

## COMPLAINT SYSTEM DEFINITIONS

Definitions of terms used in Parts 652, 653, 654, and 658 of the Code of Federal Regulations CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR and 20 CFR Part 658 - ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

In addition to the definitions set forth in Section 3 of the Workforce Innovation and Opportunity Act (WIOA), the following definitions apply to the regulations in parts 652, 653, 654, and 658:

**Act** means the Wagner-Peyser Act (codified at 29 U.S.C. 49 et seq.).

**Administrator, Office of Workforce Investment (OWI Administrator)**, means the chief official of the Office of Workforce Investment (OWI) or the Administrator's designee.

**Affirmative action** means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the affirmative action guidelines of the Equal Employment Opportunity Commission (see 29 CFR part 1608) to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other non-occupationally valid purposes has been discouraged from entering certain occupational fields.

**Agricultural employer** means any employer as defined in this part who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).

**Agricultural worker** see Farmworker.

**Applicant Holding Office** means a Wagner-Peyser Act Employment Service (ES) office that is in receipt of a clearance order and has access to U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

**Applicant Holding State** means a State Workforce Agency that is in receipt of a clearance order from another State and potentially has U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

**Bona Fide Occupational Qualification (BFOQ)** means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin, or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605, and 1627.

**Career services** means the services described in Section 134(c)(2) of the Workforce Innovation and Opportunity Act (WIOA) and §678.430 of this chapter. See Attachment L.

**Clearance order** means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS).

**Clearance System** means the orderly movement of U.S. job seekers as they are referred through the employment placement process by an ES office. This includes joint action of local ES offices in different labor market areas and/or States.

**Complainant** means the individual, employer, organization, association, or other entity filing a complaint.

**Complaint** means a representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law.

**Decertification** means the rescission by the Secretary of the year-end certification made under Section 7 of the Wagner-Peyser Act to the Secretary of the Treasury that the State agency may receive funds authorized by the Wagner-Peyser Act.

**Department** means the United States Department of Labor, including its agencies and organizational units.

**Employer** means a person, firm, corporation, or other association or organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either share in exercising one or more of the definitional indicia.

**Employment and Training Administration (ETA)** means the component of the Department of Labor that administers Federal government job training and worker dislocation programs, Federal grants to States for public ES programs, and unemployment insurance benefits. These services are provided primarily through State and local workforce development systems.

**Employment-related laws** means those laws that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.

**Employment Service (ES) office** means a site in a local WDB where staff of the State Workforce Agency, consistent with the requirements of §652.215 of this chapter, provide Wagner-Peyser Act services as a one-stop partner program. A site must be co-located with a one-stop career center consistent with the requirements of §§678.305 through 678.315 of this chapter.

**Employment Service (ES) regulations** means the Federal regulations at this part and parts 652, 653, 654, 658 of this chapter, and 29 CFR part 75.

**Establishment** means a public or private economic employing unit generally at a single physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm, orchard or ranch. It is usually engaged in one, or predominantly one, type of commercial or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community must be considered an individual establishment, except that all such units in the same physical location is considered a single establishment. A component of an establishment which may not be located in the same physical structure

(such as the warehouse of a department store) also must be considered as part of the parent establishment. For the purpose of the “seasonal farmworker” definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

**Farm work** means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities mean all commodities produced on a farm including crude gum (oleoresin) from a living tree product processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. Farm work also means any service or activity covered under §655.103(c) of this chapter and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.

**Farmworker** means an individual employed in farm work, as defined in this section.

**Field checks** means random, unannounced appearances by State Workforce Agency personnel at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

**Field visits** means appearances by Monitor Advocates or State Workforce Agency outreach personnel to the working and living areas of migrant and seasonal farmworkers (MSFWs), to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Monitor Advocates or outreach personnel must keep records of each such visit.

**Governor** means the chief executive of a State or an outlying area.

**Hearing officer** means a Department of Labor Administrative Law Judge, designated to preside at Department Administrative Hearings.

