

ATLANTA REGIONAL WORKFORCE BOARD INSTRUCTION 14-05

DATE: November 7, 2014

**SUBJECT: (1) Complying With Nondiscrimination Provisions Credit History Restrictions and
(2) Promising Practices and Resources for Addressing Long-Term Unemployment.**

PURPOSE: (1) Training and Employment Guidance Letter (TEGL) 11-14 with three attachments provides information about employment exclusions based on credit information, and how they are relevant to existing nondiscrimination obligations for the public workforce system and other entities that receive federal financial assistance to operate Job Banks, to provide assistance to job seekers, particularly long-term job seekers, in locating and obtaining employment, and to assist employers by screening and referring qualified applicants. As explained in this TEGL, restrictions based on credit information may have a disparate impact on members of a particular race or national origin, in violation of federal antidiscrimination laws.

(2) Training and Employment Guidance Letter (TEGL) 12-14 -Promising Practices and Resources for Addressing Long-Term Unemployment

REFERENCES: TEGL 11-14 issued October 17, 2014 and TEGL 12-14 issued October 17, 2014.

BACKGROUND: Racial and ethnic disparities may be reflected in credit history records. TEGL 11-14 is intended to help the public workforce system and covered entities comply with their nondiscrimination obligations when serving the population of unemployed individuals to ensure that exclusionary policies are not at cross-purposes with the public workforce system's efforts to promote employment opportunities for such workers. TEGL 12-14 informs the public workforce system and employers about affirmative efforts by employers, employer organizations and workforce agencies to increase economic competitiveness by tapping into the talent pool of long-term unemployed individuals, which includes many qualified, experienced and skilled workers.

POLICIES: ARWB Policies and Procedures

ACTION REQUIRED:

1. All staff read TEGL 11-14 with attachments and TEGL 12-14
2. All staff follow EEOC Enforcement Guidance dated October 17, 2014 – A Summary and Best Practices from EEOC on consideration of credit history in Employment Decisions Under Title VII of the Civil Rights Act of 1964 as amended **AND** Promising Practices and Resources for Addressing Long-Term Unemployment
3. All Career Resource Centers implement a system for identifying job postings with credit history hiring restrictions.
4. All staff become aware of requirement to deliver Notices # 1, 2 and 3 to the specified recipients.
5. All staff initial and file this instruction.

EFFECTIVE DATE: November 7, 2014



Mary Margaret Garrett
Manager, Workforce Solutions

MMG: at

Attachments: TEGL 11-14 with Attachments #1, #2, and #3
TEGL 12-14
ARWB Revised Policy – Background Checks and Drug Screening – Revised
Revised Release and Authorization and Disclosure

cc: All WFD staff
All Career Resource Centers, Youth Providers



EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION OWI
	CORRESPONDENCE SYMBOL DWASWS/OWI
	DATE October 17, 2014

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-14

TO: AMERICAN JOB CENTERS
 STATE WORKFORCE AGENCIES
 STATE WORKFORCE ADMINISTRATORS
 STATE WORKFORCE LIAISONS
 STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
 STATE AND LOCAL EQUAL OPPORTUNITY OFFICERS
 STATE LABOR COMMISSIONERS
 WORKFORCE INVESTMENT ACT SECTION 166 INDIAN AND NATIVE
 AMERICAN GRANTEEES
 WORKFORCE INVESTMENT ACT SECTION 167 MIGRANT AND
 SEASONAL FARMWORKER JOBS PROGRAM GRANTEEES
 SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM GRANTEEES
 EMPLOYMENT AND TRAINING ADMINISTRATION REGIONAL
 ADMINISTRATORS
 JOB CORPS CONTRACTORS
 RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL ASSISTANCE
 SUB-RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL
 ASSISTANCE

FROM: PORTIA WU /s/
 Assistant Secretary
 Employment and Training Administration

NAOMI BARRY-PEREZ /s/
 Director
 Civil Rights Center

SUBJECT: Update on Complying with Nondiscrimination Provisions: Credit History
 Restrictions and Possible Disparate Impact Based on Race, National Origin, Sex,
 and Disability

1. Purpose. The purpose of this Training and Employment Guidance Letter (TEGL) is to provide information to the public workforce system and other entities (including the “covered entities” listed above) that receive federal financial assistance to operate job banks, about the use of credit information to exclude, screen, or select applicants for employment and to provide tools

RESCISSIONS None	EXPIRATION DATE Continuing
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to educate employers about the practical and legal drawbacks of this employment practice. This guidance is being issued by the Employment and Training Administration (ETA), in conjunction with the Civil Rights Center (CRC).

This TEGL is accompanied by Training and Employment Notice (TEN) number 12-14: *Promising Practices and Resources for Addressing Long-Term Unemployment*,¹ which outlines proactive steps that a number of employers, employer organizations, and workforce agencies have implemented or pledged to implement to address the unique barriers to employment facing many of the long-term unemployed. One of these barriers, the practice of using credit information to exclude applicants from employment, is the subject of this TEGL. Long-term unemployed individuals may be more likely than employed or short-term unemployed individuals to fall into debt due to prolonged periods when they lack sufficient income or employer-sponsored benefits such as health insurance to meet basic needs. As a result, these long-term unemployed individuals may be more likely to be negatively impacted by these credit screening practices.

2. Background. This TEGL addresses the practice of considering job applicants' credit information and excluding job seekers with negative credit information from consideration for job vacancies.² According to a 2012 survey by the Society for Human Resource Management (SHRM), almost 50 percent of its employer members use credit checks³ in making hiring decisions. Employers report that they use credit information to evaluate an applicant's proclivity for theft or embezzlement, and to reduce potential legal liability for negligent hiring.⁴

This TEGL provides covered entities in the public workforce system, including those listed above (and their employer customers), with tools to ensure that exclusionary policies regarding workers' credit information are not at cross-purposes with the system's efforts to promote employment opportunities for all workers. In addition, this TEGL provides guidance on compliance with nondiscrimination obligations when credit information is used in making employment decisions. This TEGL applies to all jobs available through a covered entity's job bank.

¹ Training and Employment Notice 12-14, *Promising Practices and Resources for Addressing Long-Term Unemployment*, issued October 17, 2014, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7919.

² Examples of such job announcements recently found posted in public workforce system job banks include: "Must have a good credit rating"; "Must be able to pass a credit check prior to hire"; and "Ability to pass pre-employment background investigation, including credit check."

³ Employers can obtain credit information by purchasing it from credit reporting agencies (CRAs). A credit report provided to an employer may include information on an individual's current and past employment, credit and payment history, and collection agency activity, as well as public record information such as bankruptcies, foreclosures, tax liens, arrests, convictions, and court judgments and filings. See Federal Trade Commission, *40 Years of Experience With the Fair Credit Reporting Act* at 1 (July 2011), available at <http://www.ftc.gov/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations>; see generally Chi Chi Wu, *Credit Reporting and Repair for Domestic Violence Survivors* (National Consumer Law Center Apr. 27, 2010), available at www.nclc.org/images/pdf/domestic_violence/credit-reporting.pdf.

⁴ SHRM, *Background Checking – The Use of Credit Background Checks in Hiring Decisions* (July 19, 2012), available at <http://www.shrm.org/research/surveyfindings/articles/pages/creditbackgroundchecks.aspx>.

