information "in a timely manner." This addition was made to clarify that the Director may issue a Notice to Show Cause based upon a recipient's delay in supplying the records, data, information, and/or access sought by CRC.

Section 37.67 What information must a Notice to Show Cause contain?

This section is identical to 29 CFR 34.41(b), and includes the first sentence of 34.41(c). References to JTPA have been replaced by references to WIA. These changes are not intended to change the meaning of this section.

Section 37.68 How may a recipient show cause why enforcement proceedings should not be instituted?

This section is identical to the remainder of 29 CFR 34.41(c), with the following exceptions:

(1) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule; and

(2) References to the "Directorate" have been updated to "CRC."

Neither of these changes is intended to alter the meaning of this section.

Section 37.69 What happens if a recipient fails to show cause?

This section is identical to 29 CFR 34.41(d), except that the reference to a section in part 34 has been changed to reflect the numbering of this Interim Final Rule. This change is not intended to alter the meaning of this section.

Complaint Processing Procedures

Section 37.70 Who may file a complaint concerning discrimination connected with WIA Title I?

This section contains the same requirements as 29 CFR 34.43(a). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its readability. This change is not intended to alter the meaning of this section.

Section 37.71 Where may a complaint be filed?

This section contains the same requirements as 29 CFR 34.43(b). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.72 When must a complaint be filed?

This section contains the same requirements as 29 CFR 34.43(c). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.73 What information must a complaint contain?

This section contains the same requirements as 29 CFR 34.43(d), except that, for the ease of the reader, the information in the second sentence of Section 34.43(d)(4)(iii) has been placed in the next section. Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.74 Are there any forms that a complainant may use to file a complaint?

This section contains the same requirements as the second sentence of Section 34.43(d)(4)(iii). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. In addition, for the convenience of the reader, the section now explains where complainants or their representatives may obtain the forms.

Section 37.75 Is there a right of representation in the complaint process?

This section contains the same requirements as 29 CFR 34.43(e). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.76 What are the required elements of a recipient's discrimination complaint processing procedures?

Much of this section is new. It includes most of the general information contained in 29 CFR 34.42(a), which requires a recipient to adopt and publish procedures for processing discrimination complaints, and 34.42(c), which requires the recipient to provide the complainant with written notice of the resolution of the complaint. (As discussed earlier in this preamble, the material in 29 CFR 34.42(b), which charges a recipient's Equal Opportunity Officer with the responsibility for adopting and publishing these procedures, has been moved to Section 37.25(d), "What are the responsibilities of an Equal Opportunity Officer?" In addition, the information in the third sentence of Section 34.42(a) has been moved to the next section.) However, this section includes the following changes.

(1) The period for recipients to process discrimination complaints has been extended, from 60 to 90 days. See Paragraphs 37.76(a) and 37.76(b)(5). This change has been made in response to concerns raised by recipients that 60 days was not enough time in which to give a complaint appropriate attention.

(2) A list of specific elements that must be included in each recipient's complaint processing procedures has been added. See Paragraphs 37.76(b) and (c). This change has been made because a number of recipients have requested more extensive guidance about the steps that must be taken in order to process a complaint fairly and effectively. As this section notes, the list

is intended only as a baseline; recipients may include additional elements in their complaint processing procedures, as long as the procedures allow for resolution of the complaint within 90 days.

(3) The section requires recipients to adopt procedures for alternative dispute resolution (ADR). See Paragraph 37.76(c). This requirement was added in response to input from complainants and recipients who wanted a more flexible, less adversarial means of resolving discrimination complaints. (CRC itself is adopting procedures that will allow complainants and respondents to mediate complaints filed with the Director. See the discussion of Section 37.89, later in this preamble.) The section also includes procedures through which any party to an agreement reached under ADR may complain to the Director if the agreement is breached. See Paragraph 37.76(c)(2). CRC believes that complainants and recipients will be more willing to resolve complaints through ADR if the parties know that they have a means of enforcing the agreements reached through that procedure. However, in the event that the ADR process does not resolve a complaint, the section provides that a complainant may file a complaint with the Director within 30 days of the date on which the ADR process terminates. CRC is particularly interested in receiving comments about this new requirement.

(4) The section has given a formal name, "Notice of Final Action," to the written notification that a recipient must give a complainant when the recipient has finished processing a complaint. Because 29 CFR 34.42(c) already required such a written notification, this change is not a substantive change in the section.

Section 37.77 Who is responsible for developing and publishing complaint processing procedures for service providers?

Generally, this section contains the same requirements as the third sentence of 29 CFR 34.42(a). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, JTPA-related terminology (the references to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the reference to the LWIA grant recipient). Neither of these changes is intended to alter the meaning of this section.

The final sentence has been added to the section to clarify that service providers are obliged to follow the

procedures adopted and published on their behalf.

Section 37.78 Does a recipient have any special obligations in cases in which the recipient determines that it has no jurisdiction over a complaint?

This section contains the same requirements as 29 CFR 34.43(f)(5). Consistent with plain-language guidelines, the section has been slightly rewritten and presented in outline form to improve its readability. Also, references to JTPA have been replaced by references to WIA. Neither of these changes is intended to alter the meaning of this section.

Section 37.79 If, before the 90-day period has expired, a recipient issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?

This section contains the same general information as 29 CFR 34.43(f)(1). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, references to the 60-day period allowed for processing complaints under the JTPA nondiscrimination regulations have been replaced by references to the newly-extended 90-day period allowed under WIA, and the new term "Notice of Final Action" has been used to refer to the written notification that a recipient must provide a complainant when the recipient has completed its processing of a complaint.

Section 37.80 What happens if a recipient fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?

This section contains the same general information as 29 CFR 34.43(f)(3). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, references to the 60-day period allowed for processing complaints under the JTPA nondiscrimination regulations have been replaced by references to the newly-extended 90-day period allowed under WIA, and the new term "Notice of Final Action" has been used to refer to the written notification that a recipient must provide a complainant when the recipient has completed its processing of a complaint.

This section deals only with a complainant's rights if a recipient fails to issue a Notice of Final Action within the required period. Recipients should be aware that in such circumstances, the

Director has the right to take appropriate action against the recipient.

Section 37.81 Are there any circumstances under which the Director may extend the time limit for filing a complaint with him or her?

This section contains the same requirements as 29 CFR 34.43(f)(4). Consistent with plain-language guidelines, the section has been slightly rewritten and presented in outline form to improve its readability. Also, the reference to a section in part 34 has been changed to reflect the numbering of this Interim Final Rule, and a final sentence has been added to clarify and emphasize that the burden of showing good cause for extending the time limit rests with the complainant.

Section 37.82 Does the Director accept every complaint for resolution?

This section consolidates information contained in 29 CFR 34.43(g)(1), (g)(5), and (g)(6). Consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. Also, the information in Paragraph 37.82(c), explaining that CRC need not investigate a complaint about a matter that it has already decided, has been added. A "complaint about a matter that it has already decided" is a complaint about the same set of facts that CRC has already considered and decided in a previous case. This addition does not change CRC's authority in any way; it is intended only to notify complainants and respondents about CRC's practices. None of these changes is intended to alter the meaning of this section.

Section 37.83 What happens if a complaint does not contain enough information?

Generally, this section contains the same requirements as 29 CFR 34.43(g)(3). Consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. Also, the provision requiring that a complainant must submit the requested additional information within 15 days has been eliminated. This change has been made in order to provide the Director with the flexibility to require a longer or shorter response period, if appropriate in a particular case.

Section 37.84 What happens if CRC does not have jurisdiction over a complaint?

This section contains the same general information as 29 CFR 34.43(g)(5). Consistent with plain-language guidelines, the section has

been slightly rewritten to improve its clarity. Also, the reference to the "Directorate" has been updated to "CRC." Neither of these changes is intended to alter the meaning of this section.

Section 37.85 Are there any other circumstances in which the Director will send a complaint to another authority?

Generally, this section contains the same requirements as 29 CFR 34.43(g)(7) and (8), with additional material necessitated by the requirements of the WIA program. Differences between this section and the corresponding paragraphs of the JTPA nondiscrimination regulations are set forth below.

Paragraph 37.85(a): This paragraph generally contains the same requirements as 29 CFR 34.43(g)(7), except that the requirement that the Director advise the complainant and the respondent about the referral has been moved to paragraph (d). In addition, consistent with plain-language guidelines, the material has been slightly rewritten. Neither of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.85(b): This paragraph generally contains the same requirements as 29 CFR 34.43(g)(8), except that the requirement that the Director advise the complainant and the respondent about the referral has been moved to paragraph (d). In addition, consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. Also, the reference to JTPA has been replaced by a reference to WIA. None of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.85(c): The material in this paragraph is new. Under the One-Stop system established by WIA, CRC may have dual jurisdiction, with Federal grantmaking agencies other than the Department of Labor, over complaints that allege discrimination by One-Stop partners financially assisted by those other grantmaking agencies. This paragraph sets forth the general procedures that will be used to determine whether CRC will retain such complaints for processing or refer them to the other grantmaking agencies for appropriate action in accordance with the Federal grantmaking agency's applicable regulations. CRC will enter into Memoranda of Understanding (MOUs) with the appropriate Federal grantmaking agencies to ensure that complaints will be referred in accordance with these guidelines. These MOUs, which will contain more specific

referral procedures, will be published in the **Federal Register**. In addition, the Department encourages local Workforce Investment Boards, in developing the MOUs required by Section 121(c) of WIA, to include in those MOUs provisions regarding the appropriate referral of any such complaints filed at the local level.

Paragraph 37.85(d): The material in this paragraph comes from both 29 CFR 34.43(g)(7) and (8), as noted above. It has been placed in a separate paragraph to improve the readability of this section.

Section 37.86 *What must the Director do if he or she determines that a complaint will not be accepted?*

Generally, this section contains the same requirements as 29 CFR 34.43(g)(6). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the wording referring to circumstances in which a complaint "will not be investigated" has been changed to "will not be accepted." This change has been made to reflect the addition of the mediation option to CRC's complaint processing procedures: where a complainant and respondent agree to mediate the complaint, CRC will conduct an investigation only if the mediation fails, or if one of the parties breaches the agreement reached through the mediation. See Section 37.89.

Section 37.87 *What must the Director do if he or she determines that a complaint will be accepted?*

Generally, this section contains the same requirements as 29 CFR 34.43(g)(1)(i) and (ii). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the following changes have been made:

(1) The reference to the "Directorate" has been changed to the "Director," because it is he or she who has the authority to determine whether a complaint will be accepted.

(2) The Director is now required to notify the grantmaking agency, as well as the complainant and the respondent, when a complaint is accepted. This requirement has been added because CRC's experience has shown that when grantmaking agencies are aware of discrimination complaints, those complaints are more likely to be resolved successfully, and recipients are more likely to comply with their obligations regarding nondiscrimination and equal opportunity.

(3) The Director is also required to provide notice about any issues over which he or she has not accepted

jurisdiction, and the reasons why those issues have been rejected. This requirement has been added in order to provide complainants and respondents with reasonable notice of the Director's determinations about the entire complaint.

Section 37.88 *Who may contact CRC for information about a complaint?*

Generally, this section contains the same requirements as 29 CFR 34.43(g)(2). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, a second sentence has been added in order to clarify that the Director has the authority to determine what information about a complaint should be released.

Section 37.89 *May the Director offer the parties to a complaint the option of mediation?*

This section is new. Like the provisions allowing recipients to include provisions for ADR in their complaint processing procedures, this option was added in response to concerns of complainants and recipients who wanted a more flexible, less adversarial means of resolving discrimination complaints. CRC is particularly interested in receiving comments concerning this section.

Determinations

Section 37.90 *If a complaint is investigated, what must the Director do when the investigation is completed?*

This section contains information from 29 CFR 34.43(g)(9), (9)(i), and (9)(ii). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly, and presented in outline form to improve its readability. Also, the Director is now required to notify the grantmaking agency about his or her determination whether the respondent has violated the nondiscrimination and equal opportunity provisions. This requirement was added for the reasons listed in the discussion of Section 37.87.

Section 37.91 *What notice must the Director issue if he or she finds reasonable cause to believe that a violation has taken place?*

This section contains information from 29 CFR 34.43(g)(9)(i). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly to improve its clarity. Also, references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of this section.

