Executive Branch
Affirmative Action Plan

Governor Steven L. Beshear
Commonwealth of Kentucky

Secretary Tim Longmeyer
Kentucky Personnel Cabinet

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Steven L. Beshear
Governor

Tim Longmeyer
Secretary

MEMORANDUM

TO: Cabinet Secretaries
Agency Heads
Personnel Executive

FROM: Tim Longmeyer, Personnel Cabinet Secretary TML

RE: Executive Branch Affirmative Action Plan

DATE: November 15, 2013

Equal Employment Opportunity is more than just a legal requirement, it is a moral imperative. In order to serve effectively the people of our Commonwealth, it is essential that we enhance our workforce diversity and foster inclusive workplace cultures. The Executive Branch Affirmative Action Plan supports this Administration's continued commitment to maintaining workplaces that are free from harassment and discrimination to assure employees feel valued, respected and supported.

The Executive Branch Affirmative Action Plan reaffirms existing guidelines to ensure that all employees and applicants, without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, disability, genetic information, political affiliation or veteran status, are afforded equal employment opportunities within the Executive Branch. It also establishes Executive Branch hiring goals for minorities and females. These goals are based upon the most recent 2010 Kentucky Census data and help ensure that the Commonwealth strives to have a workplace which is reflective of society.

The Affirmative Action Plan originated in 1984 with the issuance of Executive Order 84-549 by Governor Martha Layne Collins. Statewide goals at that time were based on the results of the 1980 Kentucky Census. The 1988 General Assembly confirmed and strengthened affirmative action efforts by mandating the Affirmative Action Plan for state government via KRS 18A.138. Since 1988, each administration has reaffirmed its commitment to affirmative action efforts by setting goals which reflect the society it serves, while also capturing updated equal employment efforts within the Affirmative Action Plans. These equal employment efforts include the denouncement of sexual harassment, inclusion of policy statements regarding the Americans with Disabilities Act, and other updates to state and federal law.

Thus, Kentucky has long-recognized that a diverse and inclusive workforce enables state government to better serve an increasingly diverse community, while also being a desired place of employment. The Commonwealth has made many strides in equal opportunities in the workplace. However, we remain committed to evaluating our current processes and setting new goals for the future.

Thank you for your continued commitment and diligent work to remove any barriers for meaningful equal opportunity within state government.

Kentucky
UNBRIDLED SPIRIT
An Equal Opportunity Employer M/F/D

SECTION I:
AFFIRMATIVE ACTION PLAN OVERVIEW

ABOUT THE EXECUTIVE BRANCH AFFIRMATIVE ACTION PLAN

The Executive Branch Affirmative Action Plan is mandated by KRS 18A.138 and adopted by Executive Order 84-549 and 96-612. Governor Beshear reaffirms this Executive Branch Affirmative Action Plan with Executive Order 2013-841.

A central goal of the Plan is to achieve and maintain a qualified workforce that includes a representation of minorities and women that approximate their availability in the state resident workforce. This Plan establishes female and minority employment goals at 50.8% and 12.2%, respectively. These goals, based on 2010 Census information, reflect the state population of persons of working age (16 and older). The increase in the minority employment hiring goal will be measured on an incremental basis starting with the December 2013 *Semi-Annual Report on Female & Minority Employment*. The timetable for implementing these new goals is as follows:

Reporting Period	Goal	% Increase
December 31, 2013	10.2%	0.2%
June 30, 2014	10.7%	0.5%
December 31, 2014	11.2%	0.5%
June 30, 2015	11.7%	0.5%
December 31, 2015	12.2%	0.5%

The Plan reaffirms the Commonwealth of Kentucky's commitment to non-discrimination and equal employment through affirmative action to ensure equal treatment of applicants and employees without regard to race, color, sex, disability, age, national origin, religion, sexual orientation, gender identity, genetic information, political affiliation, or veteran status.[1]

The Plan details actions the Executive Branch will take to identify, analyze, and if necessary, correct any adverse employment practices. It also assigns responsibility and establishes timetables to complete such actions. A further goal of the plan is to ensure that persons with disabilities have equal access to employment opportunities and reasonable accommodations are made upon request.

[1] Title VII of the 1964 Civil Rights Act, Executive Order 2008-473 and KRS 18A.138

AGENCY AFFIRMATIVE ACTION PLANS AND PROGRAMS

Under the Executive Branch Affirmative Action Plan, Executive Branch agencies with over 250 employees are required to develop individual agency programs that are consistent with all aspects of the overall state plan. This includes goals, timetables, analyses of the agency workforce, policy statements regarding non-discrimination and the Americans with Disabilities Act.

Agencies will submit a copy of their Affirmative Action Plans to the Personnel Cabinet's Office of Diversity & Equality within 90 days of the adoption of this state plan.[2]

Agencies under 250 full-time employees (that have no Federal Affirmative Action reporting requirements) can either develop an affirmative action plan or adopt this Executive Branch Affirmative Action Plan. Agencies wishing to adopt this plan will submit the **State Affirmative Action Plan Adoption Form** to the Personnel Cabinet's Office of Diversity & Equality.

[2] Agencies will be required to submit updated plans as necessary. Pursuant to the Kentucky Civil Rights Act (KRS Chapter 344) agencies with Federal Reporting requirements (Title VI of the Civil Rights Act of 1964) shall submit annually a copy of their plan and Title VII compliance report to the Kentucky Commission on Human Rights and the Office of the State Auditor of Public Accounts no later than July 1.

STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2013-841
November 15, 2013

EXECUTIVE BRANCH AFFIRMATIVE ACTION PLAN

WHEREAS, the government of the Commonwealth of Kentucky exists to serve equally all the people of this state; and

WHEREAS, this administration is firmly committed, legally and morally, to securing for all Kentuckians equal employment opportunities and freedom from discrimination and other forms of harassment in employment with the Kentucky State Government Executive Branch; and

WHEREAS, an affirmative action plan, as envisioned by the provisions of KRS 18A.138, serves to redress traditional and social patterns of discrimination which may create artificial barriers to employment opportunities; and

WHEREAS, the implementation of an affirmative action plan ensures that equality and fairness to all is recognized to be in the best interest of the Commonwealth:

NOW THEREFORE, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Constitution and laws of Kentucky, hereby Order and Direct the following:

1. The Executive Branch Affirmative Action Plan dated November 15, 2013, shall be the official document for implementing the Executive Branch's policy on equal employment opportunities, and shall remain in full force and effect except as modified due to changes in the federal and state law;

2. This affirmative action plan shall provide for equal employment opportunity to all people in all aspects of employer-employee relations without discrimination because of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, disability, genetic information, political affiliation or veteran status. Employer-employee relations shall include but not be limited to hiring, promotion, termination, tenure, recruitment and compensation;

STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2013-841
November 15, 2013

3. This Administration condemns workplace harassment. The affirmative action plan shall outline the Executive Branch's policy against harassment and provide guidelines for enforcing such policy;

4. Every program cabinet, department or agency of the Kentucky State Government Executive Branch shall comply with the provisions of the affirmative action plan;

5. Equal employment opportunities shall be an integral part of each cabinet, department and agency program, and any program evaluation shall include an assessment of equal opportunity performance;

6. The Secretary of the Personnel Cabinet shall be responsible for the implementation and monitoring of the affirmative action plan and shall provide such technical assistance and reporting as may be deemed appropriate to accomplish the purposes identified by the affirmative action plan;

7. The Secretary of the Personnel Cabinet shall report to the Office of the Governor semiannually regarding female and minority employment within the Executive Branch.

STEVEN L. BESHEAR, GOVERNOR
Commonwealth of Kentucky

ALISON LUNDERGAN GRIMES
Secretary of State

POLICY STATEMENT ON
THE EXECUTIVE BRANCH AFFIRMATIVE ACTION PLAN

The Executive Branch Affirmative Action Plan reflects this administration's sincere commitment to both good government and equitable treatment of all employees of the Commonwealth, and applicants seeking employment with Kentucky State Government.

Employees and citizens of this Commonwealth are our most valuable resources. Equal Employment Opportunity, as well as opportunities for professional growth, shall be available to all applicants and employees regardless of race, color, sex, disability, age, national origin, religion, sexual orientation, gender identity, genetic information, political affiliation, or veteran status. This policy applies to all personnel actions, including but not limited to: recruiting, hiring, classification and compensation, benefits, promotions, transfers, layoffs, reinstatement, and educational programs.

It is the policy of the Commonwealth of Kentucky that no applicant for employment or employee will be subject to harassment or discrimination because of race, color, sex, disability, age, national origin, religion, sexual orientation, gender identity, genetic information, political affiliation, or veteran status.

The Executive Branch Affirmative Action Plan is established in statute by KRS 18A.138 and by Executive Order 2013-841. The Personnel Cabinet's Office of Diversity & Equality has overall responsibility for the implementation of this plan, including the development of specific overall goals and timetables, and is required to report progress under the Affirmative Action Plan to the Secretary of the Kentucky Personnel Cabinet. The Secretary of the Personnel Cabinet is required to report directly to the Office of the Governor regarding plan progress on a semi-annual basis. The full cooperation and affirmation of the Affirmative Action Plan, and the state EEO Program, by all managers, supervisors, executive leaderships, and state employees is expected.

POLICY STATEMENT ON HARASSMENT PREVENTION

The Commonwealth of Kentucky does not tolerate harassment of any kind. All employees must avoid offensive or inappropriate behavior at work and are responsible for assuring that the workplace is free from harassment at all times. Types of prohibited conduct include, but are not necessarily limited to: harassment because of one's race, color, national origin, sex, age, religion, sexual orientation, gender identity, genetic information, veteran status, disability, or political affiliation.

Examples of prohibited conduct include, but are not limited to threatening, offensive or unwelcome conduct including: abusive verbal language directed toward an individual because of sex, race, color, age, religion, national origin, sexual orientation, gender identity, or disability; lewd or obscene comments about an individual's body, attire, or gender, including abusive comments or terminology addressed to a specific employee; vulgar or indecent gestures, language, or jokes; bringing or displaying a lewd or obscene object, book, magazine, photograph, cartoon, calendar, picture, or similar item into the workplace; or use of computers to transmit, solicit, display, or download lewd or obscene messages or materials.

Complaints of harassments should be promptly and carefully investigated. Agencies should ensure that employees will be free from any and all reprisal or retaliation from filing such complaints. Further, all employees are assured that they will be free from any and all reprisal and retaliation for participating in an investigation of harassment.

Any employee who has a complaint of harassment at work by anyone, including supervisors, co-workers, visitors, clients, or customers, has a duty to immediately bring the problem to the attention of his or her supervisor. If the employee's supervisor is the subject of the problem, the employee has a duty to immediately notify his or her second-line supervisor of the problem. Employees may also bring the complaint to the attention of the agency EEO Coordinator. Any supervisor receiving a complaint of harassment shall report the complaint to the agency EEO Coordinator or the State EEO Coordinator. Failure to do so shall be grounds for disciplinary action. For guidance on the complaint filing process, employees may contact the State EEO Coordinator at (502) 564-8000.

The investigation will include, but shall not be limited to, interviews with all relevant persons including the complainant, the accused, and other potential witnesses. Employees are assured that the privacy of the complainant and the person accused of harassment shall be protected to the fullest extent permitted by the circumstances.

The appropriate host agency will review its findings with the complainant at the conclusion of the investigation. If the investigation reveals that the complaint appears to be valid, immediate and appropriate corrective action, up to and including discharge will be taken to stop harassment and prevent its recurrence.

