**WorkforceGPS**

**Transcript of Webinar**

**CRC Updates Section 188 WIOA Equal Opportunity Regulations
(29 CFR Part 38)**

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*Transcript by*

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GARY GONZALEZ: And I'm going to turn things over to our speakers in just a second. But again, I do want to highlight we are recording today's event and we're going to be posting that recording to WorkforceGPS in approximately two business days.

So now I'm going to turn things over to Naomi Barry-Perez. She's the director for the Civil Rights Center here at Labor. Naomi, take it away.

NAOMI BARRY-PEREZ: Thank you so much. I'm so pleased to see the names scrolling down the screen. There are definitely some familiar names to our equal opportunity and nondiscrimination family. And I also just saw someone from Washington County, Minnesota, where my mom is a constituent.

So I'm just so pleased that you've joined us. I know it was short timing, but we really appreciate the opportunity to get out and get some information to you early on about the Section 188 Nondiscrimination and Equal Opportunity Regulation. So let me get started without further ado.

As Gary said, my name is Naomi Barry-Perez and I'm the director of the U.S. Department of Labor's Civil Rights Center here in Washington, D.C. I appreciate all of you joining us today for this webinar to talk about our new regulations under Section 188 of the Workforce Innovation and Opportunity Act – or WIOA.

These regulations, which were published on December 2nd, 2016, and will be effective on January 3rd, 2017, update our existing regulations at 29 CFR Part 38. Like the current regulations, these new regulations will be administered by the Civil Rights Center.

Before and during this presentation, questions may be submitted through the webinar. CRC will answer questions after the presentation, as time allows. At any time, recipients may submit technical assistance requests to CRC at the email address civilrightscenter@dol.gov. More information, and answers to frequently asked questions, including translations of such, may be found in the documents linked to this webinar.

As many of you know, the mission of the Civil Rights Center is to promote justice and equal opportunities. We administer and enforce various civil rights laws that protect individuals who apply to, participate in, work for, or benefit from programs and activities that receive federal financial assistance from the U.S. Department of Labor, including programs and activities that are operated by One-Stop partners as part of a One-Stop delivery system.

We carry out our mission by investigating and adjudicating discrimination complaints; conducting compliance reviews; providing compliance assistance, including technical assistance and training; and developing and publishing civil rights regulations, policies, and guidance.

We work closely with other Department of Labor agencies in affecting our mission, including the Employment and Training Administration – or ETA – and the Office of Disability Employment Policy – or ODEP.

So before we get into the details of the new regulations, I'd like to introduce two of my colleagues from ETA and ODEP, Gerri Fiala and Jennifer Sheehy, who will talk briefly now about the importance of this new rule. Gerri?

GERRI FIALA: Thanks, Naomi. And hello. I am Gerri Fiala and I'm the deputy assistant secretary of the Employment and Training Administration at the U.S. Department of Labor.

The workforce development system is the backbone of job training, education, and employment services in the United States. It provides millions of jobseekers and workers the opportunity to learn new skills and obtain new and better jobs. The system also serves a critical role in our nation's labor market, bringing together workers and businesses – a Match.com, if you will – to ensure that workers can find good jobs, and that employers can find the skilled workers they need to keep business thriving.

The bipartisan Workforce Innovation and Opportunity Act – WIOA – is the most significant reform of the workforce system since the last 1990s. It strengthens the alignment of the core programs of the workforce system by requiring, among other things, accessible One-Stop delivery systems and access to services and benefits so that people get the tools and skills they need not just to find good jobs, but to launch middle-class careers.

One-Stop Centers or American Job Centers – AJCs as they now are known – always have emphasized inclusion for individuals with barriers to employment. Under WIOA, that commitment is strengthened and memorialized in statute and the WIOA Final Rules.

WIOA prioritizes serving vulnerable populations, individuals with multiple barriers to employment, for example, individuals with disabilities, youth disconnected from school and from work, older workers, and individuals with limited English proficiency who are English language learners.

Section 188 of WIOA helps ensure all people, including those with multiple barriers to employment, have access to the job training, education and employment services and benefits the workforce system provides, so they acquire the tools and skills they need to access good jobs.

WIOA also offers opportunities to strengthen our partnerships across programs; makes sure our governance structures reflect all the voices that need to be at the table; make clear to all parties the specific provisions of nondiscrimination and equal opportunity; and focus on improved, integrated, high-quality and accountable service delivery to our jobseeker and business customers.

