§ 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?


SOURCE: 64 FR 61715, Nov. 12, 1999, unless otherwise noted.

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
Office of the Secretary of Labor

§ 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—
§ 37.4 29 CFR Subtitle A (7–1–06 Edition)

(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 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
§ 37.4

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

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

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

(i) The overall size of the grantmaking agency;

(ii) The number, type and location of the grantmaking agency’s facilities;

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

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

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

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

(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. 801 et seq.).
Office of the Secretary of Labor § 37.4

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:

(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;
§ 37.4

(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 available to qualified individuals without disabilities.

410
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,
§ 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part, and what limitations are there related to religious activities?

(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—funded 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 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) 29 CFR part 2, subpart D governs the circumstances under which DOL support, including WIA Title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also...
§ 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 possibly 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
(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;
   (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. 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;
   (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.

§ 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 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.
§ 37.10

(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 or 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.).
§ 37.16

(6) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);
(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.

(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.

§ 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