**Individual with a disability** means an individual with a disability as defined in Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

**Interstate clearance order** means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices in a different State.

**Intrastate clearance order** means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices within the State.

**Job development** means the process of securing a job interview with a public or private employer for a specific participant for whom the ES office has no suitable opening on file.

**Job Information** means information derived from data compiled in the normal course of ES activities from reports, job orders, applications, and the like.

**Job opening** means a single job opportunity for which the ES office has on file a request to select and refer participants.

**Job order** means the document containing the material terms and conditions of employment relating to wages, hours, working conditions, worksite and other benefits, submitted by an employer.

**Job referral** means:

- (1) The act of bringing to the attention of an employer a participant or group of participants who are available for specific job openings or for a potential job; and
- (2) The record of such referral. "Job referral" means the same as "referral to a job."

**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 criteria used by the Department's Bureau of Labor Statistics in defining such areas or similar criteria established by a Governor.

**Local Office Manager** means the official in charge of all ES activities in a one-stop center.

**Local Workforce Development Board or Local WDB** means a Local Workforce Development Board established under Section 107 of WIOA.

**Migrant farmworker** means a seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is not reasonably able to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

**Migrant food processing worker** see Migrant Farmworker.

**MSFW** means a migrant farmworker or a seasonal farmworker.

**Occupational Information Network (O\*NET) system** means the online reference database which contains detailed descriptions of U.S. occupations, distinguishing characteristics, classification codes, and information on tasks, knowledge, skills, abilities, and work activities as well as information on interests, work styles, and work values.

**One-stop center** means a physical center within the one-stop delivery system, as described in Section 121(e)(2)(A) of WIOA.

**One-stop delivery system** means a one-stop delivery system described in Section 121(e) of WIOA.

**One-stop partner** means an entity described in Section 121(b) of WIOA and §678.400 of this chapter that is participating in the operation of a one-stop delivery system.

**O\*NET-SOC** means the occupational codes and titles used in the O\*NET system, based on and grounded in the Standard Occupational Classification (SOC), which are the titles and codes utilized by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting,

calculating, and disseminating data. The SOC system is issued by the Office of Management and Budget and the Department of Labor is authorized to develop additional detailed O\*NET occupations within existing SOC categories. The Department uses O\*NET-SOC titles and codes for the purposes of collecting descriptive occupational information and for State reporting of data on training, credential attainment, and placement in employment by occupation.

**Onsite review** means an appearance by the State Monitor Advocate and/or Federal staff at an ES office to monitor the delivery of services and protections afforded by ES regulations to MSFWs by the State Workforce Agency and local ES offices.

**Order holding office** means an ES office that has accepted a clearance order from an employer seeking U.S. workers to perform farm work on a less than year-round basis through the Agricultural Recruitment System.

**Outreach contact** means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from an outreach worker.

**Participant** means a reportable individual who has received services other than the services described in §677.150(a)(3) of this chapter, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination. (See §677.150(a) of this chapter.)

- (1) The following individuals are not Participants, subject to §677.150(a)(3)(ii) and(iii) of this chapter:
  - (i) Individuals who only use the self-service system; and
  - (ii) Individuals who receive information-only services or activities.
- (2) Wagner-Peyser Act participants must be included in the program's performance calculations

**Placement** means the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the employment office completed all of the following steps:

- (1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific participant;
- (2) Made prior arrangements with the employer for the referral of an individual or individuals;
- (3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;
- (4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and
- (5) Appropriately recorded the placement.

**Public housing** means housing operated by or on behalf of any public agency.

**Regional Administrator (RA)** means the chief Department of Labor Employment and Training Administration (ETA) official in each Department regional office.

**Reportable individual** means an individual who has taken action that demonstrates an intent to use Wagner-Peyser Act services and who meets specific reporting criteria of the Wagner-Peyser Act (see §677.150(b) of this chapter), including:

- (1) Individuals who provide identifying information;
- (2) Individuals who only use the self-service system; or
- (3) Individuals who only receive information-only services or activities.