The WIOA Section 188 Final Rule applies to recipients of financial assistance under Title I of WIOA, whether directly from the Department of Labor or through the governor or another recipient. This includes programs and activities that are part of the American Job Center/One-Stop delivery system, making sure that the commitment that all people can access the programs, services and benefits that the public workforce system provides is kept, and that federal partnership programs and services will be fully-inclusive.

These principles of accessibility and service are reflected throughout WIOA and related laws, and they are discussed in detail in the WIOA Section 188 Final Rule. I urge you to read the Section 188 Final Rule – (audio break) – the Department of Labor if you require additional technical assistance.

As Naomi said, we will provide the email and website contacts where you can direct your questions at the end of today's presentation.

Naomi?

MS. BARRY-PEREZ: Thanks for that introduction, Gerri. We've greatly appreciated our strengthened relationship with ETA and also with ODEP. So with that said, I'll now turn to Jennifer Sheehy. Jennifer?

JENNIFER SHEEHY: Thank you, Naomi. Hello. My name is Jennifer Sheehy and I'm the deputy assistant secretary for the U.S. Department of Labor's Office of Disability Employment Policy.

An essential element of the workforce development system is its accessibility to everyone on an equal basis. The Department of Labor's Civil Rights Center – or CRC – is tasked with ensuring that all people can access the programs, services and benefits that the system provides, equally and free from unlawful discrimination. These principles are vital to a successful workforce development system.

WIOA offers many new opportunities to support youth and adults with disabilities in accessing employment and training services through the workforce development system. In general, WIOA's opportunities increase the responsibility of workforce development boards – formerly workforce investment boards – and American Job Centers to be fully accessible and offer the necessary accommodations to provide jobseekers with disabilities effective and meaningful access to skills training and career pathways for the modern workforce.

In particular, Section 188 represents one of these opportunities by ensuring nondiscrimination and equal opportunity in the workforce development system for individuals with disabilities. The Civil Rights Center's Final Rule supports this goal in a number of ways.

For example, by reiterating the requirements that facilities, programs and services, technology and materials, must be physically and programmatically accessible, and that auxiliary aids and services may be required to ensure that communications with individuals with disabilities are as effective as communication with others.

We know that while most AJCs are physically accessible to individuals with disabilities, there is still some work that needs to be done to provide communication access and programmatic accessibility, including materials.

As state and local plans seek to delineate how they will meet nondiscrimination requirements regarding physical and programmatic accessibility, they should consider reviewing DOL's guide entitled "Promising Practices in Achieving Universal Access and Equal Opportunity: A Section 188 Disability Reference Guide." This guide is out there now and will be updated with the new regulatory citations and be released in the coming weeks.

It contains a variety of effective examples provided by AJCs themselves across the nation, to describe what might be done in each of the areas covered by Section 188. In that respect, it is a wonderful educational resource. Remember that states must develop criteria for certifying physical and programmatic accessibility of AJCs at least every three years.

I truly encourage you to read the Final Rule and please contact us if you need further technical assistance.

Thanks, Naomi.

MS. BARRY-PEREZ: Thank you, Jennifer. Thanks also for mentioning that promising practices document. We are very pleased to work with our partners again, including ETA and ODEP, to develop those guidance documents to help folks in complying with this rule. That piece is a very good piece, in part because it, as Jennifer said, provides examples directly from the system.

We'd love to hear what you're doing with regard to nondiscrimination, equal opportunity, in this way and in other ways, so we can highlight to your colleagues the good work that you're doing and how that work can be replicated. So we look forward to having these conversations into the future as well.

Back to the regulations – the new regulations. As I promised, I'll now discuss our new civil rights regulations under Section 188 of the Workforce Innovation and Opportunity Act – WIOA.

CRC has updated the regulations implementing the equal opportunity provisions of WIOA, which was signed into law in July 2014, to protect participants and other beneficiaries in the workforce development system.

The Final Rule provides important updates to our current regulations, which had not been substantially updated since 1999. The old rule did not reflect the many developments in civil rights law since that time; changes in the CRC's enforcement procedures and processes; or new practices of beneficiaries and recipients of WIOA Title I financial assistance, for example, the routine use of computer and Internet-based systems.

The update ensures the entire workforce system is aware of current equal opportunity rights and responsibilities of beneficiaries and recipients of WIOA Title I financial assistance. This rule increases equality of opportunity for the millions of job applicants, training participants, program beneficiaries, and employees of recipients who interact with the workforce development system each year.

