



To: Indiana's Workforce System

From: Regina Ashley, Chief Strategy Officer RA

Date: March 20, 2017

Subject: DWD Policy 2016-09
Equal Opportunity and Nondiscrimination Guidance Letter

Purpose

To provide initial guidance regarding the observance and enforcement of the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations found at 29 CFR Part 38.

References

- WIOA Section 188
- 29 CFR Part 38, "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act" Final Rule (January 3, 2017)

Rescission

- DWD Policy 2012-04, dated September 17, 2012, and entitled, "Nondiscrimination and Equal Opportunity Requirements of the Workforce Investment Act"
- DWD Policy 2012-05, dated September 17, 2012, and entitled, "WIA Equal Opportunity Notice and Posting Requirements within the Workforce Investment System"
- DWD Policy 2007-30, dated April 4, 2008, and entitled, "Ensuring Nondiscrimination and Equal Opportunity to Persons with Disabilities Participating in Programs and Activities in the WorkOne Delivery System"
- DWD Policy 2007-31, dated April 4, 2008, and entitled, "Equal Opportunity Monitoring for the Workforce Investment Act (WIA) Title I"
- DWD Policy 2006-19, dated April 4, 2007, and entitled, "Policy Guidance for Ensuring Access to Services for Persons with Limited English Proficiency."

Background

All WIOA Title I recipients (Recipients), defined at 29 CFR 38.4, are responsible for ensuring equal opportunity (EO) and nondiscrimination in programs and activities funded in whole or in part under WIOA. Specifically, recipients must comply with all nondiscrimination requirements in the administration and operation of programs, activities, and employment as provided by WIOA Section 188 and its implementing regulations under the 29 CFR Part 38 (Final Rule). The requirements apply to all programs and activities that are operated by One-Stop partners, as defined in WIOA section 121(b), as part of the One-Stop delivery system (the WorkOne system).

The Final Rule became effective on January 3, 2017. This Guidance is intended to provide an initial summary of the major content areas covered in the Final Rule and includes important procedures recipients must follow to maintain compliance. Additional guidance will be issued as available.

Guidance

WIOA Section 188 prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity.

The following requirements are found in the Final Rule:

A. Notice and Communication (38.34 – 38.40)

- a. **EO Poster.** Each Recipient must provide initial and continuing notice that it does not discriminate on any prohibited basis. Appropriate steps must be taken to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for limited English proficient (LEP) individuals.

The Final Rule provides exact language for the *Equal Opportunity Is the Law* notice/poster (the EO Poster). This language cannot be altered except to include the Recipient's Local EO Officer information. **The EO Poster must be initially published within 90 days of January 3, 2017.** The language of the new EO Poster is included in this Guidance for convenience as **Attachment A**. The EO Poster can be found in multiple languages on the Civil Rights Center's website in a fillable, printable pdf format.

The direct link to the English EO Poster is:

https://www.dol.gov/oasam/programs/crc/pdf/EO_NoticE_WIOA_English.pdf

Links to the EO Poster in other languages can be found at:

<https://www.dol.gov/oasam/programs/crc/external-compliance-assistance.htm>

The EO Poster must:

- be posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on recipients' website pages;
- disseminated in internal memoranda and other written or electronic communications with staff;

- included in employee handbooks or manuals;
 - provided to each participant and employee and made a part of each participant and employee file;
 - provided in appropriate formats for the visually impaired and record of such alternate format in participant or employee file; and
 - provided in appropriate languages other than English.
- b. EO Tagline and Relay Service.** All publications, broadcasts, and other communications must include that the program or activity in question is an “equal opportunity employer/program” and that “auxiliary aids and services are available upon request to individuals with disabilities.”

Where such communications indicate that the Recipient may be reached by telephone, the materials must provide the telephone number of the text telephone (TTY) number or equally effective telecommunications system, such as a relay service, videophone, or captioned telephone.

- c. Orientations.** Any WIOA Title I orientation for new participants, employees, or the general public must include a discussion of rights and responsibilities under the EO and nondiscrimination provisions of WIOA and the Final Rule, including the right to file a complaint. This information must be communicated in appropriate languages and accessible formats.
- d. Affirmative Outreach.** Recipients must take appropriate steps to ensure that they are providing equal access to WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various protected groups, including, but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, LEP individuals, individuals with disabilities, and individuals in different age groups.