**Respondent** means the employer, individual, or State agency (including a State agency official) who is alleged to have committed the violation described in a complaint.

**Seasonal farmworker** means an individual who is employed, or was employed in the past 12 months, in farm work (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farm work, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

**Secretary** means the Secretary of the U.S. Department of Labor or the Secretary's designee.

**Significant MSFW One-Stop Centers** are those designated annually by the Department and include those ES offices where MSFWs account for 10 percent or more of annual participants in employment services and those local ES offices which the administrator determines must be included due to special circumstances such as an estimated large number of MSFWs in the service area. In no event may the number of significant MSFW one-stop centers be less than 100 centers on a nationwide basis.

**Significant MSFW States** are those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants.

**Significant multilingual MSFW One-Stop Centers** are those designated annually by the Department and include those significant MSFW ES offices where 10 percent or more of MSFW participants are estimated to require service provisions in a language(s) other than English unless the administrator determines other one-stop centers also must be included due to special circumstances.

**Solicitor** means the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

**Standard Metropolitan Statistical Area (SMSA)** means a metropolitan area designated by the Bureau of Census which contains:

- (1) At least 1 city of 50,000 inhabitants or more; or
- (2) Twin cities with a combined population of at least 50,000.

**State** means any of the 50 States, the District of Columbia, Guam, Puerto Rico, and Virgin Islands.

**State Administrator** means the chief official of the SWA.

**State agency or State Workforce Agency (SWA)** means the State ES agency designated under Section 4 of the Wagner-Peyser Act.

**State Hearing Official** means a State official designated to preside at State administrative hearings convened to resolve complaints involving ES regulations pursuant to subpart E of part 658 of this chapter.

**State Workforce Development Board or State WDB** means the entity within a State appointed by the Governor under Section 101 of WIOA.

**Supply State(s)** means a State that potentially has U.S. workers who may be recruited for referral through the Agricultural Recruitment System to the area of intended employment in a different State.

**Supportive services** mean services that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner-Peyser Act. These services may include, but are not limited to, the following:

- (1) Linkages to community services;
- (2) Assistance with transportation;
- (3) Assistance with childcare and dependent care;
- (4) Assistance with housing;
- (5) Needs-related payments;
- (6) Assistance with educational testing;
- (7) Reasonable accommodations for individuals with disabilities;
- (8) Referrals to health care;
- (9) Assistance with uniform or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;
- (10) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and
- (11) Payments and fees for employment and training-related applications, tests, and certifications.

**Tests** means a standardized method of measuring an individual's possession of, interest in, or ability to acquire, job skills and knowledge. Use of tests by one-stop staff must be in accordance with the provisions of:

- (1) Title 41 CFR part 60-3, Uniform Guidelines on Employee Selection Procedures;
- (2) Title 29 CFR part 1627, Records to Be Made or Kept Relating to Age; Notices to Be Posted; Administrative Exemptions; and



- (3) The Department of Labor's regulations on Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which have been published as 29 CFR part 32.

**Training services** means services described in Section 134(c)(3) of WIOA.

**Unemployment insurance claimant** means a person who files a claim for benefits under any State or Federal unemployment compensation law.

**Veteran** means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as defined under 38 U.S.C. 101 and Section 3(63)(A) of WIOA.

**Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES)** means the national system of public ES offices described under the Wagner-Peyser Act. Employment services are delivered through a nationwide system of one-stop centers and are managed by State Workforce Agencies and the various local offices of the State Workforce Agencies and funded by the United States Department of Labor.