The rule's updates also enhance access to the system, in particular for people with disabilities; individuals with limited English proficiency; transgender individuals, who may face various forms of sex discrimination; and individuals who are pregnant, have had a child, or have related medical conditions. Our revised regulations implement the nondiscrimination and equal opportunity obligations under WIOA Section 188.

Section 188 prohibits discrimination against individuals in any WIOA Title I financially assisted program or activity, which includes job training for adults and youth, and programs or activities provided by recipients at American Job Centers or One-Stop Centers.

These programs and activities may not refuse to offer or refuse to provide services to individuals because of their race, color, religion, sex, national origin, age, disability, or political affiliation or belief. Discrimination on these bases is also prohibited against employees who are employed in the administration of or in connection with any WIOA Title I financially assisted program or activity.

Additionally, beneficiaries, applicants, and participants, as defined by the Final Rule, cannot be denied covered services because of their citizenship status, and cannot be denied their rights because of participation in a WIOA Title I financially assisted program or activity.

The rule applies to recipients of WIOA Title I financial assistance, and to programs and activities that are operated by American Job Center partners or One-Stop partners, as part of the American Job Center system or One-Stop delivery system, such as unemployment insurance, Temporary Assistance to Needy Families, adult education, Trade Adjustment Assistance, and others.

Now I'd like to highlight some of the changes in the Section 188 Final Rule, as compared to the 1999 and 2015 rules.

The Final Rule updates the nondiscrimination and equal opportunity provisions to align them with current law and legal principles. The rule captures developments since 1999 under the following laws, reflected in case law and in regulations issued by other federal agencies, including the Departments of Justice and Education, and the Equal Employment Opportunity Commission.

The laws include Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990, and the ADA Amendments Act of 2008, and Section 504 of the Rehabilitation Act of 1973.

The Final Rule ensures protection from disability based on pregnancy. The rule makes clear that sex discrimination includes discrimination based on pregnancy, childbirth, and related medical conditions, in accord with the Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, and in accord with Title IX of the Education Amendments of 1972.

The Final Rule safeguards meaningful access to the workforce system for persons with limited English proficiency – or LEP. The regulations clarify that discrimination based on national origin includes failing to provide language services to someone with limited English proficiency. Under the rule, recipients must take reasonable steps to ensure that individuals with LEP have meaningful access to aid, benefits, services, and training.

These steps may include oral interpretation and written translation of both hard-copy and electronic materials into non-English languages. This ensures that individuals with LEP are informed about or able to participate in covered programs or activities.

In addition, the rule clarifies which documents contain vital information and thus must be translated into languages spoken by a significant number or portion of the population eligible to be served or likely to be encountered.

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 it is required by law.

The rule also requires recipients to record the limited English proficiency and preferred language of applicants who seek to participate in the workforce development system to help ensure they have the necessary information to serve individuals with LEP effectively.

Finally, an appendix to the LEP section of the rule describes promising practices to help recipients comply with their legal obligations, and includes the components of a plan to facilitate meaningful access for individuals with limited English proficiency.

The Final Rule also ensures equal access to the workforce system for people with disabilities by bringing the regulations in line with updated disability rights law. The rule brings the CRC regulations in accord with the Americans with Disabilities Act Amendments Act of 2008 and the implementing regulations and guidance issued by the Department of Justice, as well as the implementing regulations and guidance issued by the Equal Employment Opportunity Commission.

The rule's updated language ensures that the definition of "disability" will be interpreted broadly, which will enable more individuals with disabilities to be effectively served within the workforce development system. The rule also addresses accessibility requirements, such as for information and electronic technologies, and service animals.

The Final Rule ensures that recipients and beneficiaries are aware of the full scope of their responsibilities and rights. CRC revised the equal opportunity notice or poster that recipients are required to display and distribute, in order to ensure that they, and individuals participating in their programs and activities, are aware of the scope of the nondiscrimination and equal opportunity responsibilities and recent developments in law.

As the Final Rule explains, CRC will make translations of this notice available to recipients in the ten most frequently used languages in the U.S., other than English.

Changes in the language of the notice or poster reflect, for example, that "sex" as a prohibited basis for discrimination, includes pregnancy, childbirth, and related medical conditions; transgender status and gender identity; and sex stereotyping.

Similarly, the changes make clear that discrimination against persons with limited English proficiency is a form of national origin discrimination.

The Final Rule outlines protections against sex discrimination. The rule states that discrimination on the basis of transgender status, gender identity, and sex stereotyping are forms of sex discrimination, in accord with similar developments under other civil rights laws.

