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March 28, 2016

Naomi Barry-Perez, Director  
Civil Rights Center  
Department of Labor  
200 Constitution Ave. NW, Room N-4123  
Washington, DC 20210

*Via online submission*

**RE: Implementation of the Nondiscrimination and Equal Opportunity Provisions of  
the Workforce Innovation and Opportunity Act--RIN 1291-AA36**

Dear Ms. Barry-Perez:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 organizations to promote and protect the rights of all persons in the United States and the 10 undersigned organizations, we write to express our strong support for the Department of Labor's (DOL) proposal to update the nondiscrimination and equal opportunity regulations implementing Section 188 of the Workforce Innovation and Opportunity Act (WIOA) issued in 1999 to align with current law and thus more effectively address current workforce issues. This rule has the potential to increase access to services, benefits, training, programs, and employment through the workforce development system for women, particularly low-income women and women of color, LGBT persons, people with disabilities, and older workers. Below we provide comments to strengthen the proposed rule.

**I. Addressing Sex Discrimination in the Workplace and in the Workforce  
Development System**

Women still face many types of sex discrimination in the workplace. In 2014, women working full time, year round typically made only 79 percent of the wages made by men working full-time, year-round.<sup>1</sup> This pay gap has barely budged in a decade.<sup>2</sup> And the gap in wages is far worse for women of color—African American women and Hispanic women typically made only 60 percent<sup>3</sup> and 55 percent,<sup>4</sup> and Asian American women typically made only 84 percent<sup>5</sup>, respectively, of the wages made by white, non-Hispanic men for full-time,

<sup>1</sup> NAT'L WOMEN'S LAW CTR., THE WAGE GAP OVER TIME (Sept. 2015), *available at* [http://nwlc.org/wp-content/uploads/2015/08/wage\\_gap\\_over\\_time\\_overall\\_9.21.15.pdf](http://nwlc.org/wp-content/uploads/2015/08/wage_gap_over_time_overall_9.21.15.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> NAT'L WOMEN'S LAW CTR., THE WAGE GAP OVER TIME: AFRICAN AMERICAN WOMEN (Sept. 2015), *available at* [http://nwlc.org/wp-content/uploads/2015/08/wage\\_gap\\_over\\_time\\_african\\_american\\_9.21.15.pdf](http://nwlc.org/wp-content/uploads/2015/08/wage_gap_over_time_african_american_9.21.15.pdf).

<sup>4</sup> NAT'L WOMEN'S LAW CTR., THE WAGE GAP OVER TIME: HISPANIC WOMEN (Sept. 2015), *available at* [http://nwlc.org/wp-content/uploads/2015/08/wage\\_gap\\_over\\_time\\_hispanic\\_9.21.15.pdf](http://nwlc.org/wp-content/uploads/2015/08/wage_gap_over_time_hispanic_9.21.15.pdf).

<sup>5</sup> NAT'L WOMEN'S LAW CTR., FAQ ABOUT THE WAGE GAP (Sept. 2015), *available at* [https://nwlc.org/wp-content/uploads/2015/08/faq\\_about\\_the\\_wage\\_gap\\_9.23.15.pdf](https://nwlc.org/wp-content/uploads/2015/08/faq_about_the_wage_gap_9.23.15.pdf).

year-round work in 2014. One cause of this wage gap is that women workers are clustered in low-wage fields. Women of color make up 47 percent<sup>6</sup> of the female low-wage workforce, with African American and Hispanic women making up 18 percent<sup>7</sup> and 23 percent<sup>8</sup> respectively.

Women also continue to face barriers to entry into higher-paid, nontraditional fields. In fact, women makeup two-thirds of low-wage workers<sup>9</sup> and, for example, only 2.6 percent of highly paid construction and extraction workers.<sup>10</sup>

Unfortunately, studies show that the federal workforce development system reinforces the gender wage gap and occupational gender segregation. Data published by DOL show that women's quarterly earnings are substantially lower than men's once they exit federal workforce training services.<sup>11</sup> An analysis conducted by the Institute for Women's Policy Research suggests that a major factor contributing to this earnings gap is that women are trained for traditionally "female" occupations while men are trained for traditionally "male" occupations.<sup>12</sup> Close to half of women receive training services for "sales and clerical" or "service jobs," compared to fewer than one in seven men.<sup>13</sup> Less than one in sixteen women receive training in "installation, repair, production, transportation, or material moving," or "farming, fishing, forestry, construction, and extraction," skills, compared to over half of men.<sup>14</sup>