Section 37.92 *What notice must the Director issue if he or she finds no reasonable cause to believe that a violation has taken place?*

This section contains information from 29 CFR 34.43(g)(9)(ii). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

Section 37.93 *What happens if the Director finds that a violation has taken place, and the recipient fails or refuses to take the corrective action listed in the Initial Determination?*

This section contains information from 29 CFR 34.46(a)(1). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

Section 37.94 *What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIA or this part?*

This section contains the same requirements as 29 CFR 34.44. The material has been slightly rewritten to improve its clarity. Also, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule, and references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of the section.

Section 37.95 *What procedures apply if the Director finds that a recipient has violated the nondiscrimination and equal opportunity provisions of WIA or this part?*

This section contains the same requirements as 29 CFR 34.45 (a) and (b). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly to improve its clarity. Some of the material has been presented in outline form. Also, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule, and references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of the section.

The section makes reference to a written Conciliation Agreement. CRC, not the recipient or the Governor, prepares the initial draft of this

document. See also the discussion in this preamble about Section 37.97.

Section 37.96 What are the required elements of a written assurance?

This section contains the same requirements as 29 CFR 34.45(c)(1). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

Section 37.97 What are the required elements of a Conciliation Agreement?

Generally, this section contains the same requirements as 29 CFR 34.45(c)(2). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

As noted above in the discussion of Section 37.95, CRC, not the recipient or the Governor, prepares the initial draft of the Conciliation Agreement.

Section 37.98 When will the Director conclude that compliance cannot be secured by voluntary means?

This section contains the same requirements as 29 CFR 34.46(a). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of the section.

Section 37.99 If the Director concludes that compliance cannot be secured by voluntary means, what actions must he or she take?

This section includes information from 29 CFR 34.46(b) (1), (2), and (3). The subparagraphs from Paragraph 34.46(b)(1) that describe the required elements of a Final Determination have been moved to the next section. Also, the material in this section has been slightly rewritten to improve its clarity. Neither of these changes is intended to alter the meaning of this section.

Section 37.100 What information must a Final Determination contain?

This section contains the same requirements as 29 CFR 34.46(a) and (b). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly to improve its clarity, and the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. In addition, in Paragraph 37.100(f)(1),

language has been added to clarify that the Department may withhold a grant applicant's or recipient's WIA Title I-funded Federal financial assistance in whole or in part. This change does not expand the Department's authority; it has been added solely to provide recipients with notice of the Department's actual practice.

Section 37.101 Whom must the Director notify of a finding of noncompliance?

Generally, this section contains the same requirements as 29 CFR 34.47. Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, language has been added to clarify that the Director will notify the grant applicant or recipient, as well as the grantmaking agency and the Assistant Attorney General. This change has been made to reflect the Director's actual practice and the requirements of the preceding sections.

Breaches of Conciliation Agreements

Section 37.102 What happens if a grant applicant or recipient breaches a Conciliation Agreement?

This section contains the same requirements as 29 CFR 34.48(b). The phrase "through the Governor or by other means" has been eliminated as redundant. This change is not intended to alter the meaning of this section.

Section 37.103 Whom must the Director notify about a breach of a Conciliation Agreement?

This section contains the same requirements as 29 CFR 34.48(c). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the Director is now required to notify the grantmaking agency, for the reasons listed in the discussion of Section 37.87.

Section 37.104 What information must a Notification of Breach of Conciliation Agreement contain?

This section contains the same requirements as 29 CFR 34.48(d). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

Section 37.105 Whom must the Director notify if enforcement action under a Notification of Breach of Conciliation Agreement is commenced?

This section contains the same requirements as 29 CFR 34.48(e). Consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. These changes are not intended to alter the meaning of the section.

Subpart E—Federal Procedures For Effecting Compliance

Section 37.110 What enforcement procedures does the Department follow to effect compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

This section contains the same requirements as 29 CFR 34.50. Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to JTPA have been changed to refer to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

Section 37.111 What hearing procedures does the Department follow?

This section contains the same requirements as 29 CFR 34.51. Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to another regulatory section within part 34 have been changed to reflect the numbering of this Interim Final Rule, and the current address of the Office of Administrative Law Judges has been provided for the convenience of the reader. None of these changes is intended to alter the meaning of the section.

Section 37.112 What procedures for initial and final decisions does the Department follow?

This section contains the same requirements as 29 CFR 34.52(a) and (b). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to JTPA have been changed to refer to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

Section 37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?

Generally, this section contains the same requirements as 29 CFR 34.53(a). Consistent with plain-language guidelines, the material has been slightly re-punctuated to improve its clarity. Also, references to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

In addition, language has been added to the section to clarify that the Department may withhold a grant applicant's or recipient's WIA Title I financial assistance in whole or in part, as explained in the discussion of Section 37.100.

Section 37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?

This section is identical to 29 CFR 34.53(b), except that the reference to JTPA has been changed to refer to WIA. This change is not intended to alter the meaning of the section.

Section 37.115 What procedures does the Department follow for post-termination proceedings?

This section contains the same general requirements as 29 CFR 34.52(c). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to JTPA have been changed to refer to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

In addition, the sentence providing that "[r]estoration to eligibility may be conditioned upon the grant applicant or recipient entering into a consent decree" has been deleted, in order to clarify that the grant applicant or recipient must actually bring itself into compliance with the nondiscrimination and equal opportunity provisions of Section 188 and this part before being restored to eligibility for WIA Title I financial assistance.

IV. Regulatory Procedures

Executive Order 12866

The Department of Labor has determined that this Interim Final Rule

is not a "significant regulatory action" under Executive Order 12866 because this action will not: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

This Interim Final Rule does not substantially change the existing obligation of recipients or entities operating Federally-assisted programs or activities to apply a policy of nondiscrimination and equal opportunity in employment or services. The Department of Labor certifies that the proposed rule will not have a significant economic impact on substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

Paperwork Reduction Act

Certain sections of this Interim Final Rule, including §§ 37.8, 37.9, 37.20, 37.29, 37.30, 37.31, 37.34, 37.37, 37.38, 37.39, 37.54, 37.73, and 37.74, contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Labor has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. Comments must be submitted by December 13, 1999 to: Desk Officer for the Department of Labor, Civil Rights Center, Office of Management and Budget, 725 17th Street, NW (Rm 10235), Washington, DC 20503. Affected

parties do not have to comply with the information collection requirements in this document until DOL publishes in the **Federal Register** the control numbers assigned by OMB. Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

Request for Comments

This publication implements the nondiscrimination and equal opportunity provisions of Section 188 of WIA, and requests comments about this Interim Final Rule from State and local governments; public interest groups; current and potential grant applicants for and recipients of Federal financial assistance (particularly current and potential providers of training services); current and potential beneficiaries of such Federal financial assistance; other Federal agencies; and the public.

Clarity Of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

Absence of Notice of Proposed Rulemaking

After full and fair consideration over the months since passage of the Workforce Investment Act of 1998, the Department of Labor has determined that it is in the public interest not to publish a Notice of Proposed Rulemaking (NPRM) regarding implementation of Section 188 of the Act, but instead to publish this Interim Final Rule. This determination is based upon the schedule for implementation of WIA.

The WIA program is designed eventually to supersede its predecessor program, the Job Training Partnership Act (JTPA) program, which sunsets on

July 1, 2000. The regulations implementing JTPA therefore will remain in effect until that date. However, States have the option of implementing WIA Title I financially assisted programs and activities as early as July 1, 1999; indeed, the Department is encouraging such early implementation.

CRC is issuing the regulations implementing WIA's nondiscrimination and equal opportunity provisions as an Interim Final Rule so that those regulations will be in place as soon as possible for early-implementation States and their recipients. Generally, the Rule tracks the nondiscrimination and equal opportunity regulations in place under JTPA; the Rule does, however, contain a number of new or revised provisions that will require these States and their recipients to take action before the date on which they implement WIA, or as soon after that date as possible.

For example, each application for financial assistance under either JTPA or WIA Title I must contain assurances regarding the grant applicant's compliance with various Federal laws and regulations concerning nondiscrimination and equal opportunity. For the WIA program, the required assurance has been rewritten in plain language. The new language appears in Section 37.20 of the Interim Final Rule. Publication of the regulations as an immediately-effective Interim Final Rule will eliminate any possible ambiguity regarding the language that grant applicants in early-implementation states must include in their applications for WIA Title I financial assistance.

Similarly, Section 37.76 of the Rule contains a list of elements that a recipient's discrimination complaint processing procedures must include. Although the JTPA nondiscrimination regulations contained a general requirement that recipients adopt and publish complaint processing procedures, the new list of requisite elements for those procedures is more detailed, and recipients in early-implementing states will need to know as soon as possible the actual requirements for those procedures in order to ensure that their complaint processing procedures comply with the requirements of the WIA program. Publishing an Interim Final Rule, rather than an NPRM, will assist States and recipients by providing a firm list of requirements that will be in place on or soon after the date of implementation, rather than a proposed list that might change before that date.

Furthermore, the Interim Final Rule sets a comment period to elicit any concerns raised by the rule. The comment period takes place before the final rule will be implemented, so that CRC may receive comments in time to consider them in preparing the final rule for publication.

For the above-listed reasons, the Department of Labor finds that publishing an NPRM, and providing a period for notice and comment, before implementing this Interim Final Rule would be contrary to the public interest, and therefore constitute good cause under 5 U.S.C. 553(b)(B) for publishing these regulations as an Interim Final Rule. Furthermore, the Department finds that the above-listed reasons also constitute good cause under 5 U.S.C. 553(d)(3) for waiving the customary requirement to delay the effective date of a regulation for 30 days following its publication. Therefore, this Interim Final Rule is effective immediately upon publication.

List of Subjects in 29 CFR Part 37

Administrative practice and procedure, Discrimination, Civil rights, Equal education opportunity, Equal employment opportunity, Grant programs—Labor, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

Signed at Washington, D.C. this 22nd day of October 1999.

Alexis M. Herman,
Secretary of Labor.

Accordingly, title 29, subtitle A of the Code of Federal Regulations is amended by adding part 37 to read as follows:

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

Subpart A—General Provisions

Sec.

- 37.1 What is the purpose of this part?
- 37.2 To whom does this part apply, and what is the scope of this part?
- 37.3 How does this part affect a recipient's other obligations?
- 37.4 What definitions apply to this part?
- 37.5 What forms of discrimination are prohibited by this part?
- 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?
- 37.7 What specific discriminatory actions based on disability are prohibited by this part?
- 37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?

- 37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?
- 37.10 To what extent are a recipient's employment practices covered by this part?
- 37.11 To what extent are intimidation and retaliation prohibited by this part?
- 37.12 What Department of Labor office is responsible for administering this part?
- 37.13 Who is responsible for providing interpretations of this part?
- 37.14 Under what circumstances may the Secretary delegate the responsibilities of this part?
- 37.15 What are the Director's responsibilities to coordinate with other civil rights agencies?
- 37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

Assurances

- 37.20 What is a grant applicant's obligation to provide a written assurance?
- 37.21 How long will the recipient's obligation under the assurance last, and how broad is the obligation?
- 37.22 How must covenants be used in connection with this part?

Equal Opportunity Officers

- 37.23 Who must designate an Equal Opportunity Officer?
- 37.24 Who is eligible to serve as an Equal Opportunity Officer?
- 37.25 What are the responsibilities of an Equal Opportunity Officer?
- 37.26 What are a recipient's obligations relating to the Equal Opportunity Officer?
- 37.27 What are the obligations of small recipients regarding Equal Opportunity Officers?
- 37.28 What are the obligations of service providers regarding Equal Opportunity Officers?

Notice and Communication

- 37.29 What are a recipient's obligations to disseminate its equal opportunity policy?
- 37.30 What specific wording must the notice contain?
- 37.31 Where must the notice required by §§ 37.29 and 37.30 be published?
- 37.32 When must the notice be provided?
- 37.33 Who is responsible for meeting the notice requirement with respect to service providers?
- 37.34 What type of notice must a recipient include in publications, broadcasts, and other communications?
- 37.35 What are a recipient's responsibilities to provide services and information in languages other than English?
- 37.36 What responsibilities does a recipient have to communicate information during orientations?