The rule specifically states that Section 188's prohibition of discrimination on the basis of sex includes, at a minimum, sex discrimination related to an individual's sexual orientation where the evidence establishes that the discrimination is based on gender stereotypes. CRC anticipates that the law regarding sex discrimination will continue to evolve, and CRC will monitor legal developments in this area.

The last thing I wanted to talk about today is the state-level equal opportunity officer and upcoming CRC technical assistance and training plans.

First, as you know, the governor has always had an opportunity to oversee the programs within their state. To enhance and support the governor's obligation to ensure an effective equal opportunity program within the state, the rule requires a state-level equal opportunity – or EO – officer. While states have had state EO officers for many years, we have observed that the states where the EO officer had the authority and resources to manage the EO program were the most effective.

Additionally, the governor's obligation extends to all state programs, and we have found that often times the state EO officer has limited their work to their own agencies, leaving some state programs unmonitored.

Today, I ask that the states appoint their state-level equal opportunity officers sooner rather than later. This becomes important as CRC's vision of training will focus on giving the state-level equal opportunity officers the tools necessary to train the equal opportunity officers within their state. Our goal is to provide the necessary training resources that would give EO officers the knowledge and skills needed to become effective.

Accordingly, with the help of state-level EO officers, we are planning to develop technical assistance materials, including PowerPoint presentations and other trainer guides that will enable the state-level EO officers to train other EO officers in their states.

As we develop training material – (audio break) – skills, but also allow them to collect promising practices that can be shared with other EO officers. Once this material is fully developed – and we're shooting for some time next summer – we'll host the state-level equal opportunity officers to review the material developed, provide train-the-trainer training, and develop a plan on how to utilize CRC as a resource as the state-level equal opportunity officers begin training within their own states.

I encourage you to read our new Section 188 regulations, which can be found through the links on our website, www.dol.gov/crc. Our site will connect you to the Federal Register website, where you can read or print a copy of the new regulations. Our site also contains additional information in alternative languages for individuals with limited English proficiency.

Thank you so much and I look forward to attempting to answer your questions. Gerri Fiala and Jennifer Sheehy remain here as well. And to the extent they can help answer questions, we are here for you. So again, if you haven't already sent them in, please start typing.

MS. : Now we have arrived at the questions-and-answer portion of today's session. Our first question is, "Where can I find the new language that recipients are required to include in the equal opportunity notice and poster?"

MS. BARRY-PEREZ: Thank you for that question. The language that must be included in the equal opportunity notice and poster is published in Section 38.35 of the Final Rule. This notice and poster must be properly displayed and distributed by April 3rd, 2017, for entities that are recipients when the rule takes effect on January 3rd, 2017.

For entities that become recipients after the rule takes effect, they must properly display and distribute the equal opportunity notice and poster within 90 days of becoming a recipient.

Sections 38.34 through 38.37 provide more information about properly displaying and distributing this notice and poster.

More questions, folks? (Pause.)

Let me anticipate one of your questions about the effective date of this rule and of some of the provisions in the rule. So recipients must comply with the Final Rule as of January 3rd, 2017. I've said that a few times now. However, the rule allows recipients some additional time to fulfill some of the obligations imposed. Regarding certain provisions, we are taking a phase-in approach.

For example, recipients will have two years from the effective date of this rule to update their data collection of individuals' LEP status and preferred language under Section 38.41(b)(2).

Section 38.55 also gives at least an additional 180 days for states to develop and implement their initial nondiscrimination plans. These are the plans that replace the current methods of administration – or MOA – plans.

Similarly, Section 38.36(d) gives the recipients up to 90 days to initially publish and provide the new equal opportunity notice and poster in compliance with Sections 38.34 through 38.37.

So while all provisions go into effect on January 3rd, there are a few provisions in the rule that specifically allow recipients a bit more time to come into compliance.

Let me also just say that while this rule reflects the current status of various laws, such that recipients should already be complying substantively with most of the regulations, the CRC is very pleased to offer technical assistance and training to help folks really understand their responsibilities, to come into full compliance. We'll be pleased to work with you and our ETA partners to, again, help folks understand what their responsibilities are. And to the extent that there are aspects of your program that are not fully in compliance, again, to work with you over a reasonable period of time to bring us all where we should be.

MS. : OK. Next question, "What data must recipients collect with respect to limited English proficiency?"

MS. BARRY-PEREZ: All right. Give me a second here to find my notes on this. (Pause.) OK. Reading the rest of the question. So thank you very much.