Today, women's paychecks are more critical to their families than ever, as women today are the sole or primary breadwinners in 41 percent of families with children. Of these, more than half are women of color, with African American and Hispanic women representing 26.9 percent and 22.5 percent of single breadwinning mothers.<sup>15</sup>

Women make up more than 14.7 percent of women live in poverty.<sup>16</sup> Women with disabilities make up the highest percentage of individuals living in poverty at 31.9 percent.<sup>17</sup> African American and Native

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<sup>6</sup> ANNE MORRISON & KATHERINE GALLAGHER ROBBINS, NAT'L WOMEN'S LAW CTR., CHARTBOOK: THE WOMEN IN THE LOW-WAGE WORKFORCE MAY NOT BE WHO YOU THINK (Sept. 2015), *available at* <http://nwlc.org/resources/chart-book-women-low-wage-workforce-may-not-be-who-you-think/>

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> NAT'L WOMEN'S LAW CTR., WOMEN IN CONSTRUCTION: STILL BREAKING GROUND 2 (2014), *available at* [http://www.nwlc.org/sites/default/files/pdfs/final\\_nwlc\\_womeninconstruction\\_report.pdf](http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf).

<sup>11</sup> INSTITUTE FOR WOMEN'S POLICY RESEARCH (IWPR), WORKFORCE INVESTMENT SYSTEM REINFORCES OCCUPATIONAL GENDER SEGREGATION AND THE GENDER WAGE GAP (June 2013), *available at* <http://www.iwpr.org/publications/pubs/workforce-investment-system-reinforces-occupational-gender-segregation-and-the-gender-wage-gap>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See SARAH JANE GLYNN, CENTER FOR AMERICAN PROGRESS, BREADWINNING MOTHERS, THEN AND NOW (2014), *available at* <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf> (last retrieved on March 24, 2016).

<sup>16</sup> NAT'L WOMEN'S LAW CTR., POVERTY RATES BY STATE, 2014, *available at* [http://nwlc.org/wp-content/uploads/2015/08/compiled\\_state\\_poverty\\_table\\_2014\\_final.pdf](http://nwlc.org/wp-content/uploads/2015/08/compiled_state_poverty_table_2014_final.pdf).

<sup>17</sup> ALANA EICHNER & KATHERINE GALLAGHER ROBBINS, NAT'L WOMEN'S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES (2014), SEPT. 2015, *available at* <http://nwlc.org/resources/national-snapshot-poverty-among-women-families-2014/>

American women each represent 25 percent or approximately half of the total percentage of women living in poverty.<sup>18</sup> Asian American and Hispanic women represent 12.2 percent and 22.8 percent of women in poverty, respectively.<sup>19</sup> At a time when more and more families are relying on women's income, it is critical that we break down barriers that keep women from entering the workforce and succeeding and advancing in their careers.

In addition, individuals who identify as lesbian, gay, bisexual, or transgender (LGBT) also face high levels of sex discrimination at work in the form of discrimination on the basis of sexual orientation or gender identity. For example, according to a survey by the National Center for Transgender Equality, 29 percent of transgender workers and 15 percent of workers with nonconforming gender identities reported job loss due to discrimination—with transgender women experiencing job loss due to bias at a rate of 36 percent compared to 19 percent for transgender men.<sup>20</sup>

Given the federal workforce development system's history of reinforcing gender inequities, it is crucial that DOL adopt final regulations that include the strongest possible nondiscrimination protections that help end—not reinforce—occupational gender segregation and the gender pay gap. We are pleased that the proposed regulations clarify explicitly various types of sex discrimination to include:

- Pregnancy, childbirth and related medical conditions, setting out specific standards for pregnancy discrimination. We strongly support DOL's inclusion of an example that reflects the Supreme Court's decision in *Young v. UPS*, describing that it may be unlawful disparate treatment to deny accommodations to pregnant workers when accommodations are provided to workers similar in ability to work.
- Parental Status and Caregiving Responsibilities and Sex stereotyping, which reflect outdated assumptions about women not being breadwinners in their families and who should be responsible for family caregiving, as well as assumptions about the work that interests women and work they are qualified to do, all of which reinforces sex segregation in the workplace.
- Protection of individuals who are victims of domestic violence, which will enable people to keep their jobs which are critical to staying safe and supporting their families, while they pursue legal action and separate from a perpetrator.