Data and Information Collection and Maintenance

- 37.37 What are a recipient's responsibilities to collect and maintain data and other information?
- 37.38 What information must grant applicants and recipients provide to CRC?
- 37.39 How long must grant applicants and recipients maintain the records required under this part?
- 37.40 What access to sources of information must grant applicants and recipients provide the Director?
- 37.41 What responsibilities do grant applicants, recipients, and the Department have to maintain the confidentiality of the information collected?
- 37.42 What are a recipient's responsibilities under this part to provide universal access to WIA Title I-financially assisted programs and activities?

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIA

- 37.50 To whom does this subpart apply?
- 37.51 What are a Governor's oversight responsibilities?
- 37.52 To what extent may a Governor be liable for the actions of a recipient he or she has financially assisted under WIA Title I?
- 37.53 What are a Governor's oversight responsibilities regarding recipients' recordkeeping?
- 37.54 What are a Governor's obligations to develop and maintain a Methods of Administration?
- 37.55 When must the Governor carry out his or her obligations with regard to the Methods of Administration?

Subpart D—Compliance Procedures

- 37.60 How does the Director evaluate compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?
- 37.61 Is there authority to issue subpoenas?

Compliance Reviews

- 37.62 What are the authority and procedures for conducting pre-approval compliance reviews?
- 37.63 What are the authority and procedures for conducting post-approval compliance reviews?
- 37.64 What procedures must the Director follow when CRC has completed a post-approval compliance review?
- 37.65 What is the Director's authority to monitor the activities of a Governor?
- 37.66 What happens if a recipient fails to submit requested data, records, and/or information, or fails to provide CRC with the required access?
- 37.67 What information must a Notice to Show Cause contain?
- 37.68 How may a recipient show cause why enforcement proceedings should not be instituted?

- 37.69 What happens if a recipient fails to show cause?

Complaint Processing Procedures

- 37.70 Who may file a complaint concerning discrimination connected with WIA Title I?
- 37.71 Where may a complaint be filed?
- 37.72 When must a complaint be filed?
- 37.73 What information must a complaint contain?
- 37.74 Are there any forms that a complainant may use to file a complaint?
- 37.75 Is there a right of representation in the complaint process?
- 37.76 What are the required elements of a recipient's discrimination complaint processing procedures?
- 37.77 Who is responsible for developing and publishing complaint processing procedures for service providers?
- 37.78 Does a recipient have any special obligations in cases in which the recipient determines that it has no jurisdiction over a complaint?
- 37.79 If, before the 90-day period has expired, a recipient issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?
- 37.80 What happens if a recipient fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?
- 37.81 Are there any circumstances under which the Director may extend the time limit for filing a complaint with him or her?
- 37.82 Does the Director accept every complaint for resolution?
- 37.83 What happens if a complaint does not contain enough information?
- 37.84 What happens if CRC does not have jurisdiction over a complaint?
- 37.85 Are there any other circumstances in which the Director will send a complaint to another authority?
- 37.86 What must the Director do if he or she determines that a complaint will not be accepted?
- 37.87 What must the Director do if he or she determines that a complaint will be accepted?
- 37.88 Who may contact CRC about a complaint?
- 37.89 May the Director offer the parties to a complaint the option of mediation?

Determinations

- 37.90 If a complaint is investigated, what must the Director do when the investigation is completed?
- 37.91 What notice must the Director issue if he or she finds reasonable cause to believe that a violation has taken place?
- 37.92 What notice must the Director issue if he or she finds no reasonable cause to believe that a violation has taken place?
- 37.93 What happens if the Director finds that a violation has taken place, and the recipient fails or refuses to take the corrective action listed in the Initial Determination?

- 37.94 What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIA or this part?
- 37.95 What procedures apply if the Director finds that a recipient has violated the nondiscrimination and equal opportunity provisions of WIA or this part?
- 37.96 What are the required elements of a written assurance?
- 37.97 What are the required elements of a Conciliation Agreement?
- 37.98 What are the circumstances under which the Director will conclude that compliance cannot be secured by voluntary means?
- 37.99 If the Director concludes that compliance cannot be secured by voluntary means, what actions must he or she take?
- 37.100 What information must a Final Determination contain?
- 37.101 Whom must the Director notify of a finding of noncompliance?

Breaches of Conciliation Agreements

- 37.102 What happens if a grant applicant or recipient breaches a Conciliation Agreement?
- 37.103 Whom must the Director notify about a breach of a Conciliation Agreement?
- 37.104 What information must a Notification of Breach of Conciliation Agreement contain?
- 37.105 Whom must the Director notify if enforcement action under a Notification of Breach of Conciliation Agreement is commenced?

Subpart E—Federal Procedures For Effecting Compliance

- 37.110 What enforcement procedures does the Department follow to effect compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?
- 37.111 What hearing procedures does the Department follow?
- 37.112 What procedures for initial and final decisions does the Department follow?
- 37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?
- 37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?
- 37.115 What procedures does the Department follow for post-termination proceedings?

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42

U.S.C. 6101; and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681.

Subpart A—General Provisions

§ 37.1 What is the purpose of this part?

The purpose of this part is to implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), which are contained in section 188 of WIA. Section 188 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. This part clarifies the application of the nondiscrimination and equal opportunity provisions of WIA and provides uniform procedures for implementing them.

§ 37.2 To whom does this part apply, and what is the scope of this part?

(a) This part applies to:

- (1) Any recipient, as defined in § 37.4;
- (2) Programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and
- (3) The employment practices of a recipient and/or One-Stop partner, as provided in § 37.10.

(b) *Limitation of Application.* This part does not apply to:

- (1) Programs or activities that are financially assisted by the Department exclusively under laws other than Title I of WIA, and that are not part of the One-Stop delivery system (including programs or activities implemented under, authorized by, and/or financially assisted by the Department under, JTPA);
- (2) Contracts of insurance or guaranty;
- (3) The ultimate beneficiary to this program of Federal financial assistance;
- (4) Federal procurement contracts, with the exception of contracts to operate or provide services to Job Corps Centers; and
- (5) Federally-operated Job Corps Centers. The operating Department is responsible for enforcing the nondiscrimination and equal opportunity laws to which such Centers are subject.

§ 37.3 How does this part affect a recipient's other obligations?

(a) A recipient's compliance with this part will satisfy any obligation of the recipient to comply with 29 CFR part 31, the Department of Labor's

regulations implementing Title VI of the Civil Rights Act of 1964, as amended (Title VI), and with Subparts A, D and E of 29 CFR part 32, the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504).

(b) 29 CFR part 32, Subparts B and C and Appendix A, the Department's regulations which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, are hereby incorporated into this part by reference. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(c) Recipients that are also public entities or public accommodations, as defined by Titles II and III of the Americans with Disabilities Act of 1990 (ADA), should be aware of obligations imposed by those titles.

(d) Similarly, recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that title.

(e) Compliance with this part does not affect, in any way, any additional obligation that a recipient may have to comply with the following laws and their implementing regulations:

- (1) Executive Order 11246, as amended;
- (2) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793 and 794);
- (3) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);
- (4) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);
- (5) Titles VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.* and 2000e *et seq.*);
- (6) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101);
- (7) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);
- (8) Title IX of the Education Amendments of 1972, as amended (Title IX) (20 U.S.C. 1681);
- (9) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*); and
- (10) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b).

(f) This rule does not preempt consistent State and local requirements.

§ 37.4 What definitions apply to this part?

As used in this part, the term:

Administrative Law Judge means a person appointed as provided in 5 U.S.C. 3105 and 5 CFR 930.203, and qualified under 5 U.S.C. 557, to preside at hearings held under the nondiscrimination and equal opportunity provisions of WIA and this part.

Aid, benefits, services, or training means WIA Title I—financially assisted services, financial or other aid, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. "Aid, benefits, services, or training" includes, but is not limited to:

- (1) Core and intensive services;
- (2) Education or training;
- (3) Health, welfare, housing, social service, rehabilitation, or other supportive services;
- (4) Work opportunities; and
- (5) Cash, loans, or other financial assistance to individuals.

As used in this part, the term includes any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIA.

Applicant means an individual who is interested in being considered for WIA Title I—financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient. See also the definitions of "application for benefits," "eligible applicant/registrant," "participant," "participation," and "recipient" in this section.

Applicant for employment means a person or persons who make(s) application for employment with a recipient of Federal financial assistance under WIA Title I.

Application for assistance means the process by which required documentation is provided to the Governor, recipient, or Department before and as a condition of receiving WIA Title I financial assistance (including both new and continuing assistance).

Application for benefits means the process by which information, including but not limited to a completed application form, is provided by applicants or eligible applicants before and as a condition of receiving WIA Title I—financially assisted aid, benefits, services, or training from a recipient.

Assistant Attorney General means the Assistant Attorney General, Civil Rights

Division, United States Department of Justice.

Assistant Secretary means the Assistant Secretary for Administration and Management, United States Department of Labor.

Auxiliary aids or services includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Beneficiary means the individual or individuals intended by Congress to receive aid, benefits, services, or training from a recipient.

Citizenship See “Discrimination on the ground of citizenship” in this section.

CRC means the Civil Rights Center, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

Department means the U.S. Department of Labor (DOL), including its agencies and organizational units.

Departmental grantmaking agency means a grantmaking agency within the U.S. Department of Labor.

Director means the Director, Civil Rights Center (CRC), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or a designee authorized to act for the Director.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary,

hematologic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase “physical or mental impairment” does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by the recipient as being such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the recipient as having such an impairment.

Discrimination on the ground of citizenship means a denial of participation in programs or activities financially assisted in whole or in part under Title I of WIA to individuals on the basis of their status as citizens or nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, or other immigrants authorized by the Attorney General to work in the United States.

Eligible applicant/registrant means an individual who has been determined eligible to participate in one or more WIA Title I—financially assisted programs or activities.

Employment practices means a recipient’s practices related to

employment, including but not limited to:

(1) Recruitment or recruitment advertising;

(2) Selection, placement, layoff or termination of employees;

(3) Upgrading, promotion, demotion or transfer of employees;

(4) Training, including employment-related training;

(5) Participation in upward mobility programs;

(6) Deciding rates of pay or other forms of compensation;

(7) Use of facilities; or

(8) Deciding other terms, conditions, benefits and/or privileges of employment.

Employment-related training means training that allows or enables an individual to obtain employment.

Entity means any person, corporation, partnership, joint venture, sole proprietorship, unincorporated association, consortium, Indian tribe or tribal organization, Native Hawaiian organization, and/or entity authorized by State or local law; any State or local government; and/or any agency, instrumentality or subdivision of such a government.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located. The phrase “real or personal property” in the preceding sentence includes indoor constructs that may or may not be permanently attached to a building or structure. Such constructs include, but are not limited to, office cubicles, computer kiosks, and similar constructs.

Federal grantmaking agency means a Federal agency that provides financial assistance under any Federal statute.

Financial assistance means any of the following:

(1) Any grant, subgrant, loan, or advance of funds, including funds extended to any entity for payment to or on behalf of participants admitted to that entity for training, or extended directly to such participants for payment to that entity;

(2) Provision of the services of grantmaking agency personnel, or of other personnel at the grantmaking agency’s expense;

(3) A grant or donation of real or personal property or any interest in or use of such property, including:

(a) Transfers or leases of property for less than fair market value or for reduced consideration;

(b) Proceeds from a subsequent sale, transfer, or lease of such property, if the grantmaking agency's share of the fair market value of the property is not returned to the grantmaking agency; and

(c) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:

(i) Without consideration,

(ii) At a nominal consideration, or

(iii) At a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;

(4) Waiver of charges that would normally be made for the furnishing of services by the grantmaking agency; and

(5) Any other agreement, arrangement, contract or subcontract (other than a procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under the statute or policy that authorizes assistance by the grantmaking agency.

Financial assistance under Title I of WIA means any of the following, when authorized or extended under WIA Title I:

(1) Any grant, subgrant, loan, or advance of Federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that entity for training, or extended directly to such participants for payment to that entity;

(2) Provision of the services of Federal personnel, or of other personnel at Federal expense;

(3) A grant or donation of Federal real or personal property or any interest in or use of such property, including:

(a) Transfers or leases of property for less than fair market value or for reduced consideration;

(b) Proceeds from a subsequent sale, transfer, or lease of such property, if the Federal share of the fair market value of the property is not returned to the Federal Government; and

(c) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:

(i) Without consideration,

(ii) At a nominal consideration, or

(iii) At a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;

(4) Waiver of charges that would normally be made for the furnishing of Government services; and

(5) Any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIA Title I.