**WIOA** means the Workforce Innovation and Opportunity Act (codified at 29 U.S.C. 3101 et seq.).

**Workforce and Labor Market Information (WLMI)** means the body of knowledge that describes the relationship between labor demand and supply. This includes identification and analysis of the socio-economic factors that influence employment, training, and business decisions, such as worker preparation, educational program offerings and related policy decisions within national, State, Sub state, and local labor market areas. WLMI includes, but is not limited to:

- (1) Employment numbers by occupation and industry;
- (2) Unemployment numbers and rates;
- (3) Short- and long-term industry and occupational employment projections;
- (4) Information on business employment dynamics, including the number and nature of business establishments, and share and location of industrial production;
- (5) Local employment dynamics, including business turnover rates; new hires, job separations, net job losses;
- (6) Job vacancy counts;
- (7) Job seeker and job posting data from the public labor exchange system;
- (8) Identification of high growth and high demand industries, occupations, and jobs;
- (9) Information on employment and earnings for wage and salary workers and for the self-employed;
- (10) Information on work hours, benefits, unionization, trade disputes, conditions of employment, and retirement;



- (11) Information on occupation-specific requirements regarding education, training, skills, knowledge, and experience;
- (12) Population and workforce growth and decline, classified by age, sex, race, and other demographic characteristics;
- (13) Identification of emerging occupations and evolving skill demands;
- (14) Business skill and hiring requirements;
- (15) Workforce characteristics, which may include skills, experience, education, credential attainment, competencies, etc.;
- (16) Workforce available in geographic areas;
- (17) Information on regional and local economic development activity, including job creation through business start-ups and expansions;
- (18) Enrollments in and completers from educational programs, training and registered apprenticeship;
- (19) Trends in industrial and occupational restructuring;
- (20) Shifts in consumer demands;
- (21) Data contained in governmental or administrative reporting including wage records as identified in §652.301 of this chapter;
- (22) Labor market intelligence gained from interaction with businesses, industry or trade associations, education agencies, government entities, and the public; and
- (23) Other economic factors.

**Workforce and Labor Market Information System (WLMIS)** means the system that collects, analyzes, interprets, and disseminates workforce characteristics and employment-related data, statistics, and information at national, State, and local labor market areas and makes that information available to the public, workforce development system, one-stop partner programs, and the education and economic development communities.

**Workforce development activity** means an activity carried out through a workforce development program as defined in Section 3 of WIOA.

**Working days or business days** means those days that the order-holding ES office is open for public business, for purposes of the Agricultural Recruitment System.

**Work test** means activities designed to ensure that an individual whom a State determines to be eligible for unemployment insurance benefits is able to work, available for work, and actively seeking work in accordance with the State's unemployment compensation law.

*For the purpose of the implementation of the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), the following definitions apply:*

**(a) 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 WOIA and this part.

**(b) Aid, benefit, service, or training** means WIOA Title I-financially assisted services, financial or other aid, training, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. "Aid, benefit, service, or training" includes, but is not limited to:

- (1) Career Services;
- (2) Education or training;
- (3) Health, welfare, housing, social service, rehabilitation, or other supportive services;
- (4) Work opportunities;
- (5) Cash, loans, or other financial assistance to individuals; and
- (6) 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.

**(c) Applicant** means an individual who is interested in being considered for any WIOA Title I-financially assisted aid, benefit, service, 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.

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

**(e) 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 any WIOA Title I-financially assisted aid, benefit, service, or training from a recipient.

**(f) Assistant Attorney General** means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

**(g) Assistant Secretary** means the Assistant Secretary for Administration and Management, United States Department of Labor.

**(h) Auxiliary aids or services includes:**

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible

electronic and information technology; or other effective means of making aurally delivered materials available to individuals with hearing impairments;

- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services, devices, and actions.

**(i) Babel Notice** means a short notice included in a document or electronic medium (e.g., website, “app,” email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages.

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

**(k) Citizenship** see “Discrimination prohibited based on citizenship status.” in §38.11.

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

**(m) Department** means the U.S. Department of Labor, including its agencies/organizational units.

**(n) Departmental grant making agency** means a grant making agency within the U.S. Department of Labor.

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

**(p) Direct threat** means a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by auxiliary aids and services, reasonable accommodations, or reasonable modifications in policies, practices and/or procedures. The determination whether an individual with a disability poses a direct threat must be based on an individualized assessment of the individual's present ability safely to either:

- (1) Satisfy the essential eligibility requirements of the program or activity (in the case of aid, benefits, services, or training); or
- (2) Perform the essential functions of the job (in the case of employment). This assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:
  - (i) The duration of the risk;
  - (ii) The nature and severity of the potential harm;

- (iii) The likelihood that the potential harm will occur; and
- (iv) The imminence of the potential harm.