The specific answer is Section 38.41(a)(2). So again, beginning on January 3rd of 2019 – so two years from the effective date – each recipient must collect information as to the fact that the person is LEP – so the person does have limited English proficiency – and then what that individual's preferred language is. Again, that's required to ensure that recipients have the information they need to ensure that LEP individuals can participate effectively in whatever way is necessary in their program or activity.

MS. : "As a recipient, what are my responsibilities in regards to EO officers?"

MS. BARRY-PEREZ: All right. Recipients' obligations regarding EO officers can be found in Sections 38.26 through – pardon me, 38.28 through 38.33 of the Final Rule.

As a recipient, you must designate an equal opportunity officer that has sufficient expertise to ensure compliance. The EO officer must be a senior-level employee and must report to whoever is the highest ranking person within your entity. As a recipient, you must give the EO officer sufficient authority, sufficient staff, and sufficient resources to be able to carry out their responsibilities.

Other questions?

MS. : "What does the Final Rule say about recipients' obligations regarding harassment?"

MS. BARRY-PEREZ: The Final Rule includes a provision that gives a recipient additional direction about their existing obligation to prevent harassment because of all bases protected by WIOA Section 188 and the Final Rule.

It defines acts that may be unlawful harassment, such as offensive remarks about a person's race, color, religion, sex, national origin, age, disability, political affiliation or belief, or citizenship, or participation in a WIOA program or activity. And it describes the conditions under which such conduct is considered to be unlawful harassment, including when the conduct has the purpose or effect of unreasonably interfering with an individual's participation.

These are just some examples. You can find the complete provision at Section 38.10.

MS. : "Is there any mention of protection for individuals who have a felony conviction?"

MS. BARRY-PEREZ: Oh, I appreciate this question very much. As folks may remember, we issued some guidance with ETA a few years ago on – with regard to criminal records. The Final Rule does not specifically address individuals who have felony convictions. However, we would again point you to the Training and Employment Guidance Letter – or TEGL – number 31-11, issued on May 25th, 2012, which provided guidance on addressing criminal record restrictions and disparate impact based on race and national origin.

MS. : "As part of the showing compliance with the obligation in this Final Rule, what are some of the responsibilities that an EO officer must have?"

MS. BARRY-PEREZ: Well, thanks very much for that question. And by the way, we look – I believe we're speaking to another group of EO officers this upcoming Thursday. If there are folks on the phone who would like more information on that session, we certainly can get it to you. Just reach out to us and we'll get you that information if you don't already have it. I'm happy to answer this question, but I imagine at that session there'll be many more specific questions.

But again, to address the question right now, all EO officers are responsible for ensuring compliance with the Final Rule, including but not limited to the following tasks: developing and publishing the recipient's procedures for processing discrimination complaints; reviewing the recipient's current policies to make sure that those policies are not discriminatory; conducting outreach to the public; and undergoing training.

Additionally, state-level equal opportunity officers will oversee the development and implementation of the state's nondiscrimination plan, as I mentioned, formerly known as the methods of administration plan, which includes the monitoring of all state program annually under the new rule.

MS. : "Why has CRC added new protections for individuals with limited English proficiency?"

MS. BARRY-PEREZ: Thanks so much for that question. It's a great opportunity for me to clarify. The CRC has not added new protections for individuals with limited English proficiency. However, the regulation does include specific clarifying language to help recipients comply with existing legal obligations.

The Final Rule makes clear that discrimination against those with limited English proficiency – or LEP – based on their LEP status is unlawful discrimination based on national origin. This is consistent with Title VI case law and Department of Justice guidance.

The Final Rule also provides clarity with respect to recipients' obligations to take reasonable steps to provide meaningful access to programs and activities for individuals with LEP by providing written translation or oral interpretation when appropriate.

The previous regulations also provided protections for LEP individuals, but you can find the updated requirements in Section 38.9 and, as I mentioned before, the appendix to Section 38.9, which CRC has provided to give more detail and better guidance.

The new appendix includes the description of the type of plan that may be implemented to promote meaningful access for persons with limited English proficiency, and examples of how to apply the LEP provisions contained in Section 38.9.

MS. : "How does the rule ensure that American Job Centers and One-Stop Centers are accessible to people with disabilities?"

MS. BARRY-PEREZ: All American Job Centers or One-Stop Center programs and activities were previously covered by Section 188 – those that were previously covered by Section 188 rules and are covered by this update rule as well.

Under this rule, they're required to provide reasonable accommodations for individuals with disabilities. They are also required to make reasonable modifications to policies, practices, and procedures. They're required to administer programs in the most integrated setting appropriate and provide auxiliary aids and services where necessary.