Fundamental alteration means:

(1) A change in the essential nature of a program or activity as defined in this part, including but not limited to an aid, service, benefit, or training; or

(2) A cost that a recipient can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in such a burden include:

(a) The nature and net cost of the modification needed, taking into consideration the availability of tax credits and deductions, and/or outside financial assistance, for the modification;

(b) The overall financial resources of the facility or facilities involved in the provision of the modification, including:

(i) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and

(ii) The effect the modification would have on the expenses and resources of the facility or facilities;

(c) The overall financial resources of the recipient, including:

(i) The overall size of the recipient;

(ii) The number of persons aided, benefited, served, trained, or employed by the recipient; and

(iii) The number, type and location of the recipient's facilities;

(d) The type of operation or operations of the recipient, including:

(i) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and

(ii) Where the modification sought is employment-related, the composition, structure and functions of the recipient's workforce; and

(e) The impact of the modification upon the operation of the facility or facilities, including:

(i) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and

(ii) The impact on the facility's ability to carry out its mission.

Governor means the chief elected official of any State or his or her designee.

Grant applicant means an entity that submits the required documentation to

the Governor, recipient, or Department, before and as a condition of receiving financial assistance under Title I of WIA.

Grantmaking agency means an entity that provides Federal financial assistance.

Guideline means written informational material supplementing an agency's regulations and provided to grant applicants and recipients to provide program-specific interpretations of their responsibilities under the regulations.

Illegal use of drugs means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, as amended (21 U.S.C. 812). "Illegal use of drugs" does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability, as defined in this section.

(1) The term "individual with a disability" does not include an individual on the basis of:

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling,

kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

(2) The term "individual with a disability" also does not include an individual who is currently engaging in the illegal use of drugs, when a recipient acts on the basis of such use. This limitation does not exclude as an individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use, but is not engaging in such use, except that it is not a violation of the nondiscrimination and equal opportunity provisions of WIA or this part for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1)(i) or (1)(ii) of this definition is no longer engaging in the illegal use of drugs.

(2) With regard to employment, the term "individual with a disability" does not include any individual who:

(i) Is an alcoholic;

(A) Whose current use of alcohol prevents such individual from performing the duties of the job in question, or

(B) Whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others; or

(ii) Has a currently contagious disease or infection, if:

(A) That disease or infection prevents him or her from performing the duties of the job in question, or

(B) His or her employment, because of that disease or infection, would constitute a direct threat to the health and safety of others.

Labor market area means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area must be identified in accordance with either criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas, or similar criteria established by a Governor.

LWIA (Local Workforce Investment Area) grant recipient means the entity that receives WIA Title I financial assistance for a Local Workforce Investment Area directly from the Governor and disburses those funds for workforce investment activities.

Methods of Administration means the written document and supporting documentation developed under § 37.54.

National Programs means:

(1) Job Corps; and

(2) Programs receiving Federal funds under Title I, Subtitle D of WIA directly from the Department. Such programs include, but are not limited to, the Migrant and Seasonal Workers Programs, Native American Programs, and Veterans' Workforce Investment programs.

Noncompliance means a failure of a grant applicant or recipient to comply with any of the applicable requirements of the nondiscrimination and equal opportunity provisions of WIA or this part.

On-the-Job Training (OJT) means training by an employer that is provided to a paid participant while the participant is engaged in productive work that:

(1) Provides knowledge or skills essential to the full and adequate performance of the job;

(2) Provides reimbursement to the employer of up to 50 percent of the

wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and

(3) Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

Participant means an individual who has been determined to be eligible to participate in, and who is receiving aid, benefits, services or training under, a program or activity funded in whole or in part under Title I of WIA.

"Participant" includes, but is not limited to, applicants receiving any service(s) under state Employment Service programs, and claimants receiving any service(s) under state Unemployment Insurance programs.

Participation is considered to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized aid, benefits, services, or training provided under Title I of WIA.

Parties to a hearing means the Department and the grant applicant(s), recipient(s), or Governor.

Population eligible to be served means the total population of adults and eligible youth who reside within the labor market area that is served by a particular recipient, and who are eligible to seek WIA Title I-financially assisted aid, benefits, services or training from that recipient. See the definition of "labor market area" in this section.

Program or activity: See "WIA Title I-financially assisted program or activity" in this section.

Prohibited ground means any basis upon which it is illegal to discriminate under the nondiscrimination and equal opportunity provisions of WIA or this part, *i.e.*, race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity.

Public entity means:

(1) Any State or local government; and

(2) Any department, agency, special purpose district, workforce investment board, or other instrumentality of a State or States or local government.

Qualified individual with a disability means:

(1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question;

(2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals with limited English skills. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary.

Reasonable accommodation. (1) The term "reasonable accommodation" means:

(i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or

(ii) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to:

(A) The environment where work is performed or aid, benefits, services, or training are given; or

(B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or

(iii) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

(2) Reasonable accommodation includes, but is not limited to:

(i) Making existing facilities used by applicants, registrants, eligible applicants/registrants, participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and

(ii) Restructuring of a job or a service, or of the way in which aid, benefits, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar

accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Recipient means any entity to which financial assistance under WIA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him or her under WIA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. "Recipient" includes, but is not limited to:

- (1) State-level agencies that administer, or are financed in whole or in part with, WIA Title I funds;
- (2) State Employment Security Agencies;
- (3) State and local Workforce Investment Boards;
- (4) LWIA grant recipients;
- (5) One-Stop operators;
- (6) Service providers, including eligible training providers;
- (7) On-the-Job Training (OJT) employers;
- (8) Job Corps contractors and center operators, excluding the operators of federally-operated Job Corps centers;
- (9) Job Corps national training contractors;
- (10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- (11) Placement agencies, including Job Corps contractors that perform these functions; and
- (12) Other National Program recipients.

In addition, for purposes of this part, One-Stop partners, as defined in section 121(b) of WIA, are treated as "recipients," and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system.

Registrant means the same as "applicant" for purposes of this part. See also the definitions of "application for benefits," "eligible applicant/registrant," "participant,"

"participation," and "recipient" in this section.

Respondent means a grant applicant or recipient (including a Governor) against which a complaint has been filed under the nondiscrimination and equal opportunity provisions of WIA or this part.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Sectarian activities means religious worship or ceremony, or sectarian instruction.

Section 504 means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, which forbids discrimination against qualified individuals with disabilities in federally-financed and conducted programs and activities.

Service provider means:

(1) Any operator of, or provider of aid, benefits, services, or training to:

(a) Any WIA Title I—funded program or activity that receives financial assistance from or through any State or LWIA grant recipient; or

(b) Any participant through that participant's Individual Training Account (ITA); or

(2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

Small recipient means a recipient who:

(a) Serves a total of fewer than 15 beneficiaries during the entire grant year, and

(b) Employs fewer than 15 employees on any given day during the grant year.

Solicitor means the Solicitor of Labor, U.S. Department of Labor, or his or her designee.

State means the individual states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

State Employment Security Agency (SESA) means the State agency that, under the State Administrator, contains both State agencies with responsibility for administering programs authorized under the Wagner-Peyser Act, and unemployment insurance programs authorized under Title III of the Social Security Act.

State Programs means programs financially assisted in whole or in part under Title I of WIA in which either:

(1) The Governor and/or State receives and disburses the grant to or through LWIA grant recipients; or

(2) The Governor retains the grant funds and operates the programs, either directly or through a State agency.

"State programs" also includes State Employment Security Agencies, State Employment Service agencies, and/or State unemployment compensation agencies.

Supportive services means services, such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in WIA Title I-financially assisted programs and activities, as consistent with the provisions of WIA.

Terminee means a participant whose participation in the program terminates, voluntarily or involuntarily, during the applicable program year.

Title VI means Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, as amended, which forbids recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin.

Transferee means a person or entity to whom real or personal property, or an interest in such property, is transferred.

Ultimate beneficiary See the definition of "beneficiary" in this section.

Undue hardship This term has different meanings, depending upon whether it is used with regard to reasonable accommodation of individuals with disabilities, or with regard to religious accommodation.

(1) *Reasonable accommodation of individuals with disabilities:* (i) In general, "undue hardship" means significant difficulty or expense incurred by a recipient, when considered in light of the factors set forth in paragraph (ii).

(ii) Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include:

(A) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation;

(B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including:

(1) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and

(2) The effect the accommodation would have on the expenses and resources of the facility or facilities;

(C) The overall financial resources of the recipient, including:

(1) The overall size of the recipient,

(2) The number of persons aided, benefited, served, trained, or employed by the recipient, and

(3) The number, type and location of the recipient's facilities;

(D) The type of operation or operations of the recipient, including:

(1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient, and

(2) Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and

(E) The impact of the accommodation upon the operation of the facility or facilities, including:

(1) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and

(2) The impact on the facility's ability to carry out its mission.

(2) *Religious accommodation* For purposes of religious accommodation only, "undue hardship" means any additional, unusual costs, other than *de minimis* costs, that a particular accommodation would impose upon a recipient. See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 81, 84 (1977).

WIA means the Workforce Investment Act of 1998, Pub. L. 105-220.

WIA Title I financial assistance See the definition of "Federal financial assistance under Title I of WIA" in this section.

WIA Title I-funded program or activity means:

(1) A program or activity, operated by a recipient and funded, in whole or in part, under Title I of WIA, that provides either:

(i) Any aid, benefits, services, or training to individuals; or

(ii) Facilities for furnishing any aid, benefits, services, or training to individuals;

(2) Aid, benefits, services, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or

(3) Aid, benefits, services, or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIA Title I financial assistance.

See the definition of "aid, benefits, services, or training" in this section.

§ 37.5 What forms of discrimination are prohibited by this part?

No individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I—financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I—funded program or activity.

§ 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?

(a) For the purposes of this section, "prohibited ground" means race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I—financially assisted program or activity.

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, on a prohibited ground:

(1) Deny an individual any aid, benefits, services, or training provided under a WIA Title I—funded program or activity;

(2) Provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIA Title I—funded program or activity;

(3) Subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIA Title I—funded program or activity;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIA Title I—funded program or activity;

(5) Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIA Title I—funded program or activity;

(6) Deny or limit an individual with respect to any opportunity to participate in a WIA Title I—funded program or activity, or afford him or her an opportunity to do so that is different from the opportunity afforded others under a WIA Title I—funded program or activity;

(7) Deny an individual the opportunity to participate as a member

of a planning or advisory body that is an integral part of the WIA Title I—funded program or activity; or

(8) Otherwise limit on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIA Title I—financially assisted aid, benefits, services, or training.

(c) A recipient must not, directly or through contractual, licensing, or other arrangements:

(1) Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground in providing any aid, benefits, services, or training to registrants, applicants or participants in a WIA Title I—funded program or activity; or

(2) Refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in undue hardship, as defined in section 37.4.

(d) (1) In making any of the determinations listed in paragraph (d)(2) of this section, either directly or through contractual, licensing, or other arrangements, a recipient must not use standards, procedures, criteria, or administrative methods that have any of the following purposes or effects:

(i) Subjecting individuals to discrimination on a prohibited ground; or

(ii) Defeating or substantially impairing, on a prohibited ground, accomplishment of the objectives of either:

(A) The WIA Title I—funded program or activity; or

(B) the nondiscrimination and equal opportunity provisions of WIA or this part.

(2) The determinations to which this paragraph applies include, but are not limited to:

(i) The types of aid, benefits, services, training, or facilities that will be provided under any WIA Title I—funded program or activity;

(ii) The class of individuals to whom such aid, benefits, services, training, or facilities will be provided; or

(iii) The situations in which such aid, benefits, services, training, or facilities will be provided.

(3) Paragraph (d) of this section applies to the administration of WIA Title I—funded programs or activities providing aid, benefits, services, training, or facilities in any manner, including, but not limited to:

(i) Outreach and recruitment;

(ii) Registration;

(iii) Counseling and guidance;

(iv) Testing;

(v) Selection, placement, appointment, and referral;

(vi) Training; and
 (vii) Promotion and retention.

(4) A recipient must not take any of the prohibited actions listed in paragraph (d) of this section either directly or through contractual, licensing, or other arrangements.