POLICY STATEMENT ON
THE AMERICANS WITH DISABILITIES ACT (ADA) &
THE AMERICANS WITH DISABILITIES ACT AMENDMENTS (ADAA)

Kentucky State government is committed to the full implementation of the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments (ADAA). It is the policy of the Commonwealth to maximize the full inclusion and integration of people with disabilities in all aspects of employment and all programs, services, and activities.

All employees must comply with the following policies regarding the ADA & ADAA:

- Discrimination Prohibited: Employees with disabilities who are otherwise qualified may not be discriminated against in any areas of employment including, but not limited to, job application and compensation procedures, fringe benefits available by virtue of employment, and activities sponsored by the state.
- Limiting, Segregating, and Classifying: Employees with disabilities shall not be limited, segregated, or classified in a way that adversely affects their employment opportunities or status.
- Contractual or Other Arrangements: The Commonwealth will not participate in contractual or other arrangements or relationships that would subject qualified employees with disabilities to the discrimination prohibited by the ADA and ADAA.
- Reasonable Accommodations: The Commonwealth will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee with a disability, unless it can be shown that the accommodation would impose an undue hardship on the agency. After a qualified employee requests reasonable accommodation, all agencies will make every reasonable effort to find out what is needed and provide the appropriate accommodations. This is to be an interactive process with the agency consulting with the employee with a disability.
- Retaliation and Coercion: The Commonwealth will not coerce, intimidate, threaten, harass, or interfere with any individual exercising or enjoying his or her rights under the ADA or because that individual aided or encouraged any other individual in the exercise of rights granted or protected by the ADA. Employees who believe they have been adversely impacted in violation of this policy may file a complaint as set forth in Employee Grievances and Complaints section of the employee handbook.

POLICY STATEMENT ON DIVERSITY

The Commonwealth of Kentucky recognizes that continued success in meeting the needs of our clients and customers, both internal and external, requires the full and active participation of talented and committed individuals regardless of their race, color, national origin, sex, age, religion, sexual orientation, gender identity, genetic information, veteran status, or disability. By fostering an atmosphere of acceptance and support, we can begin to value and appreciate the strengths afforded by the differences, styles, ideas, and organizational contributions of each and every person.

The ultimate goal of workplace diversity will be achieved when Kentucky State Government has further enhanced its ability to recruit, retain, tap the full potential of employees at all levels, and is diverse enough to:

1. allow all Cabinets to compete for qualified employees from an increasingly diverse worker pool;
2. be more reflective of the population and socioeconomic circumstances of Kentucky's citizens; and
3. eliminate biases that may be in the state government workforce.

Diversity complements the other organization values of teamwork, leadership, empowerment and service quality and encompasses the way we work, the work environment, and respect for people and ideas. Diversity includes everyone and everything. While its major focus may often revolve around issues of previous discrimination based on race and gender, it is not something that is defined, or limited solely by those two factors. Diversity also extends to age, personal and work history, education, function, and personality – including lifestyle, sexual orientation, gender identity, tenure with the organization, merit and non-merit status, and management or non-management position. It also encompasses varying management styles and ways of thinking, leadership abilities, skill levels, experiences, viewpoints, expressions of thoughts, and differing ways of delivering services provided there is consistency in the values we share.

Success in diversity requires inclusion. It stresses equal opportunity and recognizes and respects the multitude of differences that employees bring to the workplace as well as acknowledges the changing "face" of the community we service. The full cooperation and affirmation of diversity by all state employees, including management, is expected.

SECTION II:
EXECUTIVE SUMMARY, OBJECTIVES, ANALYSIS & PLAN

EXECUTIVE SUMMARY

The Executive Branch Affirmative Action Plan is based on analysis of utilization reports of protected classes in eight equal opportunity job categories, and from survey results regarding existing HR practices from practitioners from the various cabinets.[3]

The analysis identified the following as useful for achieving EEO goals and maintaining a diverse and inclusive workforce:

- Minority and female recruitment.
- Continual training for EEO coordinators and counselors.
- Accessible workforce data.
- Periodic analysis of complaint and grievance data.
- Consistent human resources practices and procedures.
- Distribution of employee rights information.

Included in the Action Plan is an extensive list of responsibilities and duties for Executive Branch personnel. These items represent three key priorities of the Plan:

A. Provide training and technical assistance to ensure agencies and EEO coordinators receive the guidance necessary to have an effective affirmative action program.
B. Facilitate and support the program monitoring, evaluation, and reporting systems.
C. Create cooperative partnerships among agencies and the Office of Diversity & Equality to encourage agencies to facilitate sharing of resources and information.

[3] The Equal Employment Opportunity Commission (EEOC) divides the workforce into eight EEO Job Categories: Officials & Administrators, Professionals, Technicians, Protective Service Workers, Paraprofessionals, Administrative Support, Skilled Workers, and Service Maintenance.

OBJECTIVES

The following are the objectives of this Plan:

1. Maintain work environments that values equality, diversity and are free of harassment and discrimination.
2. Increase the utilization of minorities and women in EEO job categories.
3. Increase affirmative action and equal employment opportunities by analyzing specific practices and implementing employment policy.
4. Strengthen accountability, reporting and evaluation when necessary.
5. Promote support for affirmative action, equal employment opportunity, and workforce diversity by providing information and training regarding these topics and fair employment practices to employees, supervisors, managers and executive officers.

EXECUTIVE BRANCH AFFIRMATIVE ACTION PLAN

Program Analysis

A careful and thorough review of employment policies, procedures, and practices was conducted in the development of this Plan. The first objective of the analysis is to determine if employment practices could be improved to lessen the possibility of adverse impact, disparate treatment, exclusion, disadvantage, or restriction of minority or female individuals. If any improvements are feasible, the analysis is then used to determine reasonable actions. Reasonable actions may include goals and timetables, recruitment to attract qualified members of underutilized groups, a system for career advancement, and/or a system for monitoring and program evaluation.