In addition, under this rule all American Job Centers are required to comply with the applicable federal physical accessibility standards, and cannot deny access to a service, program, or activity because their facilities are inaccessible or unusable by individuals with disabilities. And the rule provides that American Job Centers must use electronic and information technology which incorporates accessibility features for individuals with disabilities.

MS. : "Does the Final Rule provide protection for pregnancy under sex discrimination?"

MS. BARRY-PEREZ: Yes. As I mentioned before, the rule does provide discrimination based on pregnancy is a form of sex discrimination. This is pursuant to the Pregnancy Discrimination Act. You can find the specific section of the rule focused on pregnancy discrimination as a form of sex discrimination in Section 38.8.

In addition, although pregnancy is not in itself a disability, pregnancy-related medical impairments may be disabilities covered by the rule. 38.9(f) states that a recipient will not –

Forgive me. I was moving on to another question. It's rapid-fire questions on your end. Thanks very much.

(Pause, audio break.)

MS. : "As a recipient, are we required to have certified translators, or can the translators for an LEP customer be a non-certified translator?"

MS. BARRY-PEREZ: So 38.9(f) states that a recipient will not require LEP individuals to provide their own interpreters and identified restrictions on the use of certain persons to provide language assistance services for an LEP individual. The paragraphs at (f)(1) and (2) identify the narrow and finite situations in which a recipient may rely on an adult or a minor child accompanying an LEP individual to interpret.

Let me add to that by saying some of you may know, who have a history with our office, that I have (thought of ?) an LEP – LEP issues for some time now. There are not certifications for certain translators and interpreters in some languages, and we understand that.

The requirement is to provide meaningful access – take reasonable steps to provide meaningful access. At the same time, you want your work to be effective. So some sort of assessment of a translator or interpreter's language abilities must certainly be done to ensure that the very important information they're conveying on behalf of your Department of Labor-sponsored program is correct, does allow a person to participate effectively.

So again, while certification itself generally is not required, assessing an individual's ability to convey that information appropriately and accurately is absolutely something that should be done, just so you ensure that you're indeed complying with these requirements.

I hope that helps. OK. Moving on.

MS. : "What changes does the rule make to improve compliance procedures?"

MS. BARRY-PEREZ: The rule clarifies the process used by departmental grant-making agencies to ensure that grant applicants are complying with their nondiscrimination and equal opportunity obligations under Section 188. This includes consulting with the director of the CRC to learn whether CRC has issued a notice a show cause or a final determination against a grant applicant that has been identified as a probable awardee in Section 38.62(b).

The rule also provides clarifying language to indicate that any person or their representative may file a complaint based on discrimination or retaliation. The rule slightly modifies language to make clear that complainants and recipients may use other forms of alternative dispute resolution rather than mediation alone, which the WIOA regulations provided, to resolve complaints as to expand the options available to achieve resolution.

(Pause.)

MS. : Naomi, could you answer a question about how the rule protects women, LBGT individuals, and those who are pregnant?

MS. BARRY-PEREZ: Absolutely. That is a lot in that question, but I'm happy to try to summarize that information.

The rule states that discrimination on the basis of transgender status or gender identity, and discrimination on the basis of sex stereotyping, are forms of prohibited sex discrimination. This is in accord with similar developments under civil rights laws.

In addition, the rule acknowledges the continuing evolution of the law with regard to discrimination based on sexual orientation; and states that Section 188's prohibition of discrimination on the basis of sex includes, at a minimum, sex discrimination related to an individual's sexual orientation, where the evidence establishes that the discrimination is based on gender stereotypes.

The CRC anticipates that the law will continue to evolve on this issue. We will continue to monitor the law closely and provide you with appropriate updates as we're able. We will enforce Section 188 in light of those developments and will consider issuing further guidance on the subject as appropriate.

The rule also makes clear that sex discrimination includes discrimination based on pregnancy, childbirth, and related medical conditions, as I said, in accordance with Title IX of the Education Amendments of 1972 and the Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964.

(Pause.)

Folks, in anticipation of the question, why don't I address something that we've put into some of our frequently asked questions. And that's whether – how entities will know if they're covered by the rule. It's actually a complex answer, but if I can just point you in the right direction, that might help.

So to best understand the application of this regulation, readers are encouraged to review a couple of different sections. The first is the applicability language at Section 38.2; the definition of financial assistance under Title I of WIOA at 38.4(x) and 38.4(y); and the definition of recipients, which is found at 38.4(zz).