(e) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On a prohibited ground:

(i) Excluding individuals from a WIA Title I—financially assisted program or activity;

(ii) Denying them the benefits of such a program or activity; or

(iii) Subjecting them to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the objectives of either:

(i) The WIA Title I—financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIA or this part.

(f) (1) A recipient must not permit participants to be employed or trained in sectarian activities.

(2) This paragraph applies to any facility that is, or will be, primarily used or inherently devoted either:

(A) For sectarian instruction; or

(B) As a place of worship,

(ii) A recipient must not permit participants to be employed or trained in any way to:

(A) Construct any part of such a facility,

(B) Operate any part of such a facility, or

(C) Maintain any part of that facility.

(3) If a facility is not primarily or inherently devoted to sectarian instruction or religious worship, a recipient may permit the use of WIA Title I funds to employ participants to maintain the facility, if the organization that operates the facility is part of a program or activity that provides services to participants.

(g) The exclusion of an individual from programs or activities limited by Federal statute or Executive Order to a certain class or classes of individuals of which the individual in question is not a member is not prohibited by this part.

§ 37.7 What specific discriminatory actions based on disability are prohibited by this part?

(a) In providing any aid, benefits, services, or training under a WIA Title I—financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, on the ground of disability:

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(6) Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants.

(c) A recipient must not deny a qualified individual with a disability the opportunity to participate in WIA Title I—financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.

(d) A recipient must administer WIA Title I—financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

(1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability;

(2) That have the purpose or effect of defeating or substantially impairing

accomplishment of the objectives of the WIA Title I—financially assisted program or activity with respect to individuals with disabilities; or

(3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

(f) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On the basis of disability:

(i) Excluding qualified individuals from a WIA Title I—financially assisted program or activity;

(ii) Denying them the benefits of such a program or activity; or

(iii) Subjecting them to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the disability-related objectives of either:

(i) The WIA Title I—financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIA or this part.

(g) A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(h) A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient are not, themselves, covered by this part.

(i) A recipient must not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

(j) Nothing in this part prohibits a recipient from providing aid, benefits, services, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.

(k) A recipient must not place a surcharge on a particular individual

with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIA Title I or this part.

(l) A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(m) The exclusion of an individual without a disability from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part.

(n) This part does not require a recipient to provide any of the following to individuals with disabilities:

(1) Personal devices, such as wheelchairs;

(2) Individually prescribed devices, such as prescription eyeglasses or hearing aids;

(3) Readers for personal use or study; or

(4) Services of a personal nature, including assistance in eating, toileting, or dressing.

(o)(1) Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provided under WIA Title I or this part that such individual chooses not to accept.

(2) Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

§ 37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?

(a) With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of "reasonable accommodation" and "undue hardship" in § 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of "undue hardship" in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

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

(b) A recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of "fundamental alteration" in § 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.

(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of "fundamental alteration" in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.

(3) If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

§ 37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?

(a) Recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities, are as effective as communications with others.

(b) A recipient must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the WIA Title I—financially assisted program or activity. In determining what type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability.

(c) Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and/or employees, the recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications systems, such as telephone relay services.

(d) A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

(e)(1) A recipient must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the most current standards prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101-19.6. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information.

(2) The international symbol for accessibility must be used at each primary entrance of an accessible facility.

(f) This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity.

(1) In those circumstances where a recipient believes that the proposed action would fundamentally alter the WIA Title I—financially assisted

program, activity, or service, the recipient has the burden of proving that compliance with this section would result in such an alteration.

(2) The decision that compliance would result in such an alteration must be made by the recipient after considering all resources available for use in the funding and operation of the WIA Title I—financially assisted program, activity, or service, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(3) If an action required to comply with this section would result in the fundamental alteration described in paragraph (f)(1) of this section, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

§ 37.10 To what extent are employment practices covered by this part?

(a) Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with:

(1) Any WIA Title I-financially assisted program or activity; and

(2) Any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

(b) *Employee selection procedures.* In implementing this section, a recipient must comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3.

(c) *Standards for employment-related investigations and reviews.* In any investigation or compliance review, the Director must consider Equal Employment Opportunity Commission (EEOC) regulations, guidance and appropriate case law in determining whether a recipient has engaged in an unlawful employment practice.

(d) As provided in § 37.3(b) of this part, 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, have been incorporated into this part by reference. Therefore, recipients must comply with the requirements set forth in those

regulatory sections as well as the requirements listed in this part.

(e) Recipients that are also employers, employment agencies, or other entities covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. See 29 CFR part 1630 and 28 CFR part 35.

(f) Similarly, recipients that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision. See 8 U.S.C. 1324b, as amended.

(g) This rule does not preempt consistent State and local requirements.

§ 37.11 To what extent are intimidation and retaliation prohibited by this part?

(a) A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has:

(1) Filed a complaint alleging a violation of Section 188 of WIA or this part;

(2) Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or this part;

(3) Furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:

(i) Administration of the nondiscrimination and equal opportunity provisions of WIA or this part;

(ii) Exercise of authority under those provisions; or

(iii) Exercise of privilege secured by those provisions; or

(4) Otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIA or this part.

(b) The sanctions and penalties contained in Section 188(b) of WIA or this part may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

§ 37.12 What Department of Labor office is responsible for administering this part?

The Civil Rights Center (CRC), in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of WIA and this part, and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

§ 37.13 Who is responsible for providing interpretations of this part?

The Director will make any rulings under, or interpretations of, the nondiscrimination and equal opportunity provisions of WIA or this part.

§ 37.14 Under what circumstances may the Secretary delegate the responsibilities of this part?

(a) The Secretary may from time to time assign to officials of other departments or agencies of the Government (with the consent of such department or agency) responsibilities in connection with the effectuation of the nondiscrimination and equal opportunity provisions of WIA and this part (other than responsibility for final decisions under § 37.112), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of the nondiscrimination and equal opportunity provisions of WIA or this part to similar programs and similar situations.

(b) Any action taken, determination made, or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this section has the same effect as if the action had been taken by the Director.

§ 37.15 What are the Director's responsibilities to coordinate with other civil rights agencies?

(a) Whenever a compliance review or complaint investigation under this part reveals possible violation of one or more of the laws listed in paragraph (b) of this section, or of any other Federal civil rights law, that is not also a violation of the nondiscrimination and equal opportunity provisions of WIA or this part, the Director must attempt to notify the appropriate agency and provide it with all relevant documents and information.

(b) This section applies to the following:

(1) Executive Order 11246, as amended;

(2) Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793);

(3) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);

(4) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);

(5) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*);

(6) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);

(7) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*);

(8) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b); and

(9) Any other Federal civil rights law.

§ 37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?

(a) *Effect of State or local law or other requirements.* The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA or this part are not excused or reduced by any State or local law or other requirement that, on a prohibited ground, prohibits or limits an individual's eligibility to receive aid, benefits, services, or training; to participate in any WIA Title I—financially assisted program or activity; to be employed by any recipient; or to practice any occupation or profession.

(b) *Effect of private organization rules.* The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA and this part is not excused or reduced by any rule or regulation of any private organization, club, league or association that, on a prohibited ground, prohibits or limits an individual's eligibility to participate in any WIA Title I—financially assisted program or activity to which this part applies.

(c) *Effect of possible future exclusion from employment opportunities.* A recipient must not exclude any individual from, or restrict any individual's participation in, any program or activity based on the recipient's belief or concern that the individual will encounter limited future employment opportunities because of his or her race, color, religion, sex, national origin, age, disability, political affiliation or belief, or citizenship.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients
Assurances

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

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

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I—financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I—financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I—financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

(2) The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of the WIA is made available, whether or not it is physically incorporated in such document and whether or not there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.

(b) *Continuing State programs.* Each Strategic Five-Year State Plan submitted by a State to carry out a continuing WIA Title I—financially assisted program or activity must provide a statement that the WIA Title I—financially assisted program or activity is (or, in the case of a new WIA Title I—financially assisted program or activity, will be) conducted in compliance with the nondiscrimination and equal opportunity provisions of WIA and this part, as a condition to the approval of the Five-Year Plan and the extension of any WIA Title I financial assistance under the Plan. The State also must certify that it has developed and maintains a Methods of Administration under § 37.54.

§ 37.21 How long will the recipient's obligation under the assurance last, and how broad is the obligation?

(a) Where the WIA Title I financial assistance is intended to provide, or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient, or (in the case of a subsequent transfer) the transferee, for the longer of:

(1) The period during which the property is used either:

(i) For a purpose for which WIA Title I financial assistance is extended; or
(ii) For another purpose involving the provision of similar services or benefits; or

(2) The period during which either:
(i) The recipient retains ownership or possession of the property; or

(ii) The transferee retains ownership or possession of the property without compensating the Departmental grantmaking agency for the fair market value of that ownership or possession.

(b) In all other cases, the assurance will obligate the recipient for the period during which WIA Title I financial assistance is extended.

§ 37.22 How must covenants be used in connection with this part?

(a) Where WIA Title I financial assistance is provided in the form of a transfer of real property, structures, or improvements on real property or structures, or interests in real property or structures, the instrument effecting or recording the transfer must contain a covenant assuring nondiscrimination and equal opportunity for the period described in § 37.21.

(b) Where no Federal transfer of real property or interest therein from the Federal Government is involved, but real property or an interest therein is acquired or improved under a program of WIA Title I financial assistance, the recipient must include the covenant described in paragraph (a) of this section in the instrument effecting or recording any subsequent transfer of such property.

(c) When the property is obtained from the Federal Government, the covenant described in paragraph (a) of this section also may include a condition coupled with a right of reverter to the Department in the event of a breach of the covenant.

Equal Opportunity Officers

§ 37.23 Who must designate an Equal Opportunity Officer?

Every recipient must designate an Equal Opportunity Officer ("EO Officer"), except small recipients and

service providers, as defined in § 37.4. The responsibilities of small recipients and service providers are described in §§ 37.27 and 37.28.

§ 37.24 Who is eligible to serve as an Equal Opportunity Officer?

A senior-level employee of the recipient should be appointed as the recipient's Equal Opportunity Officer. Depending upon the size of the recipient, the size of the recipient's WIA Title I-financially assisted programs or activities, and the number of applicants, registrants, and participants served by the recipient, the EO Officer may, or may not, be assigned other duties. However, he or she must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.

§ 37.25 What are the responsibilities of an Equal Opportunity Officer?

An Equal Opportunity Officer is responsible for coordinating a recipient's obligations under this part. Those responsibilities include, but are not limited to:

- (a) Serving as the recipient's liaison with CRC;
- (b) Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIA Title I funds from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIA Title I and this part;
- (c) Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
- (d) Developing and publishing the recipient's procedures for processing discrimination complaints under §§ 37.76 through 37.79, and making sure that those procedures are followed;
- (e) Reporting directly to the appropriate official (including, but not limited to, the State WIA Director, Governor's WIA Liaison, Job Corps Center Director, SESA Administrator, or LWIA grant recipient) about equal opportunity matters;
- (f) Undergoing training (at the recipient's expense) to maintain competency, if the Director requires him or her, and/or his or her staff, to do so; and
- (g) If applicable, overseeing the development and implementation of the recipient's Methods of Administration under § 37.54.

§ 37.26 What are a recipient's obligations relating to the Equal Opportunity Officer?

A recipient has the following obligations:

(a) Making the Equal Opportunity Officer's name, and his or her position title, address, and telephone number (voice and TDD/TTY) public;

(b) Ensuring that the EO Officer's identity and contact information appears on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs;

(c) Assigning sufficient staff and resources to the Equal Opportunity Officer, and providing him or her with the necessary support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part; and

(d) Ensuring that the EO Officer and his/her staff are afforded the opportunity to receive the training necessary and appropriate to maintain competency.

§ 37.27 What are the obligations of small recipients regarding Equal Opportunity Officers?

Although small recipients do not need to designate Equal Opportunity Officers who have the full range of responsibilities listed above, they must designate an individual who will be responsible for developing and publishing of complaint procedures, and the processing of complaints, as explained in §§ 37.76 through 37.79.

§ 37.28 What are the obligations of service providers regarding Equal Opportunity Officers?

Service providers, as defined in § 37.4, are not required to designate an Equal Opportunity Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIA and this part rests with the Governor or LWIA grant recipient, as specified in the State's Methods of Administration.

Notice and Communication

§ 37.29 What are a recipient's obligations to disseminate its equal opportunity policy?