**(q) Disability**

(1) General. “Disability” meaning, with respect to an individual:

- (i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (ii) A record of such an impairment; or
- (iii) Being regarded as having such an impairment as described in paragraph (q)(7) of this section.

(2) Rules of construction

- (i) The definition of “disability” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by Federal disability nondiscrimination law and this part.
- (ii) An individual may establish coverage under any one or more of the three prongs of the general definition of disability in paragraph (q)(1) of this section, the “actual disability” prong in paragraph (q)(1)(i) of this section, the “record of” prong in paragraph (q)(1)(ii) of this section, or the “regarded as” prong in paragraph (q)(1)(iii) of this section.
- (iii) Where an individual is not challenging a recipient's failure to provide reasonable accommodations or reasonable modifications under §38.14(a) or (b), it is generally unnecessary to proceed under the “actual disability” or “record of” prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the “regarded as” prong of the definition of “disability,” which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. An individual may choose, however, to proceed under the “actual disability” or “record of” prong regardless of whether the individual is challenging a recipient's failure to provide reasonable accommodations, or reasonable modifications.

(3) Physical or mental impairment.

- (i) “Physical or mental impairment” meaning
  - (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

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

(ii) "Physical or mental impairment" includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, pregnancy-related medical conditions, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) "Physical or mental impairment" does not include homosexuality or bisexuality.

(4) Major life activities.

(i) Major life activities include, but are not limited to:

(A) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(B) The operation of a "major bodily function," such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(ii) Rules of construction.

(A) In determining whether an impairment substantially limits a major life activity, the term "major" shall not be interpreted strictly to create a demanding standard.

(B) Whether an activity is a "major life activity" is not determined by reference to whether it is of central importance to daily life.

(5) Substantially limits—

(i) Rules of construction. The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity.

(A) The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by Federal disability nondiscrimination law and this part. "Substantially limits" is not meant to be a demanding standard.

(B) The primary object of attention in disability cases brought under WIOA Section 188 should be whether recipients have complied with their obligations and whether

discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

- (C) An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a substantially limiting impairment.
  - (D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
  - (E) An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.
  - (F) The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for "substantially limits" applied prior to the ADA Amendments Act of 2008 (ADAAA).
  - (G) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence. Nothing in this paragraph (q)(5)(i)(G) is intended, however, to prohibit or limit the presentation of scientific, medical, or statistical evidence in making such a comparison where appropriate.
  - (H) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.
  - (I) The six-month "transitory" part of the "transitory and minor" exception in paragraph (q)(7)(ii) of this section does not apply to the "actual disability" or "record of" prongs of the definition of "disability." The effects of an impairment lasting or expected to last less than six months can be substantially limiting within the meaning of this paragraph (q)(5)(i) for establishing an actual disability or a record of a disability.
- (ii) Predictable assessments.

(A) The principles set forth in paragraph (q)(5)(i) of this section are intended to provide for more generous coverage and application of the prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and recipients with rights and responsibilities with respect to avoiding discrimination on the basis of disability.

(B) Applying these principles, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraph (q)(1)(i) of this section (the “actual disability” prong) or paragraph (q)(1)(ii) (the “record of” prong). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a

substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(C) For example, applying these principles, it should easily be concluded that the types of impairments set forth in paragraphs (q)(5)(ii)(C)(1) through (11) of this section will, at a minimum, substantially limit the major life activities indicated. The types of impairments described in paragraphs (q)(5)(ii)(C)(1) through (11) may substantially limit additional major life activities (including major bodily functions) not explicitly listed in paragraphs (q)(5)(ii)(C)(1) through (11).