Entities connected to the workforce development system may be recipients for purposes of Section 188 and the Final Rule, even if they do not receive assistance in the form of money. For example, recipients subject to these regulations include entities with agreements, arrangements, contracts, subcontracts, or other instruments for the provision of assistance or benefits under WIOA Title I. Thus, entities that are selected and/or certified as eligible training providers are considered to receive financial assistance for the purpose of this regulation and Section 188.

Additionally, programs and activities operated by One-Stop partners, both required partners and additional partners, also receive financial assistance for purposes of this regulation, to the extent that these programs and activities are being conducted as part of the One-Stop delivery system. We know, however, that whether an entity is an additional One-Stop partner subject to Section 188 is based on whether that entity has signed a memorandum of understanding as an additional partner, per the requirements of Section 121 of WIOA, and not merely whether that entity is working with or contributing something to a WIOA Title I program.

Back to your questions. (Pause.)

MS. : "Will CRC provide more guidance and information regarding the new rule?"

MS. BARRY-PEREZ: Yes. Absolutely. CRC has been very busy and will continue to be very busy over the next number of, really, months and years as we work with you to strengthen your programs and to integrate programs. So yes, the CRC is committed to providing assistance to recipients. For example, we anticipate providing further guidance in forthcoming months and to host a seminar in the summer of 2017.

We encourage recipients and others that wish to request further help regarding compliance to contact us via the web page or directly. We're particularly interested in your requests. We will do what we can to respond to them in the most effective manner.

I will say that some state entities have done us a great favor in the past by working with other state entities in coordinating conferences and the like, and we appreciate that assistance. Not only is it helpful to us in trying to reach more people at one time, but also I think effective because you can share your own best practices, economies of scale, other things like that. So to the extent we can facilitate meetings, we're happy to do that as well.

MS. : "Does the Final Rule cover discrimination against recipients' employees?"

MS. BARRY-PEREZ: Oh, yes. So employees also are covered. And that's a great question. The programs or activities, similarly, may not refuse to offer – or refuse to provide services to individuals because of their race, color, religion, sex, national origin, age, disability, or political affiliation or belief. This is true for all of the people who are covered by the rule, including recipients' employees.

(Pause.)

MS. : "Is there a timeline on implementing the LEP plan?"

MS. BARRY-PEREZ: Yes. So we're back to the limited English proficiency plan. These are mental gymnastics, folks, bringing me from one topic to the other. I appreciate it.

LEP plans are – it's a great question. So the question, again, is on the timeline for implementing the LEP plan. The question infers that LEP plans are mandatory. They are not, but they are strongly encouraged. Of course, again, I've said that recipients are required to take reasonable steps to ensure meaningful access to their programs and services for persons with limited English proficiency.

It's difficult to do that effectively, to ascertain what reasonable steps you should take and what meaningful access looks like, if you haven't done the appropriate assessment of your population, of your program, of service delivery mechanisms, et cetera. It's difficult to do that without a plan. So again, not mandatory, but certainly strongly encouraged.

In the appendix that I've mentioned before, recipients can find useful guidance and promising practices on how to create such a plan, again, in order to best comply with the requirements in the Final Rule. The appendix is located in Section 38.9.

MS. : "Can the One-Stop Centers receive a waiver for not having accessibility due to the lessor refusal to make adjustments to the building?"

MS. BARRY-PEREZ: Let me read that question one more time. "Can the One-Stop Center or American Job Center receive a waiver for not having accessibility –" I assume that's physical accessibility for individuals with disabilities "– due to the lessor refusal to make the adjustments to the building?"

So CRC would not issue such a waiver. And I think that's – no. Let me just go really direct in that and say, again, we're not going to issue such a waiver like that. And I think that would suggest that the One-Stop Center would – may need to look for alternative space because absolutely not appropriate pursuant to these regulations or WIOA more generally.

MS. : OK. "The sections you have been mentioning, 38.2, 38.4(x) and (y), the CFR or a different set of sections?"

MS. BARRY-PEREZ: "The sections you've been mentioning, the CFRs or a different section?" So we're referring today – when I mention any of these citations, we're referring today to the sections in the Final Rule. So these are the specific provisions within the Final Rule itself. You can find a link to the Final Rule on the website until the actual CFR is updated.

MS. : OK. "How does the Final Rule address gender stereotyping?"

MS. BARRY-PEREZ: This is a really important question. And I've mentioned it before again, but happy to mention it. And in fact, when I've gone out and I've spoken to groups, the question comes up pretty frequently. So I'm glad folks are thinking about it.

