

Attachment 2

Further Guidance Regarding Forms of Sex Discrimination Against LGBT Individuals

Entities in the public workforce systems are prohibited from discriminating on the basis of sex based stereotypes, including stereotypes about how persons of a particular sex are expected to look, speak, or act. Examples of unlawful discrimination include, but are not limited to, the following practices:

- Denial of access to, or otherwise subjecting the individual to adverse treatment in accessing aid, benefits, services, or training, under a WIA/WIOA Title I-financially assisted program or activity because of that individual's failure to comply with gender norms and expectations for dress, appearance and/or behavior, including wearing jewelry, make-up, high-heeled shoes, suits, or neckties.
- Treating an individual adversely because the individual identifies with or is perceived to identify with a gender different from the individual's sex assigned at birth, or the individual has undergone, is undergoing, or is planning to undergo, sex reassignment surgery or other processes or procedures designed to facilitate the adoption of a sex or gender other than the individual's assigned sex at birth.
- Subjecting or otherwise permitting an individual to be subjected to adverse action or harassment and/or physical threats following disclosure that the individual was going to marry a same-sex partner or otherwise not conform to society's sex-role expectations by being in a relationship with a person of the same sex.
- Subjecting an individual to harassment in the form of "homophobic gestures," "homosexual mannerisms," and verbal mocking using "very feminine or very masculine voices."
- Denying transgender employees access to the bathrooms used by the gender with which they identify.

Protection of Transgender Persons

Because of persistent employment discrimination against transgender persons,¹² it may be more difficult for workforce system customers who are transgender to find jobs. To that end, and in

¹² See, e.g., Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, National Center for Transgender Equality, National Gay and Lesbian Task Force (2011), available at <http://endtransdiscrimination.org/report.html>; Documented Evidence of Employment Discrimination & Its Effects on LGBT People, The Williams Institute, (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf>.

keeping with WIA non-discrimination regulations,¹³ transgender customers cannot be denied access to workforce and training programs due to their gender identity. The customer should not be counseled to change their gender presentation in order to find work. The following should be considered when providing services:

- ***Names and Pronouns.*** Always to refer to each person by the name, and the gender-specific pronoun (for example, he, his, him or she, hers, her), by which the person wants to be called. If staff does not know an individual's pronoun preference, they should ask in a tactful way. Continued intentional misuse of the person's name and pronouns may breach the person's privacy, may put the person at risk of harm, and in some circumstances, may be considered harassment.
- ***Identification documentation.*** Transgender people may have mismatched identification documentation (i.e., "old" identification with a previous name and/or gender marker and "new" identification with corrected name and/or gender marker). This situation occurs because obtaining corrected identification documentation as a result of gender transition is a complex legal process that may take a significant amount of time and other resources. Such discrepancies should not prevent a transgender person from getting a job, participating in a program, or receiving services. If a situation in which discrepancies in personal identification pose legitimate obstacles is encountered, staff should explain what documentation must be provided (e.g., proof of a court-ordered name change).
- ***Restroom access.*** All customers and employees must be able to access restrooms consistent with their gender identities. The decision as to which restroom to use should be left to the individual to determine the most appropriate and safest option for them. Restricting customers and employees to using only restrooms that are not consistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms, singles those individuals out and may make them fear for their physical safety. Bathroom restrictions can result in customers and employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.
- ***Confidential Medical Information.*** Information about a person's status as transgender may be considered medical information, and thus should be kept strictly confidential.¹⁴

¹³ 29 CFR 37.16(c) (stating that "[a] recipient must not exclude any individual from, or restrict any individual's participation in, any program or activity based on the recipient's belief or concern that the individual will encounter limited future employment opportunities" on the basis of a protected characteristic, including sex).

¹⁴ See 45 CFR 160; 45 CFR 164.