Organization & Resources

The Executive Branch Affirmative Action Plan is developed under the direction of the Governor. The Executive Branch of the Commonwealth of Kentucky is comprised of eleven cabinets and agencies, and the various departments, boards, commissions, institutions, and bureaus of the general government. [See enclosed organization chart at the end of this section.]

Each Executive Branch state agency[4] with at least 250 allocated full-time positions is required to develop and submit an affirmative action program in accordance with instructions and criteria provided by the Personnel Cabinet's Office of Diversity & Equality. Agencies with less than the number of full-time allocated positions listed above may adopt this official state plan. Agencies which receive federal funds (including small agencies under 250 full-time positions) are required under Title VI of the Civil Rights Act of 1964, as amended, to comply with that Act and establish suitable affirmative action programs. These Agencies, pursuant to KRS Chapter 344.015 (2)(c), 45 KAR 1:080 Section 1 (7), and Section 2 are required to submit an annual Title VI compliance report and any implementation updates to the Auditor of Public Accounts and the Kentucky Commission on Human Rights no later than July 1 each year.

All cabinets/agencies are required to submit Affirmative Action/EEO Quarterly Status Reports to the Office of Diversity & Equality. The Office of Diversity & Equality is located within the Secretary's Office, in the Kentucky Personnel Cabinet. It has responsibility under KRS 18A.138 and Executive Order 2013-841 to administer the Executive Branch Affirmative Action Plan.

[4] Agency is defined as an organization with an Appointing Authority within the Executive Branch.

Action Items

Potential obstacles to equal employment opportunity, along with corresponding goals or objectives, are listed as follows:

Workforce Composition – A review of the workforce composition within State government indicates that women and minorities have not yet achieved appropriate representation in several areas. Immediate attention is needed in these areas to improve representation.

- Ensure delivery of EEO and Affirmative Action training workshops for supervisors, managers, professionals, and others with EEO responsibilities.

Organization and Resources – A number of agency EEO Coordinators and Counselors perform a variety of duties for their respective agencies Coordination of regular meetings to provide integrated services and support will occur through the EEO Coordinators Coalition[5] (under the direction of the Office of Diversity & Equality).

Recruitment and Outreach – Based on a review of the areas of recruitment and outreach, the following have been identified as affirmative action priorities:

- The Office of Diversity & Equality will collaborate with the Division of Career Opportunities to develop innovative ways to increase the number of female and minority applicants for State government employment.
- The Office of Diversity & Equality will produce a *Minority & Female Recruitment Resource Guide* to share with the various cabinets and agencies and their recruiters. This guide will identify regional demographic information, along with up-to-date information on educational institutions, minority and female organizations, and other avenues for developing a diverse applicant pool.
- All of the recruiting sources used by the State will be informed of the State's policy regarding Equal Employment Opportunity and will be asked to refer qualified candidates without regard to their race, color, religion, sex, age, national origin, disability, sexual orientation, gender identity, genetic information, or veteran status.

[5] The EEO Coordinators Coalition consists of EEO representatives from the Executive Branch cabinets and agencies.

Selection and Promotion – The Personnel Cabinet has analyzed State government job titles and organized them into relatively homogeneous job groups based on similarities in job content, salary, grade and promotional opportunities. Based on a review of the areas of concern, the following initiatives will continue and/or be implemented:

- Agencies are encouraged to promote employee participation in professional development opportunities. This shall include various training and educational programs, which are made available to employees to improve current skills or obtain additional skills, to thereby improve their opportunities for promotion.
- New Employee Orientation will include a section on Equal Employment Opportunity, affirmative action, and diversity. The orientation will provide names of the EEO Coordinators and/or Counselors and a review of current policy and complaint procedures.
- Cabinets/Agencies will encourage participation in the Governor's Minority Management Trainee Program.

Prevention/Investigation of Harassment– We remain committed to maintaining work environments free from all forms of harassment, which is prohibited by state and federal law. The following priorities continue to be identified as action items:

- To recognize that our employees are our most valuable asset and to treat them with dignity and respect.
- To create an environment that removes obstacles that hinder the safety and welfare of our employees.
- To ensure delivery of anti-harassment prevention training workshops for all employees.
- To ensure distribution and posting of anti-harassment policies and procedures for filing complaints.

Program Monitoring, Evaluation and Reporting– A review of this area reflects time constraints and limited resources as a potential obstacle. Action items to address these issues are listed as follows:

- Maintain existing record-keeping system and providing of quarterly reports.
- Promote understanding of affirmative action/equal employment opportunity goals and programs by all supervisors, managers and other professionals and enhanced accountability.
- Provide clear and simple status reports on program activities and evaluation.
- Standardize special reports to provide a basis for comparison and analysis.
- Educate supervisors, managers, and other professionals about the new approach and responsibilities for program monitoring, evaluation, and reporting.

Dispute Resolution: EEO Complaints – It is in the best interest of state government, and the citizens of the Commonwealth, that EEO complaints be resolved efficiently and correctly within our own system. In order to provide for this the following initiatives will be developed, continued or emphasized:

- Standardize EEO complaint process across all of Kentucky State Government.
- Educate HR and EEO professionals on proper complaint/investigation procedures to resolve complaints at the lowest level.
- Encourage supervisors, managers, and other professionals to give their full cooperation in responding to complaints and investigations.
- Provide information to employees on their rights and the procedure for filing complaints.
- Require agencies to report quarterly to the Office of Diversity & Equality on the number of complaints, the nature of these complaints, and their resolution/status.
- Educate supervisors, managers and executive leadership on the Kentucky Employee Mediation Program.

ADA Compliance – To educate with respect to reasonable accommodations for individuals with disabilities, and the agency's role and responsibility in complying with the Americans with Disabilities Act, the following actions have been identified:

- Ensure management is trained and familiar with the legal rationale for making a reasonable accommodation.
- Designate and train ADA Coordinators in all agencies in State government.
- Familiarize supervisors/managers with the State ADA Plan [www.ada.ky.gov].