Examples of affirmative outreach efforts:

- Targeting specific populations when advertising programs/services
- Sending information to schools or community service groups that serve various populations
- Consulting with community service groups on ways to improve outreach and service

B. Equal Opportunity Officers (38.28 – 38.33)

Every Recipient, except small recipients (defined as serving fewer than 15 beneficiaries during an entire grant year and employing fewer than 15 employees on any given day) and service providers, must designate an EO Officer with adequate knowledge, skills, and abilities to ensure EO/Nondiscrimination in the administration and operation of programs and services. An EO Officer must be a senior level employee with sufficient authority, staff, resources, and training to fulfill his/her responsibilities and maintain competency. The EO Officer must not have other responsibilities that create a conflict or the appearance of a conflict with EO responsibilities.

The State EO Officer’s responsibilities include, but are not limited to:

- Overseeing the development and implementation of the state’s Nondiscrimination Plan (NDP);
- Serving as the state’s liaison with CRC;

- Monitoring compliance of WIOA Title I EO and nondiscrimination requirements;
- Undergoing training and providing training and technical assistance to Local EO Officers; and
- Developing procedure for and investigating discrimination matters that rise to the state level.

The Local EO Officer's responsibilities include, but are not limited to:

- Reporting EO/Nondiscrimination matters to the State EO Officer;
- Processing and investigating regional discrimination complaints;
- Monitoring compliance of regional WIOA Title I recipients;
- Undergoing training and providing training for staff and service providers (participation required for quarterly conference calls and training sessions conducted by DWD's State EO Officer);
- Surveying WorkOne offices to ensure compliance with applicable accessibility requirements;
- Reviewing the Region's policies to ensure they are nondiscriminatory;
- Conducting outreach and education about EO and nondiscrimination requirements and how an individual may file a complaint; and
- Ensuring overall implementation of the NDP.

The EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) must be made public, with the EO Officer's identity and contact information listed on all internal and external communications about the Recipient's nondiscrimination and equal opportunity programs. Changes regarding a Recipient's EO Officer must be updated in all areas where the information is published. Updated contact information must also be forwarded to the State EO Officer at EO@dwd.in.gov.

C. Language Services (38.9)

Recipients must take reasonable steps to ensure meaningful access to LEP individuals via every delivery method (written, electronic, and in person). Such steps may include, but are not limited to:

- Assessment to determine language assistance needs
- Outreach to LEP communities to improve service delivery in needed languages
- Oral interpretation or written translation

Recipients must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that these services are available free of charge. Language assistance services must be accurate and provided in a timely manner.

Recipients shall not require an LEP individual to provide their own interpreter, nor rely on an LEP individual's minor child or adult family or friend except in emergency situations. An accompanying adult may interpret or facilitate communication when the information conveyed is of minimal importance or when the LEP individual specifically requests the accompanying adult to provide language assistance. When the Recipient permits the accompanying adult to provide such assistance, it must be documented that the LEP individual decided to use their own interpreter.

Even where an LEP individual elects to use their own interpreter, a Recipient has the option to provide an independent interpreter where precise, complete, and accurate information is critical, or where the competency of the LEP individual's requested interpreter is not established.

For languages spoken by a significant amount of the eligible population to be served, or likely to be encountered, Recipients must translate vital information in written materials and have them readily

available in hard copy, upon request, or electronically. Even where languages are not spoken by a significant amount of the eligible population, Recipients must take reasonable steps to meet the particularized language needs of LEP individuals. The Final Rule does not specify what constitutes a “significant amount”, but rather stresses that providing meaningful access to the LEP population should be handled at the Recipient level based upon the circumstances found in their local area. The Appendix to Section 38.9 of the Final Rule provides further insight into strategy and practice and is a valuable resource surrounding this topic.

Vital information means information that is necessary for an individual to understand how to obtain any aid, benefit, service, and/or training; necessary to obtain any aid, benefit, service, and/or training; or required by law. Examples include, but are not limited to applications, consent and complaint forms, and notices of rights and responsibilities.

All communications of vital information must include a “Babel notice,” which is a short notice included in a document or electronic medium in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages.

D. Assurances (38.25 – 28.27)

Each application for financial assistance under WIOA Title I must include the assurance language found included in this Guidance as **Attachment B**.

The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of WIOA is made available, whether it is explicitly incorporated in such document and whether there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated in such grants, cooperative agreements, contracts, or other arrangements by reference.