- (1) Deafness substantially limits hearing;
- (2) Blindness substantially limits seeing;
- (3) Intellectual disability substantially limits brain function;
- (4) Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function;
- (5) Autism substantially limits brain function;
- (6) Cancer substantially limits normal cell growth;
- (7) Cerebral palsy substantially limits brain function;
- (8) Diabetes substantially limits endocrine function;
- (9) Epilepsy, muscular dystrophy, and multiple sclerosis each substantially limits neurological function;
- (10) Human Immunodeficiency Virus (HIV) infection substantially limits immune function; and
- (11) Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each substantially limits brain function.



(iii) Condition, manner, or duration.

- (A) At all times taking into account the principles in paragraph (q)(5)(i) of this section, in determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the major life activity; the manner in which the individual performs the major life activity; or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.
- (B) Consideration of facts such as condition, manner or duration may include, among other things, consideration of the difficulty, effort or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.
- (C) In determining whether an individual has a disability under the "actual disability" or "record of" prongs of the definition of "disability," the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning, because of the additional time or effort the individual must spend to read, write, speak, or learn compared to most people in the general population.
- (D) Given the rules of construction set forth in paragraph (q)(5)(i) of this section, it may often be unnecessary to conduct an analysis involving most or all of the facts related to condition, manner, or duration. This is particularly true with respect to impairments such as those described in paragraph (q)(5)(ii)(C) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a major life activity, and for which the individualized assessment should be particularly simple and straightforward.

(iv) Mitigating measures include, but are not limited to:

- (A) Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;
- (B) Use of assistive technology;

- (C) Reasonable modifications of policies, practices, and procedures, or auxiliary aids or services;
- (D) Learned behavioral or adaptive neurological modifications; or
- (E) Psychotherapy, behavioral therapy, or physical therapy.

(6) Has a record of such an impairment.

- (i) An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (ii) Broad construction. Whether an individual has a record of an impairment that substantially limited a major life activity shall be construed broadly to the maximum extent permitted by Federal disability nondiscrimination law and this part and should not demand extensive analysis. An individual will be considered to fall within this prong of the definition of “disability” if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a major life activity, the principles articulated in paragraph (q)(5)(i) of this section apply.
- (iii) Reasonable accommodation or reasonable modification. An individual with a record of a substantially limiting impairment may be entitled to a reasonable accommodation or reasonable modification if needed and related to the past disability.

(7) Is regarded as having such an impairment. The following principles apply under the “regarded as” prong of the definition of “disability” (paragraph (q)(1)(iii) of this section):

- (i) Except as set forth in paragraph (q)(7)(ii) of this section, an individual is “regarded as having such an impairment” if the individual is subjected to an action prohibited by WIOA Section 188 and this part because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity, even if the recipient asserts, or may or does ultimately establish, a defense to the action prohibited by WIOA Section 188 and this part.
- (ii) An individual is not “regarded as having such an impairment” if the recipient demonstrates that the impairment is, objectively, both “transitory” and “minor.” A recipient may not defeat “regarded as” coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the recipient must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment), objectively, both “transitory” and “minor.” For purposes of this section, “transitory” is defined as lasting or expected to last six months or less.

- (iii) Establishing that an individual is “regarded as having such an impairment” does not, by itself, establish liability. Liability is established only when an individual proves that a recipient discriminated on the basis of disability within the meaning of federal nondiscrimination law and this part.

**(r) 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.

**(s) Employment practices** of a recipient include, but are 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.

**(t) Employment-related training** means training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment.

**(u) Entity** means any person, corporation, partnership, joint venture, sole proprietorship, unincorporated association, consortium, Native American 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.

**(v) 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.

**(w) Federal grant making agency** means a Federal agency that provides financial assistance under any Federal statute.

**(x) Financial assistance** means any of the following:

- (1) Any grant, sub grant, loan, or advance of funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- (2) Provision of the services of grant making agency personnel, or of other personnel at the grant making 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 grant making agency's share of the fair market value of the property is not returned to the grant making 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 grant making 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 grant making agency.