Veterans Preference – Since 1970, Kentucky state law has given veterans extra points on employment tests with State government pursuant to KRS 18A.150. In light of the shift away from written testing in state employment, KRS 18A.150 was amended in 2010 to require an employing agency to offer an interview to no fewer than five (5) individuals identified on a register certificate as entitled to Veterans' Preference (if available), including individuals presently employed by the Commonwealth of Kentucky who apply for another classified position within State government.

A veterans' liaison is employed by the Division of Career Opportunities to assist veterans in applying for state employment. For more information, contact 502-564-5148.

Governor's Minority Management Trainee Program (GMMTP)

The Mission of the Governor's Minority Management Trainee Program is to develop highly trained, experienced and qualified minority candidates to help meet the future leadership needs of State government. To fulfill this mission, GMMTP is designed to meet the following objectives:

- To provide value-added learning and development opportunities that will aid the Commonwealth of Kentucky in its quest to become an employer of choice.
- To be a nationally recognized program of choice that provides opportunity for minority employees to gain access, support, functional skills, and knowledge to strengthen their competitive edge in the workplace.
- To provide minority employees opportunities for individual growth, professional development, and leadership training to better ensure the readiness and competency attainment necessary for management and executive level roles within our enterprise.
- To provide mentoring relationships and networking opportunities with participants and minorities currently in management positions, so that trainees are able to develop personal resources for continued development.

SECTION III:
RESPONSIBILITIES

An Executive Branch Action Plan depends on the efforts of many individuals for success. This section summarizes the roles and expectations of key personnel involved in the process. The duties listed may not be exhaustive.

OFFICE OF THE GOVERNOR

Governor

The Governor has the ultimate responsibility for the success of the Executive Branch Affirmative Action Plan.

The Governor shall:

1. Support Equal Employment Opportunity, Affirmative Action, and Diversity through initiatives such as Executive Orders, Legislation, etc.
2. Lead the Commonwealth with his full support in all efforts to achieve a diverse workforce representative of the Commonwealth's population.

PERSONNEL CABINET

Secretary of the Personnel Cabinet

The Secretary of the Personnel Cabinet has primary responsibility for securing equal employment opportunity and diversity within the state personnel service systems.

The Secretary of the Personnel Cabinet shall:

1. Ensure the coordination of the Executive Branch Affirmative Action Plan.

2. Provide agencies with guidelines and assistance for establishing and implementing an affirmative action program, such guidelines to be in accordance with all state and Federal laws and regulations.

3. Create and circulate EEO Policy Statements (regarding Harassment Prevention, Diversity, Executive Branch Affirmative Action Plan, and Americans with Disabilities Act).

4. Develop and implement a positive hiring program to include additional target recruiting, salary surveys, cultural awareness education, and statewide diversity and inclusion training programs.

5. Provide assistance to state agencies in assuring that persons with disabilities are provided with reasonable accommodations upon request.

6. Establish utilization goals of minorities and women, to ensured that these populations are employed are appropriately utilized and representative of the community population.

7. Take corrective action when:
    a. There is evidence of manager, supervisor and/or employee non-adherence to agency policy.
    b. There is evidence of non-adherence to the state's policy against harassment.
    c. There is evidence of non-adherence to the state's policy regarding the Americans with Disabilities Act.

8. Complete an analysis of the personnel policies and procedures of the Commonwealth to provide an evaluation of its status in assuring equal employment opportunities. This analysis shall address the following:
        i. Recruitment
        ii. Selection, promotions and transfers
        iii. Demotions, disciplinary actions and terminations
        iv. Compensation

9. Monitor and evaluate the implementation of the Affirmative Action Plan. This evaluation must be an ongoing process, the results of which shall be summarized semi-annually. The evaluation system must include an internal monitoring and reporting system covering:
    a. Records of personnel actions at all levels
    b. Formal reports from Cabinet Secretaries/Agency Heads on a scheduled basis which reflect the progress on the action plans and steps to accomplish the agency goals; and
    c. Scheduled review meetings with Cabinet Secretaries/Agency Heads to report the results of the Plan implementation.
    d. Require all cabinets, departments, and agencies of state government to develop programs consistent with the plan;
    e. Provide any technical assistance he may deem appropriate to accomplish the purposes of the plan;
    f. Provide, through the Personnel Cabinet, an annual analysis to ensure that persons protected by antidiscrimination laws are not adversely affected by examination and selection procedures;
    g. Provide for validation of examination procedures;
    h. Provide for procedures to monitor appointments and salary adjustments to ensure that standards are uniformly applied so as to prevent salary disparity;
    i. Report to the Governor semiannually on actions taken pursuant to the plan; and
    j. Review the plan on an annual basis and recommend

10. Maintain, and make available for inspection, copies of the official affirmative action plan for Kentucky state government (dated July 1, 1984, confirmed as part of Executive Order 84-549 continued in force by Executive Order 88-100), as well as plans developed by individual agencies pursuant to the state plan. 18A.138(1).

Office of Diversity & Equality (ODE)

The Office of Diversity & Equality is responsible for the development and implementation of policies, procedures and programs to promote and monitor progressive statewide workforce management in the areas of equal employment opportunity, affirmative action, retention, inclusion and diversity, as well as the duties set forth in KRS 18A.025.