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

- (1) Registrants, applicants, and eligible applicants/registrants;
- (2) Participants;
- (3) Applicants for employment and employees;
- (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
- (5) Subrecipients that receive WIA Title I funds from the recipient; and

(6) Members of the public, including those with impaired vision or hearing.

(b) As provided in § 37.9, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.

§ 37.30 What specific wording must the notice contain?

The notice must contain the following specific wording:

Equal Opportunity Is the Law

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

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

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

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

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

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

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

What to Do If You Believe You Have Experienced Discrimination

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or

Activity, you may file a complaint within 180 days from the date of the alleged violation with either:

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

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

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

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

If the recipient does give you a written Notice of Final Action on your complaint,

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

§ 37.31 Where must the notice required by §§ 37.29 and 37.30 be published?

(a) At a minimum, the notice required by §§ 37.29 and 37.30 must be:

- (1) Posted prominently, in reasonable numbers and places;
- (2) Disseminated in internal memoranda and other written or electronic communications;
- (3) Included in handbooks or manuals; and
- (4) Made available to each participant, and made part of each participant's file.

(b) The notice must be provided in appropriate formats to individuals with visual impairments. Where notice has been given in an alternate format to a participant with a visual impairment, a record that such notice has been given must be made a part of the participant's file.

§ 37.32 When must the notice required by §§ 37.29 and 37.30 be provided?

The notice required by §§ 37.29 and 37.30 must be initially provided within 90 days of the effective date of this part, or of the date this part first applies to the recipient, whichever comes later.

§ 37.33 Who is responsible for meeting the notice requirement with respect to service providers?

The Governor or the LWIA grant recipient, as determined by the Governor and as provided in that State's Methods of Administration, will be responsible for meeting the notice requirement provided in Sections 37.29 and 37.30 with respect to a State's service providers.

§ 37.34 What type of notice must a recipient include in publications, broadcasts, and other communications?

(a) Recipients must indicate that the WIA Title I-financially assisted program or activity in question is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities," in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient may be reached by telephone, the materials must state the telephone number of the

TDD/TTY or relay service used by the recipient, as required by § 37.9(c).

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

(c) A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground specified in § 37.5, except as such treatment is otherwise permitted under Federal law or this part.

§ 37.35 What are a recipient's responsibilities to provide services and information in languages other than English?

(a) A significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I-financially assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity. Where such a significant number or proportion exists, a recipient must take the following actions:

- (1) Consider:
 - (i) The scope of the program or activity, and
 - (ii) The size and concentration of the population that needs services or information in a language other than English; and
- (2) Based on those considerations, take reasonable steps to provide services and information in appropriate languages. This information must include the initial and continuing notice required under §§ 37.29 and 37.30, and all information that is communicated under § 37.34.

(b) In circumstances other than those described in paragraph (a) of this section, a recipient should nonetheless make reasonable efforts to meet the particularized language needs of limited-English-speaking individuals who seek services or information from the recipient.

§ 37.36 What responsibilities does a recipient have to communicate information during orientations?

During each presentation to orient new participants, new employees, and/or the general public to its WIA Title I-financially assisted program or activity, a recipient must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIA and this part, including the right to file a complaint of discrimination with the recipient or the Director.

Data and Information Collection and Maintenance

§ 37.37 What are a recipient's responsibilities to collect and maintain data and other information?

(a) The Director will not require submission of data that can be obtained from existing reporting requirements or sources, including those of other agencies, if the source is known and available to the Director.

(b)(1) Each recipient must collect such data and maintain such records, in accordance with procedures prescribed by the Director, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA or this part. The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIA and this part.

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

(c) Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with it that allege discrimination on the ground(s) of race, color, religion, sex, national origin, age, disability, political affiliation or belief,

citizenship, and/or participation in a WIA Title I-financially assisted program or activity. The log must include: the name and address of the complainant; the ground of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

(d) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

(e) A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or LWIA grant recipient, as provided in the State's Methods of Administration.

§ 37.38 What information must grant applicants and recipients provide to CRC?

In addition to the information which must be collected, maintained, and, upon request, submitted to CRC under § 37.37:

(a) Each grant applicant and recipient must promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. This notification must include:

(1) The names of the parties to the action or lawsuit;

(2) The forum in which each case was filed; and

(3) The relevant case numbers.

(b) Each grant applicant (as part of its application) and recipient (as part of a compliance review conducted under Section 37.63, or monitoring activity carried out under § 37.65) must provide the following information:

(1) The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and

(2) Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include:

(i) The names of the parties;

(ii) The forum in which each case was filed; and

(iii) The relevant case numbers.

(c) At the discretion of the Director, grant applicants and recipients may be required to provide, in a timely manner, any information and data necessary to investigate complaints and conduct compliance reviews on grounds prohibited under the nondiscrimination and equal opportunity provisions of WIA and this part.

(d) At the discretion of the Director, recipients may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIA or this part.

(e) At the discretion of the Director, grant applicants may be required to submit, in a timely manner, the particularized information necessary to determine whether or not the grant applicant, if financially assisted, would be able to comply with the nondiscrimination and equal opportunity provisions of WIA or this part.

(f) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

§ 37.39 How long must grant applicants and recipients maintain the records required under this part?

(a) Each recipient must maintain the following records for a period of not less than three years from the close of the applicable program year:

(1) The records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and

(2) Such other records as are required under this part or by the Director.

(b) Records regarding complaints and actions taken on the complaints must be maintained for a period of not less than three years from the date of resolution of the complaint.

§ 37.40 What access to sources of information must grant applicants and recipients provide the Director?

(a) Each grant applicant and recipient must permit access by the Director during normal business hours to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews,

monitoring activities associated with a State's development and implementation of a Methods of Administration, and inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIA or this part.

(b) Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

(c) Whenever any information that the Director asks a grant applicant or recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the grant applicant or recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the grant applicant or recipient made to obtain it.

§ 37.41 What responsibilities do grant applicants, recipients, and the Department have to maintain the confidentiality of the information collected?

The identity of any individual who furnishes information relating to, or assisting in, an investigation or a compliance review, including the identity of any individual who files a complaint, must be kept confidential to the extent possible, consistent with a fair determination of the issues. An individual whose identity it is necessary to disclose must be protected from retaliation (see § 37.11).

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

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

(a) Advertising the recipient's programs and/or activities in media,

such as newspapers or radio programs, that specifically target various populations;

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

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

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIA

§ 37.50 To whom does this subpart apply?

This subpart applies to State Programs as defined in § 37.4. However, the provisions of § 37.52(b) do not apply to State Employment Security Agencies (SESAs), because the Governor's liability for any noncompliance on the part of a SESA cannot be waived.

§ 37.51 What are a Governor's oversight responsibilities?

The Governor is responsible for oversight of all WIA Title I-financially assisted State programs. This responsibility includes ensuring compliance with the nondiscrimination and equal opportunity provisions of WIA and this part, and negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found under § 37.95(b).

§ 37.52 To what extent may a Governor be liable for the actions of a recipient he or she has financially assisted under WIA Title I?

(a) The Governor and the recipient are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIA and this part by the recipient, unless the Governor has:

(1) Established and adhered to a Methods of Administration, under Section 37.54, designed to give reasonable guarantee of the recipient's compliance with such provisions;

(2) Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;

(3) Acted with due diligence to monitor the recipient's compliance with these provisions; and

(4) Taken prompt and appropriate corrective action to effect compliance.

(b) If the Director determines that the Governor has demonstrated substantial compliance with the requirements of paragraph (a) of this section, he or she

may recommend to the Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient.

§ 37.53 What are a Governor's oversight responsibilities regarding recipients' recordkeeping?

The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of § 37.37 and any procedures prescribed by the Director under § 37.37(b). The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

§ 37.54 What are a Governor's obligations to develop and maintain a Methods of Administration?

(a) (1) Each Governor must establish and adhere to a Methods of Administration for State programs as defined in § 37.4. In those States in which one agency contains both SESA or unemployment insurance and WIA Title I-financially assisted programs, the Governor should develop a combined Methods of Administration.

(2) Each Methods of Administration must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIA and this part.

(b) The Methods of Administration must be:

(1) In writing, addressing each requirement of § 37.54(d) with narrative and documentation;

(2) Reviewed and updated as required in § 37.55; and

(3) Signed by the Governor.

(c) [Reserved]

(d) At a minimum, each Methods of Administration must:

(1) Describe how the State programs and recipients have satisfied the requirements of the following regulations:

(i) Sections 37.20 through 37.22 (assurances);

(ii) Sections 37.23 through 37.28 (Equal Opportunity Officers);

(iii) Sections 37.29 through 37.36 (Notice and Communication);

(iv) Sections 37.37 through 37.41 (Data and Information Collection and Maintenance);

(v) Section 37.42 (Universal Access);

(vi) Section 37.53 (Governor's Oversight Responsibilities Regarding Recipients' Recordkeeping); and

(vii) Sections 37.76 through 37.79 (Complaint Processing Procedures); and

(2) Include the following additional elements:

(i) A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under section 122 of the Act, is likely to conduct its WIA Title I—financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in this part;

(ii) A system for periodically monitoring the compliance of recipients with WIA section 188 and this part, including a determination as to whether each recipient is conducting its WIA Title I—financially assisted program or activity in a nondiscriminatory way. At a minimum, each periodic monitoring review required by this paragraph must include:

(A) A statistical or other quantifiable analysis of records and data kept by the recipient under § 37.37, including analyses by race/ethnicity, sex, age, and disability status;

(B) An investigation of any significant differences identified in paragraph (A) of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and

(C) An assessment to determine whether the recipient has fulfilled its administrative obligations under section 188 or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the MOA;

(iii) A review of recipient policy issuances to ensure they are nondiscriminatory;

(iv) A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity;

(v) Procedures for ensuring that recipients comply with the requirements of Section 504 and this part with regard to individuals with disabilities;

(vi) A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIA or this part are aware of and can effectively carry out these responsibilities;

(vii) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and

(viii) Supporting documentation to show that the commitments made in the Methods of Administration have been and/or are being carried out. This supporting documentation includes, but is not limited to:

- (A) policy and procedural issuances concerning required elements of the Methods of Administration;
- (B) copies of monitoring instruments and instructions;
- (C) evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part;
- (D) information reflecting the extent to which Equal Opportunity training, including training called for by §§ 37.25(f) and 37.26(c), is planned and/or has been carried out;
- (E) reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and
- (F) copies of any notices made under §§ 37.29 through 37.36.

§ 37.55 When must the Governor carry out his or her obligations with regard to the Methods of Administration?

(a) Within 180 days of either the date on which this interim final rule is effective, or the date on which the Department gives final approval to a State's Five-Year Plan, whichever is later, a Governor must:

- (1) Develop and implement a Methods of Administration consistent with the requirements of this part, and
 - (2) Submit a copy of the Methods of Administration to the Director.
- (b) The Governor must promptly update the Methods of Administration whenever necessary, and must notify the Director in writing at the time that any such updates are made.

(c) Every two years from the date on which the initial MOA is submitted to the Director under § 37.55(a)(2), the Governor must review the Methods of Administration and the manner in which it has been implemented, and determine whether any changes are necessary in order for the State to comply fully and effectively with the nondiscrimination and equal opportunity provisions of WIA and this part.

(1) If any such changes are necessary, the Governor must make the appropriate changes and submit them, in writing, to the Director.

(2) If the Governor determines that no such changes are necessary, s/he must certify, in writing, to the Director that the Methods of Administration previously submitted continues in effect.

Subpart D—Compliance Procedures

§ 37.60 How does the Director evaluate compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

From time to time, the Director may conduct pre-approval compliance reviews of grant applicants for, and post-approval compliance reviews of recipients of, WIA Title I financial assistance, to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part. Reviews may focus on one or more specific programs or activities, or one or more issues within a program or activity. The Director may also investigate and resolve complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIA and this part.

§ 37.61 Is there authority to issue subpoenas?

Yes, section 183(c) of WIA authorizes the issuance of subpoenas. A subpoena may direct the individual named on the subpoena to take the following actions:

- (a) To appear:
 - (1) Before a designated CRC representative,
 - (2) At a designated time and place;
 - (b) To give testimony; and/or
 - (c) To produce documentary evidence.