**(y) Financial assistance under Title I of WIOA** means any of the following, when authorized or extended under WIOA Title I:

- (1) Any grant, sub grant, loan, or advance of federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- (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;
- (E) Waiver of charges that would normally be made for the furnishing of Government services;
- (F) 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.

**(z) 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, benefit, service, or training, or of other employees to perform their duties; and

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

**(aa) Governor means** the chief executive of a State or an outlying area, or the Governor's designee.

**(bb) Grant applicant means** an entity that submits required documentation to the Governor, recipient, or Department, before and as a condition of receiving financial assistance under Title I of WIOA.

**(cc) Grant making agency means** an entity that provides Federal financial assistance.

**(dd) 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.

**(ee) 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.

**(ff) Individual with a Disability means** a person who has a disability as previously defined in this section.

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

(i) Transvestism, transsexualism, or gender identity disorders not resulting from physical impairments;

(ii) Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;

(iii) Compulsive gambling, kleptomania, or pyromania; or

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

(2) The term "individual with a disability" 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 the illegal use of drugs;

(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 administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (ff)(2)(i) or (ii) of this section is no longer engaging in the illegal use of drugs.

(3) With regard to employment, the term “individual with a disability” does not include any individual who:

(i) Is an alcoholic if:

(A) The individual's current use of alcohol prevents such individual from performing the duties of the job in question; or

(B) The individual's employment, by reason of such current alcohol abuse, would constitute a direct threat to the individual or the safety of others; or

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

(A) That disease or infection prevents the individual from performing the essential functions of the job in question; or

(B) The individual's employment, because of that disease or infection, would constitute a direct threat to the health or safety of the individual or others.

**(gg) 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.

**(hh) Limited English proficient (LEP) individual** means an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

**(ii) LWDA (Local Workforce Development Area) grant recipient** means the entity that receives WIOA Title I financial assistance for a local area directly from the Governor and disburses those funds for workforce development activities.

**(jj) National Programs** means:

(1) Job Corps; and

(2) Programs receiving Federal financial assistance under Title I, Subtitle D of WIOA directly from the Department. Such programs include, but are not limited to, the Migrant and Seasonal Farmworkers Programs, Native American Programs, National Dislocated Worker Grant Programs, and YouthBuild programs.

**(kk) 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 and this part.



**(ll) Nondiscrimination Plan** means the written document and supporting documentation developed under §38.54.

**(mm) 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% of the wage rate of the participant (or up to 75% as provided in WIOA section 134(c)(3)(H)), 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.

**(nn) Other Power-driven Mobility Device** means any mobility device powered by batteries, fuel, or other engines or by similar means—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

**(oo) Participant** means an individual who has been determined to be eligible to participate in, and who is receiving any aid, benefit, service, or training under, a program or activity financially assisted in whole or in part under Title I of WIOA. “Participant” includes, but is not limited to, individuals receiving any service(s) under State Employment Service programs, and claimants receiving any service(s) or benefits under State Unemployment Insurance programs.

**(pp) Participation** is considered to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized aid, benefit, service, or training provided under Title I of WIOA.

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

**(rr) 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.

**(ss) Program or activity** see “WIOA Title I-financially assisted program or activity” in this section.

**(tt) Programmatic accessibility** means policies, practices, and procedures providing effective and meaningful opportunity for persons with disabilities to participate in or benefit from aid, benefits, services, and training.

**(uu) Prohibited basis** 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, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, citizenship status or participation in a WIOA Title I-financially assisted program or activity.

**(vv) Public entity** means:

- (1) Any State or local government; and
- (2) Any department, agency, special purpose district, workforce development board, or other instrumentality of a State or States or local government.

**(ww) Qualified individual with a disability** means:

- (1) With respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position;
- (2) With respect to aid, benefits, services, or training, an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

**(xx) Qualified interpreter** means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals who are limited English proficient. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary, either in-person, through a telephone, a video remote interpreting (VRI) service, or via internet, video, or other technological methods.