3. Actions to be taken by covered entities.

a. Covered entities must provide the attached Notices to Employers (Attachments 1 and 2), which describe the drawbacks of using credit information in any part of the hiring process, and encourage employers to adopt best practices for such screening. At a minimum, covered entities must advise employers, through use of the Notices to Employers, about some of the reasons why screening job seekers based on credit history may be imprudent:

- Negative information on credit reports may reflect that applicants have experienced difficult circumstances beyond their control that have no relationship to their ability to perform the job, such as a medical emergency, disability, layoff, loss of a spouse, or identity theft.
- Credit reports may contain inaccuracies.⁵
- No reliable body of evidence validates the use of credit history in hiring decisions.⁶
- Using credit history as an employment screening tool may disproportionately exclude certain racial and ethnic groups, women, and people with disabilities from hiring consideration.⁷

⁵ See, e.g., Statement of Chi Chi Wu, Esq., National Consumer Law Center, at 4 (Oct. 20, 2010), submitted for EEOC Meeting on Employer Use of Credit History as a Screening Tool (hereinafter “EEOC Meeting on Credit History”), available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/wu.cfm> (summarizing available data on accuracy showing material error rates of 12 to 37 percent in credit reports). *But cf.* Michael A. Turner, et al., *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts* (Policy & Economic Research Council (PERC) 2011), available at <http://www.perc.net/wp-content/uploads/2013/09/DQreport.pdf> (finding that 1.78% of credit reports that were subjected to the Fair Credit Reporting Act (FCRA) dispute resolution process were found to contain errors that had lowered the individual's credit score by 10 or more points, but failing to examine the error rate for credit reports that were not subjected to the dispute resolution process). Because the results of studies that measure the accuracy of credit reports vary widely, Congress directed the Federal Trade Commission (FTC) to conduct a nationwide study of the accuracy of credit reports. See FTC, *Report to Congress Under Section 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* at 2-3, 5 (Dec. 2004), available at <http://www.ftc.gov/reports/facta/041209factarpt.pdf>. Accordingly, the FTC has conducted two pilot studies and a nationwide representative study. See FTC, *Fourth Interim Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act* at 2-6 (Dec. 2010), available at <http://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fourth-interim-federal-trade>; and FTC, *Fifth Interim Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act* (Dec. 2012), available at <http://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fifth-interim-federal-trade>. The FTC's December 2012 report found that approximately 20 percent of consumers had an error that was corrected by a credit reporting agency (CRA) after it was disputed, on at least one of their three credit reports; four out of five consumers who filed disputes experienced some modification to their credit report; and approximately 13 percent of consumers saw a change in their credit score after the CRAs modified errors on their credit report.

⁶ See, e.g., Laura Koppes Bryan & Jerry K. Palmer, *Do Job Applicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?*, THE PSYCHOLOGIST-MANAGER JOURNAL, Vol. 15, Issue 2, at 106-27 (2012) (finding no relationship between credit history and job performance or negative reasons for terminations); compare Jeremy B. Bernerth et al., *An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores*, J. APPLIED PSYCHOL. Vol. 97, Issue 2, at 469-78 (Mar. 2012) (finding credit scores may be related to certain measures of job performance, but not to “workplace deviance”); see also Statement of Michael Aamodt, Ph.D., Principal Consultant, DCI Consulting Group, Inc., at 2, submitted for EEOC Meeting on Credit History, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/aamodt.cfm> (concluding after meta-analysis of available studies that “[t]here is so little research on the topic that any conclusions would be premature”).

⁷ Studies have shown racial disparities in what is considered “good” or “bad” credit history and credit scores. (A credit score is a number created by the credit bureaus using a mathematical formula based on data from the credit

In addition, covered entities should advise employers, through use of the notices, about best practices to avoid or minimize improper decisions based on an applicant's credit information:

- An employer should only take credit information into account if:
 - the employer will be able to show that it has an objective, clearly-defined reason why credit information used to disqualify an applicant is job-related for the position in question and consistent with business necessity (for example, necessary for the safe and efficient performance of the job in question);
 - the use of credit histories is not prohibited by governing state or local law; and
 - the employer will comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., which mandates certain procedures when employers screen applicants using credit reports (see below).
- If the employer has an objective, clearly-defined reason why credit information is relevant to a particular job, to ensure consistency with business necessity, the employer should:
 - verify whether the information in an applicant's credit report is accurate and how recent it is;
 - determine the reasons the applicant may have negative information on a credit report;

report; employers typically see credit reports rather than credit scores.) For example, a 2007 Federal Reserve study reported that the mean credit score (based on a model score used for the study, where a higher score connotes better credit) for Asians was 54.8; for non-Hispanic whites was 54.0; for Hispanics was 38.2; and for blacks was 25.6. See Bd. of Governors of the Federal Reserve, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit* at 80 (Aug. 2007), available at <http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/default.htm>. A 2004 Texas Department of Insurance study concluded that "Blacks have an average credit score that is roughly 10% to 35% worse than the credit scores for Whites" and that "Hispanics have an average credit score that is roughly 5% to 25% worse than those for Whites." Texas Dep't of Insurance, *Use of Credit Information by Insurers in Texas* at 13 (Dec. 2004), available at <http://www.tdi.texas.gov/reports/credit3.html>. Further, a 2000 Freddie Mac study reported that 48% of African Americans, 34% of Hispanics, and 27% of whites had "bad" credit. See Testimony of Adam Klein, Partner, Outten & Golden, LLP, before the H. Subcomm. on Financial Services and Consumer Credit, at 1 (Sept. 23, 2010) (citing Freddie Mac National Consumer Credit Survey (2000)), available at www.financialservices.house.gov/Media/file/hearings/111/Klein092310.pdf. Additionally, studies have shown that women, who have higher medical debt that leads to credit card debt, and persons with disabilities, who have higher medical expenses, could be disadvantaged by credit checks. See, e.g., Statement of Sarah Crawford, Esq., Lawyers Committee for Civil Rights Under Law, submitted for EEOC Meeting on Credit History at 2, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/crawford.cfm>; see also Mariko Chang, *Lifting as We Climb: Women of Color, Wealth, and America's Future* at 13 (Insight Center for Community and Economic Development Spring 2010), available at <http://www.insightcecd.org/uploads/CRWG/LiftingAsWeClimb-WomenWealth-Report-InsightCenter-Spring2010.pdf> (women are more likely to have credit card debt than men, and the overall debt burden for black women is among the highest of all groups). Disparities in credit history may be attributed to disparities in income levels, unemployment, and health insurance coverage, among other factors. See, e.g., Testimony of Stuart J. Ishimaru, Then-Acting Chairman of the EEOC, before the Hawaii State Senate Committee on Labor at 2-3 (Mar. 19, 2009), available at http://www.capitol.hawaii.gov/session2009/testimony/HB31_TESTIMONY_LBR_03-19-09_LATE.pdf

- determine whether the applicant has taken steps, such as credit counseling, to improve any of the circumstances reflected in the negative information;
- not discourage job seekers by stating in vacancy announcements that only those with “good credit” need apply; and
- not rely exclusively on negative information in a credit report to automatically disqualify applicants; instead, the employer should always consider other relevant information regarding the applicant’s fitness for the job the applicant is seeking.

b. Covered entities should conduct their activities using safeguards to prevent discrimination against individuals in protected groups based on their credit information. Using negative credit information to disqualify applicants from hiring consideration may amount to unlawful discrimination under federal civil rights laws, as discussed below. Covered entities also should familiarize themselves with the FCRA and any state or local laws that impose conditions on the use of credit information to screen and select applicants for employment or to make other employment decisions. The information contained in this TEGl does not supersede those laws.

i. Posting job announcements in Job Banks. Covered entities should establish policies and procedures to ensure that job announcements containing restrictions based on credit information are handled as described below.

- When an employer registers with the American Job Center (AJC) (or other covered entity) to use a job bank, the applicable covered entity must provide the employer a notice that appears as Attachment 1 to this TEGl. This notice explains practical considerations that counsel against employers excluding job seekers on the basis of negative credit information. This notice also advises employers not to automatically exclude job seekers based on their credit history or any other hiring criterion unless it is job-related and consistent with business necessity, because these types of employment practices may violate federal civil rights laws if they have a disparate impact on protected groups. In addition, the notice provides information for employers about their obligations under the FCRA, which requires employers to obtain applicants’ permission before asking a consumer reporting agency for a credit report and to provide applicants with a copy of the report and a summary of their rights before taking adverse action, such as denying employment.
- Covered entities should use a system (automated or otherwise) for identifying job postings that include hiring restrictions based on credit history. This system may be the same system that entities already use to identify other discriminatory language in job postings.
- When job postings that exclude applicants based on credit history have been identified, covered entities must provide employers that have posted these vacancy announcements the notice that appears as Attachment 2 to this TEGl. This notice states that the employer will be given the opportunity to remove or edit the vacancy announcement. The notice and opportunity to remove or edit must be provided to the employer whether the vacancy announcement has been posted directly with the covered entity or has instead been made available in the Job Bank through other means.