The Office of Diversity & Equality shall:

1. Maintain the Executive Branch Affirmative Action Plan.
2. Work in coordination with the Personnel Cabinet Secretary to ensure that State government is working towards meeting the goals set within this Affirmative Action Plan.
3. Monitor the progress of each agency toward achieving its goals, develop a statistical analysis of the present workforce, and produce the Semi-Annual Report on Female & Minority Employment.
4. Investigate EEO related complaints at the discretion of the Personnel Cabinet Secretary.
5. Develop trainings in the areas of EEO and Diversity.
6. Review personnel policies and procedures to identify any barriers to equal employment opportunity.
7. Coordinate professional development opportunities for members of the EEO Coordinators Coalition (EEO Conference, EEO Forums, additional training opportunitie).
8. Work to ensure consistency of EEO policies and procedures across the various cabinets and agencies.
9. Evaluate agency affirmative action programs at prescribed intervals.
10. Educate personnel on employee rights and complaint procedures.
11. Administer the Governor's Minority Management Trainee Program.
12. Consult agencies on complaint investigations and resolutions when requested or necessary.
13. Produce the federally mandated EEO-4 Report on behalf of Kentucky State Government.
14. Promote Personnel Cabinet alternative dispute resolution resources.
15. Collaborate with the Division of Career Opportunities in recruiting female and minority applicants.

Governmental Services Center (GSC)

The Governmental Services Center will provide support and resources to the Personnel Cabinet and agency heads to assist them in the delivery of training.

CABINETS / AGENCIES

Cabinet Secretaries/Agency Heads

Cabinet Secretaries and Agency Heads are responsible for ensuring the development, implementation and maintenance of their cabinet's and/or agencies' affirmative action program.

Cabinet Secretaries/Agency Heads shall:

1. Appoint an EEO Coordinator for the agency and/or cabinet. The EEO Coordinator shall be designated in writing by the agency and the identity of the coordinator shall be provided to all agency employees. The Office of Diversity & Equality shall also be notified of each agency's designated EEO Coordinator.

2. Instruct each of their agency heads to carry out the goals and objectives of the State Affirmative Action Plan.

3. Coordinate training available for administrators and supervisors to familiarize them with the State Affirmative Action Plan and all federal and State government statutes, regulations and policies prohibiting discrimination in employment, opportunities for professional growth, and employment benefits.

4. Ensure that Agency EEO Coordinators and Counselors receive appropriate training and information regarding federal and state anti-discrimination statutes and regulations.

5. Develop an action plan according to the priorities established for addressing the identified problem areas. These shall become a part of the agency's Affirmative Action Program. In developing this element of the program, the following guidelines shall be followed:
    a. Action plans must specify how the cabinet/ agency will move forward with increasing diversity in the workforce. This shall include, but not limited to the following:
        i. The sequence of activities, which must be completed
        ii. The person/persons responsible for the completion of each activity, and
        iii. The date by which each activity shall be completed

6. Conduct periodic meetings with management staff to ensure compliance, discuss problem areas and promote understanding of affirmative action and equal employment opportunity responsibilities.

7. Ensure the fair and equitable administration of the EEO Complaint Procedure, Grievance Procedure or any other applicable state or federal law without retaliation or reprisal against any person filing a complaint, or against any person giving testimony or aiding in the resolution of a complaint.

8. Direct the formulation, implementation and monitoring of the agency's affirmative action and diversity programs.

9. Review each internal personnel procedure to identify any barriers to equal employment opportunity.

10. Complete an analysis of personnel policies and procedures to provide an evaluation of the cabinet/agency's status in assuring equal employment opportunities. This component shall address the following:
    b. Recruitment
    c. Selection, promotions and transfers
    d. Demotion, disciplinary actions and terminations
    e. Compensation

11. Assure that all official stationery and prepared correspondence contain the disclaimer "An Equal Opportunity Employer M/F/D"

12. Display the Commonwealth's Equal Employment Opportunity Policy Statement along with other required statements and posters conspicuously in state facilities.

Human Resources Administrators

The Cabinet/Agency's Human Resources Administrator (or designee) shall:

1. Develop (in conjunction with the Agency EEO Coordinator) Cabinet/Agency Affirmative Action program, policy statements, and related policies.

2. Develop, maintain and evaluate recruitment, selection, training, promotional, employment and other related programs to ensure compliance with the agency and State Affirmative Action Plan.

3. Provide EEO Coordinators and Counselors with needed resources and support in the complaint investigation process.

4. Submit quarterly reporting form by the deadline established by the ODE.

Agency EEO Coordinator

The Agency EEO Coordinator shall have direct access to the agency head (or designee) and has primary responsibility for the agency's affirmative action program in compliance with the State's Affirmative Action Plan.

Agency EEO Coordinator shall:

1. Assist with the development of the agency's affirmative action program, policy statement, and related policies.

2. Assist in the identification, selection and training of prospective EEO counselors prior to their designation.

3. Identify problem areas (i.e. clusters of EEO related complaints) and provide assistance in the resolution of problem areas in the agency.

4. Provide employees with information on Employee Rights and Complaint Filing Options.

5. Evaluate the affirmative action program's effectiveness, and provide recommendations for improvements.

6. Provide periodic reports to management regarding progress toward equal opportunity in the agency and of the latest developments in affirmative action.

7. Evaluate, revise and update the agency's affirmative action program as necessary. The results of this process must be forwarded to the Office of Diversity & Equality with a copy of the agency's revised program.

8. Conduct or coordinate investigation of discrimination complaints within their agency, and upon request for assistance by other agencies (with referral from ODE and approval from their supervisor).

9. Coordinators are expected to participate in professional development and workshops hosted by the EEO Coalition.

Agency EEO Counselors

The Agency EEO Counselors report to the Agency EEO Coordinator or other designated authority and may refer employee complaints to the EEO Coordinator or appropriate authority. In some instances, the counselor may also have the authority to conduct investigations of discrimination complaints within the agency, as well as provide training.

The Agency EEO Counselors shall:

1. Attend EEO related trainings conducted through the Office of Diversity & Equality.

2. Provide assistance to the Agency EEO Coordinator in complaint resolution.

3. Be well versed in employee complaint and grievance procedures and avenues of appeal, such as the Kentucky Human Rights Commission, the Grievance Procedure (101 KAR 1:375) and the Personnel Board (101 KAR 1:365). Informs employee of such avenues of appeal.