We are also pleased that the DOL proposed regulations that explicitly recognize that gender identity discrimination is a form of sex discrimination and used gender-neutral language so that individuals of all genders are protected. Specifically, we applaud DOL's recognition that denying access to facilities consistent with an employee's gender identity because of transgender status is a form of sex discrimination. However, a serious shortcoming is the failure of the Department to include the same explicit recognition of sexual orientation discrimination as sex discrimination. We urge DOL to include sexual orientation in the final rule.

## **II. Addressing Discrimination Based on Disability in the Workplace and in the Workforce Development System**

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> JAIME M. GRANT, LISA A. MOTET, & JUSTIN TANIS, NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY & LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 53 (2011), *available at* [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).

According to the Bureau of Labor Statistics, the number of people with disabilities of working age (16-64) is estimated to be almost 28 million. Of that 28 million, only 5.8 million are in the workforce and only 5.1 million are employed. Of those employed, it is estimated by the Wage and Hour Division that more than 400,000 are working in sheltered workshops and being paid at less than minimum wage, in some cases earning as low as 50 cents per hour. As evidenced by the Department of Justice settlements in Rhode Island and Oregon where thousands of youths with disabilities were funneled into sheltered workshops by their schools and vocational rehabilitation agencies, there is a critical need to ensure that young people with disabilities and their families have the information and experiences that allow them to aim to obtain work in competitive integrated settings.

We urge the Department to ensure that the proposed regulations promote competitive integrated employment for students and youth with disabilities. The regulations should ensure that employment outcomes for all individuals with disabilities focus on securing jobs at competitive wages and that people with disabilities are not paid subminimum wage nor paid below the competitive wage that workers without disabilities in similar jobs earn.

We support the proposed regulations noted below, which will help ensure that youth with disabilities have the opportunity to work in integrated settings earning competitive wages:

- As proposed, the definition of “competitive, integrated employment” captures critical aspects of work that all people, including people with disabilities, should expect: income that is comparable to other employees, employment in settings that include people with and without disabilities, and comparable opportunities for advancement when compared to their non-disabled peers.
- The prohibition on local or state education agencies from contracting with entities that employ people at subminimum wage for the purpose of training or employing a student or youth at subminimum wage will help to raise the expectations for employment of youth with disabilities and will help stop the pipeline of students with disabilities going to subminimum wage programs.
- Sec. 511 defines “students and youth who are known” as any young person with a disability between the ages of 14 and 24 with the affirmative requirement for Vocational Rehabilitation agencies to ensure all youth and their families receive information about alternatives to subminimum wage programs. This is similar to the other affirmative requirements of school districts.

### **III. Addressing Age Discrimination in the Workplace and in the Workforce Development System**

Older workers will also be impacted by these changes, and the workforce development system must be able to respond to their needs. The workforce is aging: one-fifth of the workforce was 50 or older in 1985, one-third of the workforce was 50 or older in 2013, and that proportion is expected to continue to grow into the 2020s. One contributing factor to this phenomenon is the fact that women are now remaining in the workforce longer.

Older workers who lose their jobs experience much longer periods of unemployment than their younger counterparts – often two to three times as long. Lower reemployment rates as well as greater wage loss plague older workers compared to their younger counterparts. While some older workers prefer to work part-time, others are forced to take part-time positions because they are unable to find full-time work.

Older workers seeking reemployment often face age-related barriers. Older workers often face skill and technology deficits compared to their younger counterparts. As a result, overreliance on online access can be a significant barrier. Older workers tend to respond better to staff assisted services than to online or self-directed assistance. It is important that DOL track demographic characteristics of those individuals who do not receive staff assistance so that a disparate impact on older workers or any other category of workers can be avoided.

In conclusion, we urge DOL to adopt final nondiscrimination regulations without delay. The proposed rule will be a much needed effective measure to address sex discrimination in all its forms including based on gender identity, discrimination based on disability and discrimination against older workers. We thank you for the opportunity to provide comments on these important regulations. For further information please contact June Zeitlin, Director of Human Rights Policy at 202-263-2852 or [zeitlin@civilrights.org](mailto:zeitlin@civilrights.org)

Sincerely,

The Leadership Conference on Civil and Human Rights  
9to5, National Association of Working Women  
American Association of University Women (AAUW)  
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO  
Anti-Defamation League  
The Arc of the United States  
Human Rights Campaign  
NAACP  
National Employment Law Project  
National Employment Lawyers Association  
National Women's Law Center