- Any job postings containing language that excludes candidates based on credit history should remain posted only when accompanied by the Notice to Job Seekers that appears as Attachment 3 to this TEGL. This notice explains that the exclusions in the posting may be unlawful under certain circumstances. The notice further informs job seekers that the covered entity does not prohibit individuals with negative credit information from applying for the posted position, and that they may obtain a free copy of their credit report by visiting www.AnnualCreditReport.com or calling 1-877-322-8228. Covered entities that accept job applications from job seekers should continue to forward to employers the applications of all applicants who otherwise meet the job qualifications, despite language in vacancy announcements excluding candidates based on their credit history.

The Department recognizes that covered entities have a variety of systems in place to comply with nondiscrimination obligations, and that such entities engage with employer customers in varying ways. Covered entities may elect to take steps other than those listed above that are at least equally effective in preventing unlawful exclusions based on credit history, except that covered entities must provide the attached notices as discussed in this TEGL.

ii. Screening and referral based on credit history restrictions. When screening or referring applicants for job postings, job orders, training, or other employment-related services:

- Covered entity staff should refrain from screening and refusing to make job referrals based on what may be perceived (by the applicant, staff, or employer) as negative credit information. Job seekers who are referred for positions where the job posting states that the employer takes credit history into account must receive a copy of the notice to job seekers (see Attachment 3), along with the job announcement.
- Nothing in this TEGL prevents covered entity staff from taking into account an individual's credit history for purposes of providing appropriate employment-related services or participating in programs designed to provide credit-related help.

c. Covered entities are also encouraged to consult the TEN 12-14: *Promising Practices and Resources for Addressing Long-Term Unemployment*, which contains best practices for overcoming barriers to employment for the long-term unemployed.⁸

4. Applicable civil rights statutes, regulations, and guidance.

The nondiscrimination provisions that apply to the federally-assisted workforce system prohibit intentional discrimination on the basis of race, national origin, sex, disability and other protected bases, as well as policies or practices that appear neutral, but which have a disparate impact on these protected groups and cannot be justified as job-related and consistent with business necessity. Although individuals with negative credit histories are not a protected group under the applicable federal civil rights laws, and FCRA permits the use of credit reports for employment decisions, **antidiscrimination laws may be implicated when credit history is used to**

⁸ Training and Employment Notice 12-14, *Promising Practices and Resources for Addressing Long-Term Unemployment*, October 17, 2014 available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7919.

make employment decisions. For example, if applicants of a particular race receive more favorable hiring consideration than applicants of another race who have the same or similar negative credit information, this could indicate a form of intentional discrimination. As another example, if an employer screens out all workers who have negative credit information, this may have a disparate impact on certain protected groups whose members have negative credit history at a disproportionately higher rate than other groups. To determine whether a particular practice violates federal antidiscrimination statutes, an analysis of the relevant facts of the particular case and, if available, more refined data would be necessary.

a. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., prohibits employment discrimination based on race, color, religion, sex, and national origin. *See* 42 U.S.C. 2000e-2. Entities within the public workforce system, such as State Workforce Agencies and AJCs, may be regarded as “employment agencies” under Title VII.⁹ Thus, Title VII prohibits employment agencies from failing or refusing to refer an individual for employment or otherwise discriminating against any individual based on race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2(b). In addition, employment agencies may be liable for violating Title VII if they “print or publish or cause to be printed” any job announcement that discriminates based on race, color, religion, sex, or national origin.¹⁰

The Equal Employment Opportunity Commission (EEOC), the federal agency that administers and enforces Title VII,¹¹ held a public meeting on October 20, 2010, on Employer Use of Credit History as a Screening Tool.¹² Credit check policies, when used as employee selection tools, are subject to Title VII employment discrimination analysis.¹³

⁹ *See* 42 U.S.C. 2000e(c) (defining “employment agency” as “any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer”); EEOC, COMPLIANCE MANUAL, SEC. 2, THRESHOLD ISSUES (2000), *available at* <http://www.eeoc.gov/policy/docs/threshold.html>. EEOC POLICY GUIDANCE, NO. N-917.002, WHAT CONSTITUTES AN EMPLOYMENT AGENCY UNDER TITLE VII, HOW SHOULD CHARGES AGAINST EMPLOYMENT AGENCIES BE INVESTIGATED, AND WHAT REMEDIES CAN BE OBTAINED FOR EMPLOYMENT AGENCY VIOLATIONS OF THE ACT? *available at* 1991 WL 11665181, at *1-2 & n.1 (Sept. 20, 1991).

¹⁰ 42 U.S.C. 2000e-3(b). *See, however,* 47 U.S.C. 230, which may shield Internet-based Job Banks from civil liability for posting content created by third parties.

¹¹ The Department’s Office of Federal Contract Compliance Programs (OFCCP) administers Executive Order 11246, which, similar to Title VII, prohibits covered federal contractors, federally-assisted construction contractors, and covered subcontractors from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. *See* Executive Order 11246, as amended. OFCCP enforces the nondiscrimination requirements of Executive Order 11246 in accordance with Title VII. The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (VEVRAA), which requires covered federal government contractors to post certain categories of job announcements in the state workforce agency job bank or with American Job Centers, also is administered and enforced by OFCCP. *See* 38 U.S.C. 4212(a)(2).

¹² Testimony and a transcript of that meeting are available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/>.

¹³ *See* Ishimaru Testimony at 1; *see also* EEOC, “Pre-Employment Inquiries and Credit Rating or Economic Status,” *available at* http://www.eeoc.gov/laws/practices/inquiries_credit.cfm (“[i]nquir[ies] into an applicant’s current or past assets, liabilities, or credit rating” that are not job-related and consistent with business necessity “generally should be avoided because they tend to impact more adversely on minorities and females”); *see* EEOC Factsheet “Employment Tests and Selection Procedures” (last modified Sept. 23, 2010), *available at* http://www.eeoc.gov/policy/docs/factemployment_procedures.html; EEOC Informal Discussion Letter, Title VII: Employer Use of Credit Checks (Mar. 9, 2010), *available at* <http://www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditchk.html> (“Title VII prohibits an employment practice that disproportionately screens out racial

b. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, applies to all programs or activities receiving federal financial assistance, such as covered entities that receive assistance under the Workforce Investment Act and/or the Wagner-Peyser Act. Title VI and its implementing regulations prohibit any program or activity from excluding from participation in or denying the benefits of programs, or otherwise subjecting anyone to discrimination, on the ground of race, color, or national origin. 42 U.S.C. 2000d; 29 C.F.R. 31.3(a). The Department's CRC administers and enforces these requirements.

Recipients may not use any "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of race, color or national origin." 29 C.F.R. 31.3(b)(2). Further, the "selection and referral of individuals for job openings or training opportunities and all other activities performed by or through employment service offices" must be done without regard to race, color, or national origin. 29 C.F.R. 31.3(d)(1)(i).

c. The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq., prohibits discrimination against qualified individuals on the basis of disability. 42 U.S.C. 12112. The ADA also applies to employment agencies, 42 U.S.C. 12111(2), as well as state and local government programs, services, and activities, 42 U.S.C. 12132; 28 C.F.R. Part 35. The CRC is delegated responsibility by the Department of Justice for enforcing Title II of the ADA with regard to "[a]ll programs, services, and regulatory activities relating to labor and the work force." 28 C.F.R. 35.190(b)(7).

d. The Rehabilitation Act of 1973, 29 U.S.C. 794 (Section 504), prohibits discrimination against qualified individuals with a disability "under any program or activity receiving federal financial assistance."¹⁴ CRC administers and enforces the Department's regulations implementing Section 504 that apply to recipients of the Department's financial assistance. These regulations state that no qualified individual shall, on the basis of disability, "be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity," 29 C.F.R. 32.4(a), nor may a recipient use criteria or administrative methods that "have the effect of subjecting qualified . . . individuals [with disabilities] to discrimination on the basis of [disability]." 29 C.F.R. 32.4(b)(4)(i).

e. The Workforce Investment Act (WIA), 29 U.S.C. 2801 et seq., is the key source of federal assistance for state and local workforce development activities. The relevant nondiscrimination provision in WIA states that no "individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity" on the basis of race,

minorities, women, or another protected group unless the practice is job related and consistent with business necessity. Thus, if an employer's use of credit information disproportionately excludes African-American and Hispanic candidates, the practice would be unlawful unless the employer could establish that the employment practice is needed for it to operate safely or efficiently.").