- (1) Qualified interpreter for an individual with a disability includes, for example, a sign language interpreter, oral transliterator, and cued language transliterator. When an interpreter is provided to a person with a disability, the qualified interpreter must be able to sign or otherwise communicate effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (2) Qualified interpreter for an individual who is limited English proficient means an individual who demonstrates expertise and ability to communicate information effectively, accurately, and impartially, in both English and the other language, and identifies and employs the appropriate mode of interpreting (e.g., consecutive, simultaneous, or sight translation).

**(yy) 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, services, 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.
- (4) A recipient is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong (paragraph (q)(1)(i) of this section) or the “record of” a disability prong (paragraph (q)(1)(ii) of this section), but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong (paragraph (q)(1)(iii) of this section).

**(zz) Recipient** means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted 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 the Governor under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. 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. “Recipient” includes, but is not limited to:

- (1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
- (2) State Workforce Agencies;
- (3) State and Local Workforce Development Boards;
- (4) LWDA 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;
- (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;
- (12) Other National Program recipients.

**(aaa) 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.

**(bbb) 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.

**(ccc) Secretary** means the Secretary of Labor, U.S. Department of Labor, or the Secretary's designee.

**(ddd) Sectarian Activities** means religious worship or ceremony, or sectarian instruction.

**(eee) 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.

**(fff) Service animal** means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or

interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship, without more, do not constitute work or tasks for the purposes of this definition.

**(ggg) Service provider** means:

- (1) Any operator of, or provider of aid, benefits, services, or training to:
  - (i) Any program or activity that receives WIOA Title I financial assistance from or through any State or LWDA 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.

**(hhh) 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.

**(iii) Solicitor** means the Solicitor of Labor, U.S. Department of Labor, or the Solicitor's designee.

**(jjj) 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.

**(kkk) State Programs** means programs financially assisted in whole or in part under Title I of WIOA in which either:

- (1) The Governor and/or State receives and disburses the grant to or through LWDA grant recipients; or
- (2) The Governor retains the grant funds and operates the programs, either directly or through a State agency.
- (3) "State Programs" also includes State Workforce Agencies, State Employment Service agencies, and/or State unemployment compensation agencies.

**(III) State Workforce Agency (SWA)** 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.

**(mmm) 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 Title I.

**(nnn) Terminatee** means a participant whose participation in the program or employee whose employment with the program ends voluntarily or involuntarily, during the applicable program year.

**(ooo) 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.

**(ppp) Transferee** means a person or entity to whom or to which real or personal property, or an interest in such property, is transferred.

**(qqq) Ultimate beneficiary** see the definition of “beneficiary” in this section.

**(rrr) Undue Burden or Undue Hardship** 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 (rrr)(1)(ii) of this section.

(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.
- (3) Religious accommodation. For purposes of religious accommodation only, "undue hardship" means anything more than a de minimis cost or operational burden that a particular accommodation would impose upon a recipient.

**(sss) Video remote interpreting (VRI) service** means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images, as provided in §38.15.

**(ttt) Vital information** means information, whether written, oral or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service, and/or training; necessary for an individual to obtain any aid, benefit, service, and/or training; or required by law. Examples of documents containing vital information include, but are not limited to applications, consent and complaint forms; notices of rights and responsibilities; notices advising LEP individuals of their rights under this part, including the availability of free language assistance; rulebooks; written tests that do not assess English language competency, but rather assess competency for a particular license, job, or skill for which English proficiency is not required; and letters or notices that require a response from the beneficiary or applicant, participant, or employee.

**(uuu) Wheelchair** means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor and/or outdoor locomotion.

**(vvv) WIOA** means the Workforce Innovation and Opportunity Act.

**(www) WIOA Title I financial assistance** see the definition of "Financial assistance under WIOA" in this section.

**(xxx) WIOA Title I- financially assisted program or activity** means:

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

- (i) Any aid, benefit, service, or training to individuals; or
- (ii) Facilities for furnishing any aid, benefits, services, or training to individuals;



- (2) Aid, benefit, service, 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, benefit, service, or training provided with the aid of any non-WIOA Title I financial assistance, 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, benefit, service, or training” in this section.

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