The subpoena may require the appearance of witnesses, and the production of documents, from any place in the United States, at any designated time and place.

Compliance Reviews

§ 37.62 What are the authority and procedures for conducting pre-approval compliance reviews?

(a) As appropriate and necessary to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA or this part, the Director may review any application, or class of applications, for Federal financial assistance under Title I of WIA, before and as a condition of their approval. The basis for such review may be the assurance specified in § 37.20, information and reports submitted by the grant applicant under this part or guidance published by the Director, and any relevant records on file with the Department.

(b) Where the Director determines that the grant applicant for Federal financial assistance under WIA Title I, if financially assisted, might not comply with the nondiscrimination and equal opportunity requirements of WIA or this part, the Director must:

(1) Notify, in a timely manner, the Departmental grantmaking agency and the Assistant Attorney General of the findings of the pre-approval compliance review; and

(2) Issue a Letter of Findings. The Letter of Findings must advise the grant applicant, in writing, of:

- (i) The preliminary findings of the review;
- (ii) The proposed remedial or corrective action under Section 37.94 and the time within which the remedial or corrective action should be completed;
- (iii) Whether it will be necessary for the grant applicant to enter into a written Conciliation Agreement as described in §§ 37.95 and 37.97; and
- (iv) The opportunity to engage in voluntary compliance negotiations.

(c) If a grant applicant has agreed to certain remedial or corrective actions in order to receive WIA Title I-funded Federal financial assistance, the Department must ensure that the remedial or corrective actions have been taken, or that a Conciliation Agreement has been entered into, before approving the award of further assistance under WIA Title I. If a grant applicant refuses or fails to take remedial or corrective actions or to enter into a Conciliation Agreement, as applicable, the Director must follow the procedures outlined in §§ 37.98 through 37.100.

§ 37.63 What are the authority and procedures for conducting post-approval compliance reviews?

(a) The Director may initiate a post-approval compliance review of any recipient to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part. The initiation of a post-approval review may be based on, but need not be limited to, the results of routine program monitoring by other Departmental or Federal agencies, or the nature or frequency of complaints.

(b) A post-approval review must be initiated by a Notification Letter, advising the recipient of:

- (1) The practices to be reviewed;
- (2) The programs to be reviewed;
- (3) The information, records, and/or data to be submitted by the recipient within 30 days of the receipt of the Notification Letter, unless this time frame is modified by the Director; and

(4) The opportunity, at any time before receipt of the Final Determination described in §§ 37.99 and 37.100, to make a documentary or other submission that explains, validates or otherwise addresses the practices under review.

(c) The Director may conduct post-approval reviews using such techniques as desk audits and on-site reviews.

§ 37.64 What procedures must the Director follow when CRC has completed a post-approval compliance review?

(a) Where, as the result of a post-approval review, the Director has made a finding of noncompliance, he or she must issue a Letter of Findings. This Letter must advise the recipient, in writing, of:

(1) The preliminary findings of the review;

(2) Where appropriate, the proposed remedial or corrective action to be taken, and the time by which such action should be completed, as provided in § 37.94;

(3) Whether it will be necessary for the recipient to enter into a written assurance and/or Conciliation Agreement, as provided in §§ 37.96 and 37.97; and

(4) The opportunity to engage in voluntary compliance negotiations.

(b) Where no violation is found, the recipient must be so informed in writing.

§ 37.65 What is the Director's authority to monitor the activities of a Governor?

(a) The Director may periodically review the adequacy of the Methods of Administration established by a Governor, as well as the adequacy of the Governor's performance under the Methods of Administration, to determine compliance with the requirements of §§ 37.50 through 37.55. The Director may review the Methods of Administration during a compliance review under §§ 37.62 and 37.63, or at another time.

(b) Nothing in this subpart limits or precludes the Director from monitoring directly any WIA Title I recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIA or this part.

§ 37.66 What happens if a recipient fails to submit requested data, records, and/or information, or fails to provide CRC with the required access?

The Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the recipient's failure or refusal to:

(a) Submit requested information, records, and/or data within 30 days of receiving a Notification Letter;

(b) Submit, in a timely manner, information, records, and/or data requested during a compliance review, complaint investigation, or other action to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIA or this part; or

(c) Provide CRC access in a timely manner to a recipient's premises, records, or employees during a compliance review, as required in § 37.40.

§ 37.67 What information must a Notice to Show Cause contain?

(a) A Notice to Show Cause must contain:

(1) A description of the violation and a citation to the pertinent nondiscrimination or equal opportunity provision(s) of WIA and this part;

(2) The corrective action necessary to achieve compliance or, as may be appropriate, the concepts and principles of acceptable corrective or remedial action and the results anticipated; and

(3) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.

(b) A Notice to Show Cause must give the recipient 30 days to show cause why enforcement proceedings under the nondiscrimination and equal opportunity provisions of WIA or this part should not be instituted.

§ 37.68 How may a recipient show cause why enforcement proceedings should not be instituted?

A recipient may show cause why enforcement proceedings should not be instituted by, among other means:

(a) Correcting the violation(s) that brought about the Notice to Show Cause and entering into a written assurance and/or entering into a Conciliation Agreement, as appropriate, under §§ 37.95 through 37.97;

(b) Demonstrating that CRC does not have jurisdiction; or

(c) Demonstrating that the violation alleged by CRC did not occur.

§ 37.69 What happens if a recipient fails to show cause?

If the recipient fails to show cause why enforcement proceedings should not be initiated, the Director must follow the enforcement procedures outlined in §§ 37.99 and 37.100.

Complaint Processing Procedures

§ 37.70 Who may file a complaint concerning discrimination connected with WIA Title I?

Any person who believes that either he or she, or any specific class of individuals, has been or is being

subjected to discrimination prohibited by WIA or this part, may file a written complaint, either by him/herself or through a representative.

§ 37.71 Where may a complaint be filed?

A complainant may file a complaint with either the recipient or the Director. Complaints filed with the Director should be sent to the address listed in the notice in § 37.30.

§ 37.72 When must a complaint be filed?

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

§ 37.73 What information must a complaint contain?

Each complaint must be filed in writing, and must contain the following information:

(a) The complainant's name and address (or another means of contacting the complainant);

(b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);

(c) A description of the complainant's allegations. This description must include enough detail to allow the Director or the recipient, as applicable, to decide whether:

(i) CRC or the recipient, as applicable, has jurisdiction over the complaint;

(ii) The complaint was filed in time; and

(iii) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or this part; and

(d) The complainant's signature or the signature of the complainant's authorized representative.

§ 37.74 Are there any forms that a complainant may use to file a complaint?

Yes. A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the recipient's EO Officer, or from CRC at the address listed in the notice contained in § 37.30.

§ 37.75 Is there a right of representation in the complaint process?

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

§ 37.76 What are the required elements of a recipient's discrimination complaint processing procedures?

(a) The procedures that a recipient adopts and publishes must provide that the recipient will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed.

(b) At a minimum, the procedures must include the following elements:

(1) Initial, written notice to the complainant that contains the following information:

(i) An acknowledgment that the recipient has received the complaint, and

(ii) Notice that the complainant has the right to be represented in the complaint process;

(2) A written statement of the issue(s), provided to the complainant, that includes the following information:

(i) A list of the issues raised in the complaint, and

(ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;

(3) A period for fact-finding or investigation of the circumstances underlying the complaint;

(4) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section

(5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

(i) For each issue raised in the complaint, a statement of either:

(A) The recipient's decision on the issue and an explanation of the reasons underlying the decision, or

(B) A description of the way the parties resolved the issue; and

(ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

(c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:

(1) The choice whether to use ADR or the customary process rests with the complainant;

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

(i) The non-breaching party may file a complaint with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach;

(ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint.

(3) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in §§ 37.71 through 37.74.

§ 37.77 Who is responsible for developing and publishing complaint processing procedures for service providers?

The Governor or the LWIA grant recipient, as provided in the State's Methods of Administration, must develop and publish, on behalf of its service providers, the complaint processing procedures required in § 37.76. The service providers must then follow those procedures.

§ 37.78 Does a recipient have any special obligations in cases in which the recipient determines that it has no jurisdiction over a complaint?

Yes. If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:

(a) A statement of the reasons for that determination, and

(b) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

§ 37.79 If, before the 90-day period has expired, a recipient issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?

If, during the 90-day period, the recipient issues its Notice of Final Action, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or his/her representative may file a complaint with the Director within 30 days after the date on which the complainant receives the Notice.

§ 37.80 What happens if a recipient fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?

If, by the end of 90 days from the date on which the complainant filed the complaint, the recipient has failed to issue a Notice of Final Action, the

complainant or his/her representative may file a complaint with the Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Director within 120 days of the date on which the complaint was filed with the recipient.

§ 37.81 Are there any circumstances under which the Director may extend the time limit for filing a complaint with him or her?

Yes. The Director may extend the 30-day time limit:

(a) If the recipient does not include in its Notice of Final Action the required notice about the complainant's right to file with the Director, as described in § 37.76(b)(5)(ii); or

(b) For other good cause shown.

The complainant has the burden of proving to the Director that the time limit should be extended.

§ 37.82 Does the Director accept every complaint for resolution?

No. The Director must determine whether CRC will accept a particular complaint for resolution. For example, a complaint need not be accepted if:

(a) It has not been timely filed;

(b) CRC has no jurisdiction over the complaint; or

(c) CRC has previously decided the matter.

§ 37.83 What happens if a complaint does not contain enough information?

(a) If a complaint does not contain enough information, the Director must try to get the needed information from the complainant.

(b) The Director may close the complainant's file, without prejudice, if:

(1) The Director makes reasonable efforts to try to find the complainant, but is unable to reach him or her; or

(2) The complainant does not provide the needed information to CRC within the time specified in the request for more information.

(c) If the Director closes the complainant's file, he or she must send written notice to the complainant's last known address.

§ 37.84 What happens if CRC does not have jurisdiction over a complaint?

If CRC does not have jurisdiction over a complaint, the Director must:

(a) Notify the complainant and explain why the complaint falls outside the coverage of the nondiscrimination and equal opportunity provisions of WIA or this part; and

(b) Where possible, transfer the complaint to an appropriate Federal, State or local authority.

§ 37.85 Are there any other circumstances in which the Director will send a complaint to another authority?

Yes. The Director refers complaints to other agencies in the following circumstances:

(a) Where the complaint alleges discrimination based on age, and the complaint falls within the jurisdiction of the Age Discrimination Act of 1975, as amended, then the Director must refer the complaint, in accordance with the provisions of 45 CFR 90.43(c)(3).

(b) Where the only allegation in the complaint is a charge of individual employment discrimination that is covered both by WIA or this part and by one or more of the laws listed below, then the complaint is a "joint complaint," and the Director may refer it to the EEOC for investigation and conciliation under the procedures described in 29 CFR part 1640 or 1691, as appropriate. The relevant laws are:

(1) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e-17);

(2) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d));

(3) The Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, *et seq.*); and

(4) Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*).

(c) Where the complaint alleges discrimination by an entity that operates a program or activity financially assisted by a Federal grantmaking agency other than the Department, but that participates as a partner in a One-Stop delivery system, the following procedures apply:

(1) Where the complaint alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the Federal grantmaking agency, then CRC and the grantmaking agency have dual jurisdiction over the complaint, and the Director will refer the complaint to the grantmaking agency for processing. In such circumstances, the grantmaking agency's regulations will govern the processing of the complaint.

(2) Where the complaint alleges discrimination on a basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the Federal grantmaking agency, then CRC has sole jurisdiction over the complaint, and will retain the complaint and process it pursuant to this part. Such bases generally include religion, political affiliation or belief, citizenship, and/or participation in a WIA Title I-financially assisted program or activity.

(d) Where the Director makes a referral under this section, he or she

must notify the complainant and the respondent about the referral.

§ 37.86 What must the Director do if he or she determines that a complaint will not be accepted?

If a complaint will not be accepted, the Director must notify the complainant, in writing, about that fact, and provide the complainant his/her reasons for making that determination.

§ 37.87 What must the Director do if he or she determines that a complaint will be accepted?

If the Director accepts the complaint for resolution, he or she must notify the complainant, the respondent, and the grantmaking agency. The notice must:

(a) State that the complaint will be accepted,

(b) Identify the issues over which CRC has accepted jurisdiction; and

(c) Explain the reasons why any issues were rejected.