4. May (in some agencies) conduct investigations of complaints of discrimination if authorized to do so by the agency or in the absence of an Agency Coordinator.

Agency ADA Coordinator

Responsibilities: The Agency ADA Coordinator has primary responsibility for the cabinet/agency's Americans with Disabilities Act of 1990 (ADA) program.

The Agency ADA Coordinator shall:

1. Coordinate efforts to complete the required agency self-evaluation.

2. Ensure that publications, i.e. handbooks, manuals, pamphlets, and posters are in an accessible format and comply with ADA.

3. Coordinate the development and dissemination of agency ADA procedures.

4. Design and implement monitoring procedures and reporting systems, which will:
    a. measure the effectiveness of the agency's program;
    b. ensure facility and work areas are in compliance with the ADA; and
    c. indicate the need for corrective action

5. Completion of evaluation, revision and updating of the agency's program on a semi-annual basis. The results of this process must be forwarded to the Office of Diversity & Equality, Personnel Cabinet, with a copy of the agency's revised program.

6. Coordinate ongoing agency training regarding ADA.

Section Heads, Managers and Supervisors

Ensures compliance with the State Affirmative Action Plan, through the agency's affirmative action program. Promotes Equal Employment Opportunity for all employees. Section Heads, Managers and Supervisors shall:

1. Assist the Equal Employment Opportunity Coordinator in identifying and resolving problems and eliminating barriers, which inhibit equal employment opportunity

2. Support the objectives and initiatives of the agency's affirmative action program

3. Communicate the agency's affirmative action program to all assigned employees

4. Ensure compliance with agency EEO Training requirements.

5. Comply with EEO investigations.

Employees

Employees are responsible for following and supporting all laws, rules, and regulations that govern equal employment opportunity in the workplace, including timely compliance with any agency directed training. Employees will also participate in any agency directed investigations, including EEO investigations.

SECTION IV:
APPENDICES

APPENDIX 1: LEGAL FOUNDATIONS

The Executive Branch Affirmative Action Plan was developed and updated over the years based on federal and state laws, executive orders and administrative regulations. These legal foundations are the basis for many of the steps and strategies included in this Plan. These foundations are the building blocks of affirmative action and equal employment opportunity.

Title VII of the CIVIL RIGHTS ACT OF 1964 - 42 U.S.C. sections 2000e to 2000e-17

The law prohibits discrimination in employment because of race, color, religion, sex or national origin. It did NOT cover federal, state and local governments at the time of its enactment. The Equal Employment Opportunity Commission (EEOC) was established and given responsibility to investigate EEO complaints, make findings, attempt to resolve complaints through conciliation, persuasion, and/or mediation.

EXECUTIVE ORDER 11246 -Affirmative Action for Federal Contractors Regarding Minorities and Women Issued by President Lyndon B. Johnson on September 24, 1965

This order provides anti-discrimination provisions for federal agencies and government contractors receiving $10,000 or more in federal funds. Discrimination on the basis of race, color, religion, sex, or national origin is prohibited in all employment activities. Affirmative action plans are required of those having 50 or more employees with contracts of more than $50,000. The Office of Federal Contract Compliance Programs (OFCCP) was created to regulate and monitor the aforementioned activities. Veterans, veterans of the Vietnam War and persons with disabilities are also under their purview.

E.E.O. ACT OF 1972 Amended Civil Rights Act of 1964

Empowers the Equal Employment Opportunity Commission to bring civil action in federal court against private sector employees after the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. Brings federal, state and local governments under the Civil Rights Act of 1964.

CIVIL RIGHTS ACT OF 1991 - P.L. 102-166

Expanded Title VII of the Civil Rights Act of 1964 to authorize compensatory and punitive damages, authorize assessment of expert witness fees against the unsuccessful party, provide for jury trials and enlarge the timeframe for filing complaints with the EEOC from 180 days to 2 years.

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA) 29 U.S.C. sections 621 to 633a

Prohibits discrimination based on age for individuals above the age of 40 and under the age of 70.

AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT AND OAG 87-12

Effective January 1987, removed the cap of 70 from the law. Preempts any state law currently in effect on the same topic.

REHABILITATION ACT OF 1973 - 29 U.S.C. sections 706, 791 to 795r

Prohibits discrimination against persons with disabilities by federal contractors or in any program or activity receiving federal financial assistance.

VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT OF 1974 - 38 U.S.C. sections 4211 to 4214

This federal act passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans. A veteran is defined as disabled if he/she has a 30% or more disability. All suitable job openings of employers with a minimum of $10,000 in government contracts must be listed with state employment offices.

PREGANCY DISCRIMINATION ACT OF 1978

This act amended the Civil Rights Act of 1964, making discrimination due to pregnancy illegal. Prior to this, pregnant women could be required to resign or take a leave of absence without medical and/or disability benefits. The act defines pregnancy as a disability, and pregnant women are to be afforded equal benefits as other employees with medical conditions. Also, discrimination in any personnel action (e.g. hiring, promotion, termination) based on the pregnancy is prohibited. Personnel decisions and leave dates are now to be based on the ability of the employee to perform the essential function of the job. Amendments to Title VII of the Civil Rights Act have strengthened this provision.

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES, 1978

Adopted by the Equal Employment Opportunity Commission in 1978, this manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.

THE IMMIGRATION REFORM AND CONTROL ACT (IRCA) OF 1986 - 8 U.S.C. section 132 A

Prohibits discrimination in employment based on national origin or citizenship status.

AMERICANS WITH DISABLITIES ACT (ADA) OF 1990 - 42 U.S.C. 12101 to 12213

Modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. Requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. Kentucky adopted this act in 1992 with the enrollment and passage of S.B. 210.

AMERICANS WITH DISABILITIES ACT AMENDMENTS of 2008

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis.

The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted.