So the rule makes clear that discrimination based on sex stereotypes – so these are things like how men are supposed to act and how women are supposed to act under traditional gender norms, if you will – that discrimination based on those sex stereotypes is unlawful sex discrimination.

Sex stereotyping actually is one of the most significant barriers to women's ability to access services, benefits, training, programs, and employment in and through the workforce development system. Sex stereotypes about the roles of women and men and their respective capabilities in the workplace can influence decisions about hiring, training, promotions, pay raises, and other terms and conditions of employment.

The Final Rule thus adopts the well-recognized principle that employment decisions made on the basis of stereotypes about how males and females are expected to look or speak or act are forms of sex-based employment discrimination. And it applies that principle to the provision of any aid, benefit, service, or training through WIOA Title I program or activities.

The Final Rule also clarifies that Section 188's prohibition on discrimination on the basis of sex includes, at a minimum, sex discrimination related to an individual's sexual orientation, where the evidence would establish that discrimination is based on gender stereotypes.

Let me just go back and say the case law is pretty solid on the prohibition against the use of sex stereotyping in employment. And what this rule does is extend that principle again to the workforce system and the provision of aid, benefit, services, training, et cetera.

(Pause.)

OK, folks. Thanks for your patience there. We got a question on how the Final Rule interacts with the apprenticeship equal employment opportunity rules that the department is in the process of updating.

So it's a great question. Some apprenticeship programs fall under the jurisdiction of Section 188 regulations, particularly those that are considered recipients because they're American Job Center partners or One-Stop partners, or eligible training providers under the law.

At the time of the Final Rule publication, the department is continuing to develop the final apprenticeship EEO rule. It's important to note, however, that the requirements of the WIOA Section 188 Final Rule and the apprenticeship EEO rules may have distinct requirements. CRC and the department's Employment and Training Administration will provide technical assistance to apprenticeship programs to ensure that they are aware of any relevant requirements.

So folks, we've – I think we've addressed many of the questions that have come in. It's taken us a little bit of time to ensure – to attempt to ensure that we're not being redundant, more fully understand your questions.

Without any – there are no questions in the queue now, so we could end a few minutes early. Or if folks have last-minute questions that they've been hesitating to ask, why don't we give one more shot at that?

Again, however, we are pleased – there'll be a number of other webinars offered in the next coming weeks. We are pleased to attempt to address questions as we are able, given our resources and such, over really the next number of months and of course years, as we continue to work with you.

To the extent your question has not been answered or could not be answered today, please know that we're absolutely happy to entertain those questions and do our best to get the information out to the community in a timely manner.

(Pause.)

Folks, I wanted to remind folks or share with folks, in case you don't know, there is a Civil Rights Center email address, just civilrightscenter@dol.gov. And you're encouraged to send questions directly to that address. We'll get them to the appropriate people. And again, the hope is not only to answer specific questions, but really to get information out that we think is valuable to the whole community, to figure out ways in which to get that information out to folks. So I'd encourage you to look at our website on a relatively frequent basis as we issue guidance and such, as questions come up.

So I think, folks, that we're going to start wrapping up. Let me take one more second here to look and see if we have anything else that has come in. (Pause.)

All right. One final question folks have asked about where to get the language for the equal opportunity poster or notice. That language – the specific language that must be included in the notice and poster – is published at Section 38.35 of the Final Rule. So there is a link to the Final Rule on the CRC website. And when you go to that link and pull it up, again you'll look for section 38.35. That specific language can be found there. You can cut and paste it if that's what you think is appropriate. At a minimum your posters must include that language.

And I did share before that we are pleased to translate that poster into 10 languages other than English. Those translations will be available shortly so that if you have relevant populations in your service areas, you'll be able to have that guidance in an appropriate language for those individuals as well.

Specific reg sections are also at the end of the Final Rule.

So I want to thank everyone who's participated today. Really robust question. Really do encourage you to read the rule. We spent a great deal of time trying to make it as robust as possible but yet as readable as possible. We know that folks on the frontline work with these rules every day and really have to put them – really have to apply them and put them into practice. So we hope that they're as helpful as we intended them to be.

We're available to you as much as we can as you implement this important work. So thanks to everyone who took the time today or who will take the time in the upcoming weeks and months as this is further rolled out.

I want to thank our team here as well, our colleagues Gerri Fiala and Jennifer Sheehy who participated, and everyone who helped support the rule itself and the rollout of this rule. We again are very pleased to offer this information to help strengthen our efforts at compliance. And believe that you've been asking for this information, so are grateful for the opportunity to get it to you.

Thanks very much. And with that, I think I'll sign off.

(END)