¹⁴ The Department's OFCCP enforces Section 503 of the Rehabilitation Act, 29 U.S.C. 793, which requires covered federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified people with disabilities. The same standards that are applicable under the ADA to determine whether discrimination has taken place also apply to Sections 503 and 504 of the Rehabilitation Act. Similar standards apply under WIA Section 188 and its implementing regulations.

color, religion, sex, national origin, age, disability, or political affiliation or belief. 29 U.S.C. 2938(a)(2). The regulations implementing this provision, which CRC administers and enforces, apply to all programs and activities that are operated by AJC (formerly known as One-Stop) partners as part of the AJC delivery system. 29 C.F.R. 37.2(a)(2). Similarly, under the Wagner-Peyser Act regulations, states are required to assure nondiscrimination regarding any services or activities authorized under that Act. 20 C.F.R. 652.8(j)(1).¹⁵

The WIA nondiscrimination regulations prohibit recipients from using “standards, procedures, criteria, or administrative methods” that have the purpose or effect of subjecting individuals to discrimination on a prohibited ground due to the recipient’s administration of programs providing aid, benefits, services, training or facilities “in any manner.” 29 C.F.R. 37.6(d). In addition, the Wagner-Peyser Act regulations specifically require states to “[a]ssure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ).” 20 C.F.R. 652.8(j)(2).

5. Action Requested. Covered entities and their program operators are directed to review their existing policies and procedures and make any changes necessary to implement the guidance provided in this TEGL. They are also encouraged to consult TEN 12-14: *Promising Practices and Resources for Addressing Long-Term Unemployment*,¹⁶ which contains best practices for overcoming barriers to employment for the long-term unemployed.

6. Contact Information. Inquiries about incentive programs and other efforts to promote employment opportunities should be addressed to the appropriate ETA regional or national office. Inquiries about civil rights issues in the public workforce system should be addressed to CRC by phone at 202-693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov. Complaints alleging discrimination by entities in the system may be filed with CRC by postal mail, e-mail, or fax, addressed to Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210, CRCEXternalComplaints@dol.gov, 202-693-6505 (fax). Further information about the discrimination complaint process is available on CRC's website at <http://www.dol.gov/oasam/programs/crc/external-enforce-complaints.htm>.

Inquiries relating to discrimination in employment by federal contractors and subcontractors should be addressed to Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C-3325, Washington, DC 20210. Further information is available at: <http://www.dol.gov/ofccp>, 1-800-397-6251 (Help Desk).

¹⁵ The Workforce Innovation and Opportunity Act (WIOA), signed into law on July 22, 2014, supersedes the Workforce Investment Act of 1998 and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973. In general, WIOA takes effect on July 1, 2015, which is the first full program year after it was enacted. Enactment of WIOA in no way changes the nondiscrimination and equal opportunity obligations discussed in this TEGL.

¹⁶ Training and Employment Notice 12-14, *Promising Practices and Resources for Addressing Long-Term Unemployment*, issued October 17, 2014, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7919.

7. Attachments.

- Notice to Employers Regarding Job Bank Nondiscrimination and Hiring Restrictions Based on Credit Information
- Notice to Employers Regarding Job Posting Containing Hiring Restrictions Based on Credit Information
- Notice to Job Seekers to be Attached to Job Postings with Hiring Restrictions Based on Credit Information

Notice to Employers Regarding Job Bank Nondiscrimination and Hiring Restrictions Based on Credit Information

We advise employers not to automatically exclude job seekers based on their credit history unless the employer can show that a credit history restriction is related to the job posted and consistent with the employer's business needs. While employers are permitted to use credit reports in hiring and other decisions, this type of screening requirement may unjustifiably limit the employment opportunities of applicants in protected groups and may therefore violate federal civil rights laws. Any employer that submits a job announcement containing restrictions or exclusions based on an applicant's credit information will have an opportunity to edit or remove the announcement.

Practical Considerations:

- Screening job seekers based on their credit information may be imprudent because:
 - Negative information on credit reports may reflect that applicants have experienced difficult circumstances beyond their control that have no relationship to their ability to perform the job, such as a medical emergency, disability, layoff, loss of a spouse, or identity theft.
 - Credit reports may contain inaccuracies.
 - No reliable body of evidence supports the use of credit history in hiring decisions.
 - Using credit history as an employment screening tool may disproportionately exclude certain racial and ethnic groups, women, and people with disabilities from hiring consideration.

- Best practices to avoid or minimize improper decisions based on an applicant's credit history:
 - An employer should only take credit information into account if:
 - the employer will be able to show that it has an objective, clearly-defined reason why credit information used to disqualify an applicant is job-related for the position in question and consistent with business necessity (for example, necessary for the safe and efficient performance of the job in question);
 - the use of credit histories is not prohibited by governing state or local law; and
 - the employer will comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., which mandates certain procedures when employers screen applicants using credit reports (see below).
 - If the employer has an objective, clearly-defined reason why credit information is relevant to a particular job, to ensure consistency with business necessity, the employer should:
 - verify whether the information in an applicant's credit report is accurate and how recent it is;
 - determine the reasons the applicant may have negative information on a credit report;

- determine whether the applicant has taken steps, such as credit counseling, to improve any of the circumstances reflected in the negative information;
- not discourage job seekers by stating in vacancy announcements that only those with “good credit” need apply; and
- not rely exclusively on negative information in a credit report to automatically disqualify applicants; instead, the employer should always consider other relevant information regarding the applicant’s fitness for the job the applicant is seeking.

Relevant Information from Federal Agencies

The U.S. Department of Labor, Civil Rights Center (CRC), is responsible for investigating complaints concerning public workforce system entities and programs that allege discrimination on the basis of race, color, religion, sex, national origin, or disability, among others. More information about the laws CRC enforces and its external complaint process is available at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>, (202) 693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov.

The Equal Employment Opportunity Commission (EEOC) is responsible for investigating charges of employment discrimination on the basis of race, color, religion, national origin, or sex under Title VII of the Civil Rights Act of 1964, and disability under Title I of the Americans with Disabilities Act of 1990. Both laws apply to employers with 15 or more employees. More information about the laws EEOC enforces and its complaint process is available at <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).

The Federal Trade Commission enforces the Fair Credit Reporting Act, which requires that employers:

- Tell the applicant that the employer may obtain a credit report and get the applicant’s written consent before asking a consumer reporting agency for a credit report.
- Provide the applicant with a copy of the report and a summary of the applicant’s rights before the employer takes an adverse action (such as denying an application for employment) based on information in the credit report.

For more information, please visit: <http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know>.

Notice to Employers Regarding Job Postings Containing Hiring Restrictions Based on Credit Information

The public workforce system has identified hiring restrictions based on credit history in the job announcement submitted for posting by this employer or in a job announcement referenced in a job bank.

We advise employers not to automatically exclude job seekers based on their credit history unless the employer can show that a credit history restriction is related to the job posted and consistent with the employer's business needs. While employers are permitted to use credit reports in hiring and other decisions, this type of screening requirement may unjustifiably limit the employment opportunities of applicants in protected groups and may therefore violate federal civil rights laws. Any employer that submits a job announcement containing restrictions or exclusions based on an applicant's credit information has an opportunity to edit or remove the announcement.

Please take this opportunity to remove or edit the announcement as needed. If you continue to post the announcement as is, the announcement will be posted along with information for job seekers about the civil rights laws that may apply to restrictions based on credit history.