THE EQUAL PAY ACT OF 1993 - 29 U.S.C. section 206d

The Act requires that men and women employed in the same establishment receive equal pay (including fringe benefits) for jobs which involve substantially equal skill, effort and responsibility, and are performed under similar working conditions. The Act is concerned solely with wage discrimination based on sex.

FAMILY MEDICAL LEAVE ACT (FMLA) OF 1993 - 29 C.F.R. Part 825

This Act provide eligible employees with up to twelve (12) weeks in a calendar year of job-protected leave for a qualifying event. The qualifying events under the FMLA were updated significantly in 2008 and the application of the FMLA is continually clarified by the Department of Labor.

KENTUCKY EQUAL OPPORTUNITY ACT OF 1978 - KRS 45.560 to 45.640

Requires that contractors bidding or awarded contracts with the Commonwealth of Kentucky in excess of $250,000 comply with the state's equal employment opportunity and affirmative action policies of non-discrimination of employees or applicants without regard to race, color, sex, age (over 40) or national origin in cases of employment, promotion, demotion, transfer, recruitment (including employment advertisement), layoffs, compensation, selection, and training. Affirmative Action Plans are required of all bidding parties whose workforce reflects an underutilization of minorities. This Act is vigorously enforced by the Finance & Administration Cabinet's Office of Equal Employment Opportunity and Contract Compliance.

KRS CHAPTER 344 – KENTUCKY CIVIL RIGHTS ACT

The Kentucky Civil Rights Act prohibits discrimination in employment by any Kentucky employer with eight or more employees. The act is enforced by the Kentucky Commission on Human Rights and prohibits subjecting persons to different terms and conditions of employment because of race, color, national origin, disability, religion, sex, age forty and above, status as a smoker though they have complied with workplace smoking rules, or retaliation for filing a complaint or providing assistance.

KRS Chapter 344.015 (2)(c) and 45 KAR 1:080 Section 1(7) and Section 2 require all state agencies receiving federal funds to submit an annual Title VI compliance report and any implementation updates to the Auditor of Public Accounts and the Human Rights Commission no later than July 1 each year. Title VI of the U.S. Civil Rights Act of 1964 pertains to the delivery of services by recipients of federal funds.

KRS CHAPTER 18A.140 - STATE PERSONNEL

Provides the standards for operation of the state classified service (merit system) and unclassified service. Specifically mandates that no person shall be appointed to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his/her political or religious opinions or affiliations or ethnic origins, race, gender, disability, or age (discrimination is prohibited against persons of age 40 and over).

KRS CHAPTER 151B - WORKFORCE DEVELOPMENT CABINET

KRS 151B.090, Section 1, prohibits discrimination in any personnel action within the 151B personnel system because of "political or religious opinions or affiliations, ethnic origin, sex, disability, or age."

KRS CHAPTER 16 - STATE POLICE

KRS 16.055, Section 8, prohibits discrimination based on race, sex, age, national origin, color, religion, creed or political affiliation in the promotional system of the state police personnel system.

GENETIC NON-DISCRIMINATION ACT (GINA) OF 2008

The Genetic Information Nondiscrimination Act (GINA) of 2008 is a federal law that protects individuals against genetic discrimination in the areas of health insurance and employment. This law (Public Law 110-233) will be enforced by the Department of Health and Human Services (HHS), the Department of Labor, the Department of Treasury, and the Equal Employment Opportunity Commission (EEOC).

EXECUTIVE ORDER 2008-473

On June 2, 2008, Governor Beshear signed Executive Order 2008-473, relating to "Equal Employment Opportunities and Non-Discrimination in Employment in Kentucky State Government." The Executive Order states, "It shall be the policy of the Commonwealth of Kentucky to provide equal employment opportunity to all people in all respects of employer-employee relations without discrimination because of race, color, religion, sex, national origin, sexual orientation or gender identity, ancestry, age, disability or veteran status. Employer-employee relations shall include but not be limited to hiring, promotion, termination tenure, recruitment and compensation."

APPENDIX 2: ESSENTIAL FUNCITONS (ADA)

ESSENTIAL FUNCTIONS –

EEOC Technical Assistance guidelines note that written job descriptions may state that an employee performs a certain essential function. The job description may be evidence that the function is essential, but if individuals currently performing the job do not in fact perform the job, or perform it very infrequently, a review of the actual work performed will be more relevant evidence than the job description. In identifying an essential function to determine if an individual with a disability is qualified, the employer should focus on the purpose of the function and the result to be accomplished, rather than the manner in which the function is presently performed.[6]

An individual with a disability may be qualified to perform the function if an accommodation would enable the individual to perform the job in a different way.

For example, the essential function of a job on a loading dock may be to move heavy packages from the dock to a storage room, rather than lifting and carrying packages from the dock to the storage room. The focus should be on getting the package from point A to point B, and not on how the person would get it there.

When advertising a job or interviewing applicants, if the employer intends to use the job description as evidence of essential functions, the job description must be prepared before advertising or interviewing (see information below).

The first consideration in identifying the essential functions of a job is whether employees in the position are actually required to perform the function. According, to the EEOC, reasons why a function could be considered essential include:

1. The position exists to perform the function
2. There are a limited number of other employees available to perform the function, or among whom the function can be distributed
3. A function is highly specialized and the person is hired for special expertise or ability to perform it

[6] Guidelines provided by the Job Accommodations Network (JAN), a service provided by the US Department of Labor Office of Disability Employment Policy (ODEP).

The EEOC regulation lists several types of evidence to be considered in determining whether a function is essential. The EEOC's list does not include every possibility, but included are:

1. The employer's judgment.
2. A written job description prepared before advertising or interviewing applicants for a job.
3. The amount of time spent performing the function.
4. The consequences of not requiring a person in this job to perform a function.
5. The terms of a collective bargaining agreement (these are considered along with other evidence when it lists duties to be performed in particular jobs).
6. Work experience of people who have performed a job in the past and work experience of people who currently perform similar jobs.