§ 37.88 Who may contact CRC about a complaint?

Both the complainant and the respondent, or their authorized representatives, may contact CRC for information about the complaint. The Director will determine what information, if any, about the complaint will be released.

§ 37.89 May the Director offer the parties to a complaint the option of mediation?

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

(a) Mediation is voluntary; the parties must consent before the mediation process will proceed.

(b) The mediation will be conducted under guidance issued by the Director.

(c) If the parties are unable to reach resolution of the complaint through mediation, CRC will investigate and process the complaint under §§ 37.82 through 37.88 of this part.

Determinations

§ 37.90 If a complaint is investigated, what must the Director do when the investigation is completed?

At the conclusion of the investigation of the complaint, the Director must take the following actions:

(a) Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or this part; and

(b) Notify the complainant, the respondent, and the grantmaking agency, in writing, of that determination.

§ 37.91 What notice must the Director issue if he or she finds reasonable cause to believe that a violation has taken place?

If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or this part, he or she must issue an Initial Determination. The Initial Determination must include:

(a) The specific findings of the investigation;

(b) The corrective or remedial action that the Department proposes to the respondent, under § 37.94;

(c) The time by which the respondent must complete the corrective or remedial action;

(d) Whether it will be necessary for the respondent to enter into a written agreement under § 37.95 and 37.96; and

(e) The opportunity to engage in voluntary compliance negotiations.

§ 37.92 What notice must the Director issue if he or she finds no reasonable cause to believe that a violation has taken place?

If the Director determines that there is no reasonable cause to believe that a violation has taken place, he or she must issue a Final Determination under § 37.100. The Final Determination represents the Department's final agency action on the complaint.

§ 37.93 What happens if the Director finds that a violation has taken place, and the recipient fails or refuses to take the corrective action listed in the Initial Determination?

Under such circumstances, the Department must take the actions described in § 37.99 of this part.

§ 37.94 What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIA or this part?

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91 respectively, must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.

(b) Such steps must include:

(1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIA or this part;

(2) Make whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a

compliance review) or other monetary relief; hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and

(3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to outreach, recruitment and training designed to ensure equal opportunity.

(c) Monetary relief may not be paid from Federal funds.

§ 37.95 What procedures apply if the Director finds that a recipient has violated the nondiscrimination and equal opportunity provisions of WIA or this part?

(a) *Violations at State level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred at the State level, he or she must notify the Governor through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under § 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement, under paragraph (d) of this section.

(b) *Violations below State level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred below the State level, the Director must so notify the Governor and the violating recipient(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively.

(1) Such issuance must:

(i) Direct the Governor to initiate negotiations immediately with the violating recipient(s) to secure compliance by voluntary means;

(ii) Direct the Governor to complete such negotiations within 30 days of the Governor's receipt of the Notice to Show Cause or within 45 days of the Governor's receipt of the Letter of Findings or Initial Determination, as applicable. The Director reserves the right to enter into negotiations with the recipient at any time during the period. For good cause shown, the Director may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance must not exceed 60 days.

(iii) Include a determination as to whether compliance must be achieved by:

(A) Immediate correction of the violation(s) and written assurance that

such violations have been corrected, under § 37.96;

(B) Entering into a written Conciliation Agreement under § 37.97; or

(C) Both.

(2) If the Governor determines, at any time during the period described in paragraph (b)(1)(ii) of this section, that a recipient's compliance cannot be achieved by voluntary means, the Governor must so notify the Director.

(3) If the Governor is able to secure voluntary compliance under paragraph (b)(1) of this section, he or she must submit to the Director for approval, as applicable:

(i) Written assurance that the required action has been taken, as described in § 37.96;

(ii) A copy of the Conciliation Agreement, as described in § 37.97; or

(iii) Both.

(4) The Director may disapprove any written assurance or Conciliation Agreement submitted for approval under paragraph (b)(3) of this section that fails to satisfy each of the applicable requirements provided in §§ 37.96 or 37.97.

(c) *Violations in National Programs.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred in a National Program, he or she must notify the Federal grantmaking agency and the recipient by issuing a Letter of Findings, Notice to Show Cause, or Initial Determination, as appropriate, under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement under §§ 37.96 or 37.97, as applicable.

§ 37.96 What are the required elements of a written assurance?

A written assurance must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

§ 37.97 What are the required elements of a Conciliation Agreement?

A Conciliation Agreement must:

(a) Be in writing;

(b) Address each cited violation;

(c) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;

(d) Provide for periodic reporting on the status of the corrective and remedial action;

(e) Provide that the violation(s) will not recur; and

(f) Provide for enforcement for a breach of the agreement.

§ 37.98 When will the Director conclude that compliance cannot be secured by voluntary means?

The Director will conclude that compliance cannot be secured by voluntary means under the following circumstances:

(a) The grant applicant or recipient fails or refuses to correct the violation(s) within the time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or

(b) The Director has not approved an extension of time for agreement on voluntary compliance, under § 37.95(b)(1)(ii), and he or she either:

(1) Has not been notified, under § 37.95(b)(3), that the grant applicant or recipient has agreed to voluntary compliance;

(2) Has disapproved a written assurance or Conciliation Agreement, under § 37.95(b)(4); or

(3) Has received notice from the Governor, under § 37.95(b)(2), that the grant applicant or recipient will not comply voluntarily.

§ 37.99 If the Director concludes that compliance cannot be secured by voluntary means, what actions must he or she take?

If the Director concludes that compliance cannot be secured by voluntary means, he or she must either:

(a) Issue a Final Determination;

(b) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(c) Take such other action as may be provided by law.

§ 37.100 What information must a Final Determination contain?

A Final Determination must contain the following information:

(a) A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;

(b) A statement of those matters upon which the grant applicant or recipient and CRC continue to disagree;

(c) A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;

(d) A statement of the grant applicant's or recipient's liability, and, if appropriate, the extent of that liability;

(e) A description of the corrective or remedial actions that the grant applicant or recipient must take to come into compliance;

(f) A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:

(1) After the grant applicant or recipient is given the opportunity for a hearing, its WIA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;

(2) The Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the grant applicant or recipient; or

(3) the Secretary may take any other action against the grant applicant or recipient that is provided by law;

(g) A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in §§ 37.112 through 37.115; and

(h) A determination of the Governor's liability, if any, under § 37.52.

§ 37.101 Whom must the Director notify of a finding of noncompliance?

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director must notify:

- (a) The grant applicant or recipient;
- (b) The grantmaking agency; and
- (c) The Assistant Attorney General.

Breaches of Conciliation Agreements

§ 37.102 What happens if a grant applicant or recipient breaches a Conciliation Agreement?

When it becomes known to the Director that a Conciliation Agreement has been breached, the Director may issue a Notification of Breach of Conciliation Agreement.

§ 37.103 Whom must the Director notify about a breach of a Conciliation Agreement?

The Director must send a Notification of Breach of Conciliation Agreement to the Governor, the grantmaking agency, and/or other party(ies) to the Conciliation Agreement, as applicable.

§ 37.104 What information must a Notification of Breach of Conciliation Agreement contain?

A Notification of Breach of Conciliation Agreement must:

- (a) Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;
- (b) Identify the specific provisions of the Conciliation Agreement violated;
- (c) Determine liability for the violation and the extent of the liability;
- (d) Indicate that failure of the violating party to come into compliance

within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request from the Department to file suit;

(e) Advise the violating party of the right to request a hearing, and reference the applicable procedures in Section 37.111; and

(f) Include a determination as to the Governor's liability, if any, in accordance with the provisions of § 37.52.

§ 37.105 Whom must the Director notify if enforcement action under a Notification of Breach of Conciliation Agreement is commenced?

In such circumstances, the Director must notify:

- (a) The grantmaking agency; and
- (b) The Governor, recipient or grant applicant, as applicable.

Subpart E—Federal Procedures For Effecting Compliance

§ 37.110 What enforcement procedures does the Department follow to effect compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

(a) *Sanctions; judicial enforcement.* If compliance has not been achieved after issuance of a Final Determination under §§ 37.99 and 37.100, or a Notification of Breach of Conciliation Agreement under §§ 37.102 through 37.105, the Secretary may:

(1) After opportunity for a hearing, suspend, terminate, deny or discontinue the WIA Title I financial assistance, in whole or in part;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(3) Take such action as may be provided by law.

(b) *Deferral of new grants.* When proceedings under § 37.111 have been initiated against a particular recipient, the Department may defer action on that recipient's applications for new WIA Title I financial assistance until a Final Decision under § 37.112 has been rendered. Deferral is not appropriate when WIA Title I financial assistance is due and payable under a previously approved application.

(1) New WIA Title I financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New WIA Title I financial assistance does not include assistance

approved before the beginning of proceedings under § 37.111, or increases in funding as a result of changed computations of formula awards.

§ 37.111 What hearing procedures does the Department follow?

(a) *Notice of opportunity for hearing.* As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director must include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) *Complaint; request for hearing; answer.* (1) In the case of noncompliance that cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement is considered the Department's formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges, 800 K Street N.W., Suite 400, Washington, DC 20001.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer must specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement will have the effect of a denial. Findings of fact not denied are considered admitted. The answer must separately state and identify matters alleged as affirmative defenses, and must also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights Division, Room N-2464, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington DC 20210.

(4) (i) The failure of a grant applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, waives the right to a hearing; and

(ii) Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement are

considered admitted, and the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing. See § 37.112(b)(3).

(c) *Time and place of hearing.* Hearings will be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard must be given to the convenience of the parties, their counsel, and witnesses, if any.

(d) *Judicial process; evidence.* (1) The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents authorized by Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

(2) *Evidence.* In any hearing or administrative review conducted under this part, evidentiary matters will be governed by the standards and principles set forth in the Uniform Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, 29 CFR part 18.

§ 37.112 What procedures for initial and final decisions does the Department follow?

(a) *Initial Decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties by certified mail, return receipt requested.

(b) *Exceptions; Final Decision.* (1) Final decision after a hearing. The initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Secretary serves notice that he or she will review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Secretary and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Secretary within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Secretary no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Secretary may, within 30 days of the expiration of the time for filing exceptions, on his or her own motion serve notice on the parties that the Secretary will review the decision.

(vii) Final Decision and Order.

(A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary has served notice on the parties that he or she will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) Any case reviewed by the Secretary under this paragraph must be decided within 180 days of the notification of such review. If the Secretary fails to issue a Final Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.

(2) Final Decision where a hearing is waived.

(i) If, after issuance of a Final Determination under § 37.100 or Notification of Breach of Conciliation Agreement under § 37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in § 37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective

and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

(3) Final agency action. A Final Decision and Order issued under § 37.112(b) constitutes final agency action.

§ 37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?

Any action to suspend, terminate, deny or discontinue WIA Title I financial assistance must be limited to the particular political entity, or part thereof, or other recipient (or grant applicant) as to which the finding has been made, and must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIA Title I financial assistance will become effective until:

(a) The Director has issued a Final Determination under § 37.100 or Notification of Breach of Conciliation Agreement under § 37.104;

(b) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or under the nondiscrimination and equal opportunity provisions of WIA or this part;

(c) A Final Decision has been issued by the Secretary, the Administrative Law Judge's decision and order has become the Final Decision of the Secretary, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Decision of the Secretary, under § 37.112(b); and

(d) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

§ 37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?

When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

(a) The ability to comply with these regulations; and

(b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIA.

§ 37.115 What procedures does the Department follow for post-termination proceedings?

(a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under § 37.112(b) will be restored, where appropriate, to full eligibility to receive WIA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

(b) A grant applicant or recipient adversely affected by a Final Decision and Order issued under § 37.112(b) may at any time petition the Director to restore its eligibility to receive WIA

Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, sanctions imposed by the Final Decision and Order under § 37.112(b) (1) and (2) must remain in effect.

(c) The Director must issue a written decision on the petition for restoration.

(1) If the Director determines that the grant applicant or recipient has not

brought itself into compliance, he or she must issue a decision denying the petition.

(2) Within 30 days of its receipt of the Director's decision, the recipient or grant applicant may file a petition for review of the decision by the Secretary, setting forth the grounds for its objection to the Director's decision.

(3) The petition must be served on the Director and on the Office of the Solicitor, Civil Rights Division.

(4) The Director may file a response to the petition within 14 days.

(5) The Secretary must issue the final agency decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

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