Practical Considerations:

- Screening job seekers based on their credit information may be imprudent because:
 - Negative information on credit reports may reflect that applicants have experienced difficult circumstances beyond their control that have no relationship to their ability to perform the job, such as a medical emergency, disability, layoff, loss of a spouse, or identity theft.
 - Credit reports may contain inaccuracies.
 - No reliable body of evidence supports the use of credit history in hiring decisions.
 - Using credit history as an employment screening tool may disproportionately exclude certain racial and ethnic groups, women, and people with disabilities from hiring consideration.
- Best practices to avoid or minimize improper decisions based on an applicant's credit history:
 - An employer should only take credit information into account if:
 - the employer will be able to show that it has an objective, clearly-defined reason why credit information used to disqualify an applicant is job-related for the position in question and consistent with business necessity (for example, necessary for the safe and efficient performance of the job in question);
 - the use of credit histories is not prohibited by governing state or local law; and

- the employer will comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., which mandates certain procedures when employers screen applicants using credit reports (see below).
- If the employer has an objective, clearly-defined reason why credit information is relevant to a particular job, to ensure consistency with business necessity, the employer should:
 - verify whether the information in an applicant’s credit report is accurate and how recent it is;
 - determine the reasons the applicant may have negative information on a credit report;
 - determine whether the applicant has taken steps, such as credit counseling, to improve any of the circumstances reflected in the negative information;
 - not discourage job seekers by stating in vacancy announcements that only those with “good credit” need apply; and
 - not rely exclusively on negative information in a credit report to automatically disqualify applicants; instead, the employer should always consider other relevant information regarding the applicant’s fitness for the job the applicant is seeking.

Relevant Information from Federal Agencies

The U.S. Department of Labor, Civil Rights Center (CRC), is responsible for investigating complaints concerning public workforce system entities and programs that allege discrimination on the basis of race, color, religion, sex, national origin, or disability, among others. More information about the laws CRC enforces and its external complaint process is available at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>, (202) 693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov.

The Equal Employment Opportunity Commission (EEOC) is responsible for investigating charges of employment discrimination on the basis of race, color, religion, national origin, or sex under Title VII of the Civil Rights Act of 1964, and disability under Title I of the Americans with Disabilities Act of 1990. Both laws apply to employers with 15 or more employees. More information about the laws EEOC enforces and its complaint process is available at <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).

The Federal Trade Commission (FTC) enforces the Fair Credit Reporting Act, which requires that employers:

- Tell the applicant that the employer may obtain a credit report and get the applicant’s written consent before asking a consumer reporting agency for a credit report.
- Provide the applicant with a copy of the report and a summary of the applicant’s rights before the employer takes an adverse action (such as denying an application for employment) based on information in the credit report.

For more information, please visit: <http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know>.

Notice to Job Seekers Regarding Job Postings with Hiring Restrictions Based on Credit Information

Notice: The attached job announcement contains a hiring restriction based on credit information. You are not prohibited from applying for this job, even though you may have “bad” credit or a poor credit history. Further, rejecting you for reasons related to credit may violate federal civil rights laws, depending on the circumstances. Please see below for more information.

Relevant Information from Federal Agencies

The U.S. Department of Labor, Civil Rights Center (CRC), is responsible for investigating complaints concerning public workforce system entities and programs that allege discrimination on the bases of race, color, religion, sex, national origin, or disability, among others. Inquiries about civil rights issues in the public workforce system should be addressed to CRC by phone at 202-693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov. Complaints alleging discrimination by entities in the system may be filed with CRC by postal mail, e-mail, or fax, addressed to Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210, CRCEXternalComplaints@dol.gov, 202-693-6505 (fax). Further information about the discrimination complaint process is available on CRC's website at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>.

The Equal Employment Opportunity Commission (EEOC) is responsible for investigating charges of employment discrimination on the bases of race, color, religion, national origin or sex under Title VII of the Civil Rights Act of 1964, and disability under Title I of the Americans with Disabilities Act of 1990. Both laws apply to employers with 15 or more employees. More information about the laws EEOC enforces and its complaint process is available at <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).

The Federal Trade Commission (FTC) enforces the Fair Credit Reporting Act, which requires that employers:

- Tell the applicant that the employer may obtain a credit report and get the applicant's written consent before asking a consumer reporting agency for a credit report.
- Provide the applicant with a copy of the report and a summary of the applicant's rights before the employer takes an adverse action (such as denying an application for employment) based on information in the credit report.

For more information, please visit:

<http://www.consumer.ftc.gov/articles/0157-employment-background-checks>.

To obtain a free copy of your credit report, visit www.AnnualCreditReport.com or call 1-877-322-8228.

TRAINING AND EMPLOYMENT NOTICE	NO. 12-14
	DATE October 17, 2014

TO: AMERICAN JOB CENTER DIRECTORS
STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE AND LOCAL EQUAL OPPORTUNITY OFFICERS
STATE LABOR COMMISSIONERS
WORKFORCE INVESTMENT ACT SECTION 166 INDIAN AND NATIVE
AMERICAN GRANTEES
WORKFORCE INVESTMENT ACT SECTION 167 MIGRANT AND
SEASONAL FARMWORKER JOBS PROGRAM GRANTEES
SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM GRANTEES
EMPLOYMENT AND TRAINING ADMINISTRATION REGIONAL
ADMINISTRATORS
JOB CORPS CONTRACTORS
RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL ASSISTANCE
SUB-RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL
ASSISTANCE

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Promising Practices and Resources for Addressing Long-Term Unemployment

1. Purpose. To inform the public workforce system and employers about affirmative efforts by employers, employer organizations, and workforce agencies to increase economic competitiveness by tapping into the talent pool of long-term unemployed individuals, which includes many qualified, experienced, and skilled workers. And to encourage the workforce system, through resources and information, to assist the long-term unemployed in returning to work by: (a) partnering with employers to implement promising human resources practices; (b) targeting and expanding work-based learning models, such as on-the-job training; (c) offering specialized services, such as financial counseling, behavioral health counseling, and enhanced job search assistance; and (d) boosting job seeker outreach and engagement strategies to better reach the long-term unemployed.

**EMPLOYMENT AND TRAINING ADMINISTRATION
U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210**

2. References.

- White House Fact Sheet, *Getting Long-Term Unemployed Americans Back to Work*, dated October 15, 2014, (<http://www.whitehouse.gov/the-press-office/2014/10/15/fact-sheet-getting-long-term-unemployed-americans-back-work>);
- *Governmentwide Guidance to Ensure Fair Employment Opportunities for Applicants Who Are Unemployed or Facing Financial Difficulty Through No Fault of Their Own*, U.S. Office of Personnel Management, dated October 14, 2014, (<http://chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=6465>);
- *OPM Mythbuster on Federal Hiring Practices*, U.S. Office of Personnel Management, October 2014, (https://hru.gov/Studio_Recruitment/tools/Mythbuster_on_Federal_Hiring_Policies.pdf);
- White House Fact Sheet, *Opportunity For All – The President’s Call to Action to Give the Long-Term Unemployed a Fair Shot*, dated January 31, 2014, (<http://www.whitehouse.gov/the-press-office/2014/01/31/fact-sheet-opportunity-all-president-s-call-action-give-long-term-unempl>);
- *Best Practices for Recruiting and Hiring the Long-Term Unemployed*, issued by the White House, dated January 31, 2014, (http://www.whitehouse.gov/sites/default/files/docs/best_practices_recruiting_longterm_unemployed.pdf);
- *Addressing the Negative Cycle of Long-Term Unemployment*, Executive Office of the President, dated January 31, 2014, (http://www.whitehouse.gov/sites/default/files/docs/wh_report_addressing_the_negative_cycle_of_long-term_unemployment_1-31-14_-_final3.pdf);
- Presidential Memorandum, *Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through no Fault of Their Own*, issued January 31, 2014, (<http://www.whitehouse.gov/the-press-office/2014/01/31/prevent-undue-denial-federal-employment-opportunities-unemployed-and-tho%20>);
- Ready to Work Partnerships Grant Announcement and Project Summaries, (<http://www.dol.gov/opa/media/press/eta/ETA20141956.htm>);
- Job-Driven National Emergency Grants Project Summaries: (<http://www.dol.gov/opa/media/press/eta/ETA20141235.htm>);
- Online Toolkit for On-the-Job Training, *Building the Next Generation OJT Toolkit*, (<https://ojttoolkit.workforce3one.org/>);
- Training and Employment Guidance Letter (TEGL) 10-14, *Update on Complying with Nondiscrimination Provisions: Unemployment Status Restrictions and Possible Disparate Impact Based on Race, National Origin, Sex, and Disability*, dated October 17, 2014, (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7027);
- TEGL 11-14, *Update on Complying with Nondiscrimination Provisions: Credit History Restrictions and Possible Disparate Impact Based on Race, National Origin, Sex, and Disability*, dated October 17, 2014, (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9442);
- TEGL 31-11, *Update on Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Disparate Impact Based on Race and National Origin*, dated May 25, 2012, (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9230);

