

§ 38.2 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 § 38.4;

(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 WIOA, 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 § 38.10.

(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 WIOA, 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 non-discrimination and equal opportunity laws to which such Centers are subject.

§ 38.3 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.

§ 38.4 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.

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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 WIOA and this part.

Aid, benefits, services, or training. (1) The term “aid, benefits, service, or training” means WIOA 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:

- (i) Core and intensive services;
- (ii) Education or training;
- (iii) Health, welfare, housing, social service, rehabilitation, or other supportive services;
- (iv) Work opportunities; and
- (v) Cash, loans, or other financial assistance to individuals.

(2) 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 WIOA.

Applicant means an individual who is interested in being considered for WIOA 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 WIOA 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 WIOA 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 appli-

cants or eligible applicants before and as a condition of receiving WIOA 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, hemic 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 at-

titudes 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 WIOA 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 WIOA 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

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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:

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

(ii) 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

(iii) 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:

(A) Without consideration;

(B) At a nominal consideration; or

(C) 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 con-

tract 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 WIOA means any of the following, when authorized or extended under WIOA 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:

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

(ii) 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

(iii) 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:

(A) Without consideration;

(B) At a nominal consideration; or

(C) 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 WIOA 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:

(i) 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;

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

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

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

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

(A) The overall size of the recipient;

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

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

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

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

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

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

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

(B) 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 WIOA.

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 WIOA or this part for a recipient to adopt or

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administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1)(i) or (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.

LWIOA (Local Workforce Investment Area) grant recipient means the entity that receives WIOA Title I financial assistance for a Local Workforce Investment Area directly from the Governor and disburses those funds for Workforce Innovation and Opportunity Act activities.

Methods of Administration means the written document and supporting documentation developed under § 38.54.

National Programs means:

(1) Job Corps; and

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

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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 WIOA 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 WIOA. “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 WIOA.

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 WIOA 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 “WIOA 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 WIOA 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 WIOA 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. The term “recipient” means:

(1) Any entity to which financial assistance under WIOA 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 WIOA Title I-funded program or activity. In instances in which a Governor operates a program or activity, either directly or through

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a State agency, using discretionary funds apportioned to him or her under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. "Recipient" includes, but is not limited to:

- (i) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
- (ii) State Employment Security Agencies;
- (iii) State and local Workforce Investment Boards;
- (iv) LWIOA grant recipients;
- (v) One-Stop operators;
- (vi) Service providers, including eligible training providers;
- (vii) On-the-Job Training (OJT) employers;
- (viii) Job Corps contractors and center operators, excluding the operators of federally-operated Job Corps centers;
- (ix) Job Corps national training contractors;
- (x) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- (xi) Placement agencies, including Job Corps contractors that perform these functions; and
- (xii) Other National Program recipients.

(2) In addition, for purposes of this part, One-Stop partners, as defined in section 121(b) of WIOA, are treated as "recipients," and are subject to the nondiscrimination and equal opportunity requirements of 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 WIOA 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:

(i) Any WIOA Title I—funded program or activity that receives financial assistance from or through any State or LWIOA grant recipient; or

(ii) 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:

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

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

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. The term "State programs" means:

(1) Programs financially assisted in whole or in part under Title I of WIOA in which either:

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

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

(2) "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 WIOA Title I-financially assisted programs and activities, as consistent with the provisions of WIOA.

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) of this definition.

(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).

WIOA means the Workforce Innovation and Opportunity Act, Public Law 113-128.

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

WIOA 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 WIOA, 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;

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

(3) Aid, benefits, services, or training provided with the aid of any non-WIOA 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 WIOA Title I financial assistance. *See* the definition of “aid, benefits, services, or training” in this section.

§ 38.5 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 WIOA 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 WIOA Title I—funded program or activity.

§ 38.6 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 WIOA 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 WIOA 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 WIOA Title I—funded program or activity;

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(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 WIOA 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 WIOA 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 WIOA Title I—funded program or activity;

(6) Deny or limit an individual with respect to any opportunity to participate in a WIOA 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 WIOA 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 WIOA 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 WIOA 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 WIOA 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 § 38.4.

(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