- Training and Employment Notice (TEN) 42-10, *Encouraging Partnerships between the Workforce Investment System and Job Clubs to meet Career and Employment Needs*, dated May 20, 2011, (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3026);
- *A Guide to Recruiting and Hiring the Long-Term Unemployed – A Handbook for Employers*, Deloitte Consulting in collaboration with The Rockefeller Foundation, October 2014, (https://www.deloitte.com/view/en_US/us/About/social-impact/540aa1db85f58410VgnVCM3000003456f70aRCRD.htm);
- *New Guide, New Destinations – A Handbook for Job Seekers to Navigate Out of Long-Term Unemployment*, Deloitte Consulting in collaboration with The Rockefeller Foundation, October 2014, (https://www.deloitte.com/view/en_US/us/About/social-impact/540aa1db85f58410VgnVCM3000003456f70aRCRD.htm);
- *Engage Your Community – A Local Guide to Addressing the Long-Term Unemployment Challenge*, Deloitte Consulting in collaboration with The Rockefeller Foundation, October 2014, (https://www.deloitte.com/view/en_US/us/About/social-impact/540aa1db85f58410VgnVCM3000003456f70aRCRD.htm);
- *The Long-Term Unemployed: How to Make Sure You Are Not Overlooking Skilled Talent, Guide for HR*, Society for Human Resources Management (SHRM), January 2014, (http://www.shrm.org/hrdisciplines/staffingmanagement/Articles/Documents/14-0241LTUGuideforHR_FNL.pdf); and
- *How to Effectively Market Yourself for a Job When You've Been Long-Term Unemployed, A guide for jobseekers*, Society for Human Resources Management (SHRM), January 2014, (<http://www.shrm.org/hrdisciplines/staffingmanagement/articles/pages/long-term-unemployed-jobseeker-guide.aspx>).

3. Background. Long-term unemployment is a legacy of the Great Recession that continues to impact too many Americans. Many of these individuals were simply in the wrong place at the wrong time during the economic downturn and, despite their qualifications, experiences, and skills, have struggled to reclaim their place in the labor market. Employers stand to benefit by tapping into this talented labor force, and the workforce system has an obligation to provide targeted assistance to this disadvantaged group of workers.

Currently, 3.0 million individuals in the U.S. labor market fall into the category of long-term unemployment, defined as jobless for 27 weeks or longer. While this is a significant decrease from a peak of 6.8 million in April 2010, the long-term unemployment rate is still 1.9 percent, more than double pre-recession levels. Meanwhile, the unemployment rate for persons unemployed less than 27 weeks is 4.0 percent, nearly identical to pre-recession levels. The currently elevated unemployment rate of 5.9 percent is driven almost entirely by long-term unemployment.

In addition, there is evidence that longer unemployment presents a higher barrier for job-seekers. Research has documented an “unemployment cliff” that exists between six and seven months of joblessness; after six months of unemployment, job seekers were far less likely to be called in by employers for an interview even if they had more experience and qualifications than job seekers

for the same positions who were unemployed for six months or less.¹ Employers may be hesitant to hire long-term unemployed individuals for a number of reasons, such as a real or perceived decline in skills during extended periods of unemployment. In other cases, employers may purposefully or inadvertently screen out long-term unemployed individuals based on characteristics these candidates may be more likely to exhibit (compared to the employed or short-term unemployed), such as recent resume gaps or affected credit.²

While the long-term unemployed are disadvantaged by these practices, so too are the employers who may overlook these candidates. Long-term unemployed job seekers are often highly qualified and a reliable source of skilled, educated, and experienced talent. By passing over these candidates, employers may be unnecessarily diminishing their economic competitiveness, along with the quality and productivity of their workforce.

4. Employer Partnerships and Human Resources Strategies. Many employers recognize the strengths that qualified, long-term unemployed individuals can bring to their companies' success. Earlier this year, over 300 businesses, including 20 Fortune 50 companies and 45 Fortune 200 companies, committed to review their hiring policies and institute best practices for recruiting and hiring the long-term unemployed. These and other companies are also partnering with the public workforce system and other public and private organizations to implement human resources strategies that leverage the talents of the long-term unemployed.

These employer practices and human resources strategies have been catalogued in recent guides for employers and human resources professionals, including a new handbook by Deloitte Consulting in collaboration with the Rockefeller Foundation, called, *A Guide to Recruiting and Hiring the Long-Term Unemployed*, and a guide released earlier this year by the Society for Human Resources Professionals (SHRM) called, *The Long-Term Unemployed: How to Make Sure You Are Not Overlooking Skilled Talent*.³ In addition to information provided in these guides, these practices and strategies are also being implemented through ETA grant investments.

Examples of employer practices and strategies, include the following:

- *Acknowledge the talents and value of the long-term unemployed:* Employers can take affirmative steps to embrace the long-term unemployed as valuable candidates and employees. For example, the company leadership team can work with its human

1 Ghayad, Rand, *The Jobless Trap*, Northeastern University and the Federal Reserve Bank of Boston, presented at Massachusetts Institute of Technology Sloan School of Business, May 2014:

<http://instituteforcareertransitions.org/2014/05/08/the-jobless-trap-by-rand-ghayad/>.

2 For information on applicable legal requirements and employer best practices to avoid or minimize improper decisions based on an applicant's employment status or credit history, please see TEGL 10-14 *Update on Complying with Nondiscrimination Provisions: Unemployment Status Restrictions and Possible Disparate Impact Based on Race, National Origin, Sex, and Disability*, (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7027); and TEGL 11-14, *Update on Complying with Nondiscrimination Provisions: Credit History Restrictions and Possible Disparate Impact Based on Race, National Origin, Sex, and Disability*, (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9442).

3 The views expressed in the informational materials prepared by private sector organizations do not necessarily reflect official U.S. Department of Labor positions or policy. Inclusion of these materials does not represent an official endorsement by the U.S. Department of Labor of the organizations, their programs, products or services.

resources team to define diverse talent needs and make hiring the long-term unemployed as part of this strategy. To further this strategy, employers can set targets to consider and hire the long-term unemployed. Employers can also provide systematic education and tools to hiring managers on the business value of hiring the long-term unemployed, such as higher retention rates and greater employee loyalty. In addition, companies can identify a committed senior leader who actively champions the value in recruiting and hiring the long-term unemployed.

- *Outreach and recruitment strategies:* Employers can take steps to ensure that advertising does not discriminate against unemployed individuals. They can review recruiting and hiring screens and systems to ensure that long-term unemployed candidates are not automatically screened out. Companies can also adopt recruiting practices that encourage qualified, long-term job seekers to apply. Such practices can include participating in job fairs and other recruitment or community events that target the long-term unemployed.
- *Applicant review and hiring approaches:* Employers can adjust their review and hiring procedures to maximize talent acquisition while not inadvertently disqualifying highly qualified long-term unemployed individuals. For example, companies can use skills-based approaches when making hiring decisions that balance objective measures of skills and skill level with recent work experience. They can also limit credit checks to those positions where relevant and then only for final round candidates, abiding by applicable legal requirements.⁴ Where credit checks are conducted, employers can investigate the history behind a poor credit score and assess if the candidate has taken a good-faith effort to meet financial obligations.
- *Onboarding strategies:* Employers can take a range of steps when making offers and onboarding new hires that can ensure long-term success for the company and worker alike. For example, hiring managers can present offer packages to candidates that highlight the potential for an accelerated career path given strong performance. In addition, employers can partner with employer organizations and workforce agencies as part of public and private programs to hire and train long-term unemployed individuals through on-the-job training programs, Registered Apprenticeship, and paid work experience opportunities, discussed in more detail below. Finally, employers can train incumbent workers for upgrade opportunities and backfill vacancies with long-term unemployed candidates.

Employers should be encouraged to share these best practices and human resources strategies with the broader business community.

We also note that federal contractors are subject to specific nondiscrimination and affirmative action obligations. Nothing in this TEN is inconsistent with the obligations of federal contractors and subcontractors under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act, as amended, and 38 U.S.C. Section 4212, the Vietnam Era Veterans' Readjustment Assistance Act, as amended. Many groups protected by the Department of Labor Office of Federal Contract Compliance Programs' laws are also disproportionately represented among the

⁴ For information on applicable legal requirements and employer best practices to avoid or minimize improper decisions based on an applicant's credit history, please see TEG 11-14, *Update on Complying with Nondiscrimination Provisions: Credit History Restrictions and Possible Disparate Impact Based on Race, National Origin, Sex, and Disability*, (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9442).

long-term unemployed, and thus implementation of practices in the TEN could significantly aid contractors' related outreach and recruitment efforts.

5. Work-Based Models. Work-based models can be an effective strategy to help the long-term unemployed return to work. On-the-job training (OJT) and Registered Apprenticeship are the most common models for combining work experience with training and skills development. These approaches benefit employers by limiting any real or perceived risks in hiring the long-term unemployed, while helping the long-term unemployed transition back into the workforce, refresh skills and build new skills, and receive wages and compensation.

Work-based training opportunities also provide the long-term unemployed an opportunity to fill employment gaps in their resumes, gain first-hand experience at employer sites, and establish a direct link to permanent employment, especially for programs that may include commitments from employers to hire and/or interview participants who complete work-based training assignments.

ETA continues to encourage and invest in work-based models. Under Title I of the Workforce Investment Act, the public workforce system may set up OJT programs with eligible employers and individuals. Under standard WIA guidelines, employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT.⁵ Many states have received waivers to reimburse employers up to 90 percent of the wage rate, based on the employer size, participant skills shortages, and/or participant length of employment. Certain ETA grants, such as National Emergency Grants and H-1B training grants also allow for higher OJT reimbursement rates based on employer size, especially to encourage opportunities for the long-term unemployed.

For more information on OJT programs, including guidance for setting up such programs, visit: <https://ojttoolkit.workforce3one.org/>.

6. Specialized Services. Public and private organizations and agencies have identified unique barriers facing the long-term unemployed and have incorporated specialized service strategies to address them. Such strategies include, but are not limited to the following:

- *Intensive Assessment and Customized Service Tracks:* Long-term unemployed job seekers have a wide range of skills, education, work experiences, and interests. ETA has invested in programs, including through the recently awarded Ready to Work Partnership grants that provide an intensive up-front assessment to accurately analyze an individual's work experiences, educational experiences, and barriers to employment. These assessments are used to direct the individual to customized interventions based on their needs, skills, experiences, and interests. Interventions are offered within three general service categories: (a) direct job placement; (b) short-term training; and (c) accelerated training along a career pathway.

⁵ OJT is one of the many types of training that may be provided under WIA (see section 134(d)(4)(D) of WIA). Section 101(31) of WIA and 20 CFR 663.700-663.710 describe requirements that apply to OJT under WIA. The Workforce Innovation and Opportunity Act (WIOA) also includes OJT as a training strategy. See sections 3(44) and 134(c)(3)(D) of WIOA. Most provisions of WIOA will go into effect beginning on July 1, 2015.

- *Financial Counseling and Repair Services:* In many cases, long-term unemployed individuals have fallen into financial hardship due to extended periods of lack of income to meet basic needs. In some cases, programs serving the long-term unemployed focus on rebuilding financial stability through financial management workshops, mortgage foreclosure prevention and other housing counseling assistance, debt repair and reduction counseling, and assistance accessing available federal and state income supports.
- *Behavioral Health Counseling and Support:* Research has shown that long-term unemployment is often associated with loss of confidence and depression, as well as anxiety, poor self-esteem, and low subjective well-being.⁶ Programs serving the long-term unemployed build in a range of interventions to address these challenges, including clinical counseling, support group models, and confidence-building exercises. Such interventions may be delivered through partnerships with behavioral and mental health organizations and community-based organizations.
- *Enhanced Job Search Assistance:* In many cases, long-term unemployed individuals rely on self-directed job searches using dated strategies and techniques. These job seekers may benefit from training on how to search and interview for a job in the contemporary labor market and with relevant tools, such as social media and other technologies. Programs serving the long-term unemployed have incorporated enhanced job search assistance into their service offerings, such as resume consultation, networking advice and opportunities, understanding how to read a job lead, social media strategies, LinkedIn labs, and informational interviews with employers. Programs have also enlisted job coaches and human resources professionals to introduce job seekers to new industries and employers, train them on how their skills and work experience translate to these industries, conduct mock interviews about transferability, and guide them through the job search and hiring process.

These practices are currently being implemented in certain states and local areas by the public workforce system and through ETA-funded programs. In addition, these and other practices have been catalogued in recent guides for job seekers, including a new handbook created by Deloitte Consulting in collaboration with the Rockefeller Foundation, *New Guide, New Destinations: A Handbook for Job Seekers to Navigate Out of Long-Term Unemployment*; and a recent guide issued by SHRM, *How to Effectively Market Yourself for a Job When You've Been Long-Term Unemployed, A guide for jobseekers.*⁷

7. **Job Seeker Engagement.** One of the ongoing challenges in assisting the long-term unemployed has been recruiting, engaging, and enrolling these job seekers in services. In many cases, these individuals may not actively seek out services from the public workforce system or other providers, due to the stigma associated with long-term unemployment, low self-esteem, or other reasons. A recent survey found that only 9 percent of the long-term unemployed reported receiving help from a government agency when they were looking for a

⁶ Paul, K. I., & Moser, K., *Unemployment impairs mental health: Meta-analysis*, Journal of Vocational Behavior, 2009.

⁷ The views expressed in the informational materials prepared by private sector organizations do not necessarily reflect official U.S. Department of Labor positions or policy. Inclusion of these materials does not represent an official endorsement by the U.S. Department of Labor of the organizations, their programs, products or services.

job and only 4 percent say they were enrolled in a government-funded training program.⁸ Several strategies for actively engaging long-term unemployed job seekers include the following:

- *Coordination with State Unemployment Insurance (UI) programs:* Programs can develop partnership agreements with UI agencies to support recruitment efforts by using state-funded job seeker and UI databases to identify long-term unemployed individuals whose UI benefits have expired or are close to expiring. In some cases, states are including information about these local programs in correspondence to UI claimants nearing exhaustion.
- *Targeted recruitment through human services, income support, and community-based programs:* Workforce organizations are recruiting long-term unemployed individuals through other systems and programs where these individuals are likely to receive assistance, such as the Supplemental Nutrition Assistance Program (SNAP, or food stamps), housing counseling programs, and job clubs or support groups at faith-based and community organizations.
- *Prevention strategies:* Another promising strategy for engaging the long-term unemployed is to provide responsive reemployment services to unemployed individuals before they reach the six-month mark, including UI claimants, with characteristics that are likely to result in long-term unemployment. Reemployment Eligibility Assessment/Reemployment Services (REA/RES) programs managed by state UI agencies have proven to be an effective model, especially when integrated with WIA services, to help UI claimants return to work. In one recent study, the REA/RES program was credited with reducing average UI benefits duration by 3.4 weeks.⁹ These programs have proven effective in preventing unemployed individuals from becoming long-term unemployed.

8. Action Requested. ETA encourages the public workforce system and ETA grantees to share this TEN with partners, employers, and other interested stakeholders; to review the resources and promising practices referenced in this TEN; and, where appropriate and feasible, to incorporate them into targeted service delivery strategies for the long-term unemployed and assist employers and other partners in using and implementing them.

9. Inquiries. Questions on this TEN may be directed to the appropriate ETA Regional Offices, or contact Ben Seigel at seigel.benjamin@dol.gov.

⁸ Van Horn, Carl, *Left Behind: The Long-term Unemployed Struggle in an Improving Economy*, Heldrich Center for Workforce Development, September 2014:

http://heldrich.rutgers.edu/sites/default/files/products/uploads/Work_Trends_September_2014_0.pdf.

⁹ Michaelides, Marios, *Are Reemployment Services Effective in Periods of High Unemployment? Experimental Evidence from the Great Recession*, December 2013.

ARWB POLICY – Background Checks and Drug Screening – Revised October 2014 per TEGL 11-14

A background check and drug screen may be required and will be provided prior to training enrollment for individuals enrolling in WIA training programs such as truck driving, healthcare and education.

Background:

Individual training plans must address other occupational or industry related criteria that may preclude an individual from securing employment. Examples may include: driving record for individuals interested in commercial truck driver training; felony conviction or patterns of arrest or conviction for positions with education, IT, and healthcare; clean criminal background check for positions with the aviation industry etc. The background check must be conducted and dated no earlier than one month prior to the date a customer begins training.

In addition, many employers are asking applicants to submit to a drug screening prior to employment.

Due to several circumstances experienced at the Career Resource Centers, local staff have asked that the Board institute a policy regarding background checks and drug screening. Examples from our Career Center Managers include:

1. Customer indicated on his application that he had a felony conviction. He reported that he had a MBA and had worked for many years in the financial industry and wanted the financial planner program. After he was questioned about the nature of the offense, he told me that he had served time for embezzlement. I informed him that because of his felony conviction, he would not be marketable in the financial industry and we could explore other training programs. He was not interested and refused any other services.
2. Customer provided false information on her application regarding her criminal background. She completed the classroom portion of her training program and when the school placed her on an externship, it was discovered that she had a felony conviction and the school informed her she could not complete her externship. The school had to terminate her from the program and we are attempting to locate her to assist her in finding a job outside of the medical field.
3. Customer completed the Medical Assistant program and relocated to Florida. The school allowed her to complete the externship in Florida. We received a phone call from the school this morning and were informed that she cannot be placed because her background check shows offenses that will prevent her from working in the medical industry
4. Welding student with prior drug abuse history attended first term successfully then stated relapse and entered rehab, current WIA status-hold. Drug screen might have revealed issue prior to enrollment.
5. CNA/PCT student with shoplifting misdemeanor, charge not previously revealed now negatively impacting potential job placement.
6. WIA applicant requested pick-up for Early Childhood enrollment but was terminated from program due to prior simple battery charge revealed from program required background check, is now requesting WIA funding for criminal justice program.

Information on requiring background checks and drug screening

Background checks

- The following information can be obtained:
Verification of social security # and past addresses
Criminal and civil record searches

Driving and vehicle records
Verification of education and past employment
Verification of professional licenses
Reference checks
Bankruptcy and workers' comp records
Military service records

- Information sought should be relevant to the purpose and must be kept confidential
- If requesting more than just general info (which is info concerning addresses of record), must do the following:
 - have a written disclaimer that a background check will be done and get the individual to sign it
 - must adequately disclose to the individual that the background check may include in-depth information about his or her character, personal characteristics, mode of living, criminal, driving and work history, etc. This must be in writing, be mailed or otherwise delivered to the individual no later than 3 days after the report was first requested and include a statement informing the individual of his or her right to request additional disclosures and to receive a written summary of legal rights
- Before taking any adverse action based on a background check, must provide the individual with:
 - Notice of the adverse action
 - A copy of the report
 - A written statement of the individual's rights under the law
 - Name, address and telephone # of the consumer reporting agency that provided the background check
 - A statement that the consumer reporting agency did not make the adverse decision and cannot provide the individual with the specific reasons supporting the action
 - Notice of the individual's right to obtain a free copy of the consumer report
 - Notice of the individual's right to dispute the accuracy or completeness of the information contained in the report
- Background check cannot include medical information unless the individual specifically consents to disclosure; cannot include individual arrest information that predates the report by more than 7 years.

Drug Testing

- Although not required in the public sector, it's best to have a signed consent form
- Should make sure that the lab that will be conducting the testing uses a chain of custody procedure
- Must use testing methods that assure privacy and non-contamination of specimens
- Must confirm positive results with a second test, either the gas chromatography/mass spectrometry (GC/MC) method or an equivalent method
- Results must be kept confidential

RELEASE AND AUTHORIZATION

I, _____ in connection with my application for WIA Occupational Training, hereby authorize Atlanta Regional Commission/Atlanta Regional Workforce Board (ARC/ARWB) and ScreeningOne, Inc. to perform a pre-training background screening check. I understand and agree to the following:

1. A background check is not only for the benefit of ARC/ARWB as a sound business practice, but also for the benefit of all employees. It is no reflection on an applicant. I have read, understand and signed the separate Disclosure concerning my rights.
2. All reports are confidential, and provided to ARC/ARWB for occupational training decisions only. Information is obtained in strict compliance with the Americans with Disabilities Act (ADA), anti-discrimination and privacy laws and all other applicable federal and state laws.
3. I may review or obtain a copy of my report as provided by law. Screening One may be contacted by writing to: Screening One, Inc., 2233 W. 190th Street, Torrance, CA 90504.
4. I authorize and release people, companies, references, current and former employers, schools, municipal, county, state and federal agencies and courts, and agencies that provide motor vehicle records, to provide all information that is requested to Company or Screening One.
5. I further release all of the above, including ARC/ARWB and its contractors and Screening One, to the full extent permitted by law, from any liability or claims arising from retrieving and reporting information concerning me.
6. I agree that a copy or fax of this document shall be as valid as the original.

Your signature _____ Date _____

COURTS AND OTHER ENTITIES REQUIRE THE FOLLOWING INFORMATION FOR IDENTIFICATION WHEN CHECKING PUBLIC RECORDS. IT IS CONFIDENTIAL AND IS USED FOR IDENTIFICATION ONLY. YEAR OF BIRTH ENSURES ACCURACY AND AVOIDS DELAY.

Last Name First Name Middle Name Social Security Number

DOB¹: ____/____/____

Former Names

Date of Name Change

¹ Date of birth month and day is mandatory, year is optional.

Name on Drivers License

Driver's License or I.D. Number

State of Issue

PLEASE PROVIDE ALL ADDRESSES WHERE YOU HAVE LIVED
FOR THE PAST SEVEN YEARS INCLUDING ZIP CODES

CURRENT:

FORMER:

FORMER:

FORMER:

FORMER:

FORMER:

FORMER:

May we contact your current employer? Yes No

DISCLOSURE

For the benefit of Atlanta Regional Commission/Atlanta Regional Workforce Board (ARC/ARWB), ARC/ARWB has a policy of performing pre-occupational training background screening on customers as a condition of approval for specific occupational training programs. This policy is a business practice that protects everyone by ensuring placement opportunities at the end of training. All pre-occupation training inquiries are limited to information that affects hiring practices, job opportunities and the workplace. It is conducted in accordance with applicable federal and state laws, including the Fair Credit Reporting Act (FCRA). The screening will be conducted by ScreeningOne, Inc., an outside agency. ARC/ARWB may obtain a consumer credit report and/or an investigative consumer report on you as a training applicant.

1. The report consists of information deemed to have a bearing on job performance, and may include information from public and private sources, public records, former employers and references. The scope of the report may include information concerning driving record, civil and criminal court records, worker's compensation records, education, credentials, identity, past addresses, social security number, previous employment and personal references.
2. The report may also include reference checks from former employers, co-workers or references. Any past employment reference check is limited to job related information. These are known as an "investigative consumer report." This type of report is legally defined as a report based upon interviews that may contain information relating to my character, general reputation, personal characteristics or mode of living. You have the right to request additional disclosures of the nature and scope of the investigation and a statement of your rights. To receive this information or to inspect any files concerning such a report or to determine if a report on you has been requested, you may contact Company or Screening One, Inc. at (888) 327-6511, or at 2233 W. 190th Street, Torrance, CA 90504.
3. In using a report for training purposes, as an applicant you will be notified in writing if the background check reveals a record that will impact your ability to undertake a specific training and will be provided a copy of the record. You may review further description of consumer rights under the Federal Trade Commission section 609 (c) (3).
4. California Provisions: In California, any report concerning a consumer's character, general reputation, personal characteristics or mode of living is defined as an Investigative Consumer Report. In addition to your rights under federal law, you have the following additional rights: You have the right to inspect Screening One's files during normal business hours and on reasonable notice; the inspection may be in person, by certified mail, or by telephone if the individuals shows proper identification and pays for any copying charges; the applicant may be accompanied by one other person who must show proper identification; and trained ScreeningOne

personnel will explain any of the information in the report and will provide written explanation for any coded information.

5. CALIFORNIA, MINNESOTA, AND OKLAHOMA APPLICANTS ONLY:

I request a free copy of any Consumer Report, Investigative Report or Credit Report on me that is requested.

YES _____ NO _____

I, _____, hereby consent and authorize ARC/ARWB and/or Screening One, Inc. to prepare each report as defined above for pre-occupational training purposes.

DATE _____

SIGNATURE _____

PRINT NAME _____