In lieu of including the assurance language in its entirety for smaller contracts or agreements (such as OJT contracts, etc.), the following reference to the language may be used:

“The equal opportunity and nondiscrimination assurances at 29 CFR Part 38.25 apply to this contract/agreement.”

E. Accessibility and Reasonable Accommodation (38.12 – 38.14)

- a. Physical Accessibility.** Recipients must ensure that their facilities are accessible and usable by individuals with disabilities. Recipients must meet applicable accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR Part 32 and the Americans with Disabilities Act (ADA).
- b. Programmatic Accessibility.** All WIOA Title I programs and activities must be programmatically accessible, which includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with

persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary.

- c. Reasonable Accommodations and Modifications.** Recipients must provide reasonable accommodations to qualified individuals with disabilities unless providing the accommodation would cause undue hardship.

A qualified individual with a disability, with respect to aid, benefits, services, or training, is an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements; or, with respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements, with or without reasonable accommodation can perform the essential functions of such position.

Reasonable accommodation includes, but is not limited to:

- Making existing facilities readily accessible and usable;
- Restructuring of a job or service, or of the way in which aid, benefits, services, or training is/are provided;
- Part-time or modified work or training schedules;
- Acquisition or modification of equipment or devices;
- Appropriate adjustment or modifications of examinations, training materials, or policies;
- Provision of readers or interpreters

Undue hardship means significant difficulty or expense incurred by a Recipient. Factors to be considered in determining whether a reasonable accommodation would impose an undue hardship on a Recipient include:

- Nature and cost of accommodation needed;
- Overall financial resources of the facility;
- Overall financial resources of the Recipient;
- Type of operations of the Recipient; and
- Impact of the accommodation upon the operation of the facility

F. Data and Information Collection and Maintenance (38.41 – 38.45)

- a. Data Collection.** Recipients must collect EO data for applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment and record the race/ethnicity, sex, age, and where known, disability status. Beginning on January 3, 2019, each Recipient must also record LEP and preferred language.

Data collected must be stored in a manner that ensures confidentiality and used only for purposes of:

- Recordkeeping and reporting;
- Determining eligibility for WIOA Title I programs or activities;
- Determining the extent to which the recipient is operating its WIOA programs and activities in a nondiscriminatory manner; or
- Other uses authorized by law.

Any medical or disability-related information must be collected on separate forms and maintained in separate files apart from any other information about the individual. This information must be treated as confidential and locked or otherwise secured (for example, through password protection).

Records must be maintained for a period of not less than three years from the close of the applicable program year.

- b. Complaint Logs.** Recipients must maintain a log of complaints filed with the Recipient that allege discrimination on the basis(es) of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity.

The log must include the name and address of complainant, basis of complaint, a description of the complaint, the date the complaint was filed, the disposition and date of disposition of the complaint, and other pertinent information. Recipients must submit their complaint logs on a quarterly basis to DWD's EO Officer at EO@dwd.in.gov. Logs must cover the Recipient's entire Region and are due on or before the following dates: April 5, July 5, October 5, and January 5.

G. Complaint Processing Procedures (38.69 – 38.85)

- a. Complaints.** A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the Recipient's EO Officer or from CRC. Complaints must be filed in writing, either electronically or in hard copy, and must contain the following information:
- Complainant's name, mailing address, and if available, email address (or another means of contact);
 - Identity of respondent;
 - Description of allegations;
 - Written or electronic signature of the complainant or complainant's representative;
- b. Complaint Processing.** A Recipient's procedures must state that the Recipient will issue a written Notice of Final Action on complaints within 90 days of the date on which the complaint is filed. The procedure must include, at a minimum, the following elements:
- Initial, written notice to complainant acknowledging receipt of complaint, notice of complainant's right to representation, notice of rights contained in the EO Poster, and notice that complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated as required;
 - Written statement of the issue(s), provided to complainant, that includes a list of issues raised in the complaint and whether the Recipient will accept or reject each issue;
 - Period for fact-finding or investigation;
 - Period for attempt to resolve complaint, including provision for alternative dispute resolution (ADR);
 - Written Notice of Final Action provided to complainant within 90 days of filing date.

If the Recipient issues its Notice of Final Action before the 90-day period ends, but the complainant is dissatisfied with the Recipient's decision, the complainant may file a complaint with the CRC Director within 30 days after the date on which the Complainant receives the Notice.

If, by the end of 90 days from the filing date, the Recipient has failed to issue a Notice of Final Action, the complainant may file a complaint with the CRC Director within 30 days of the expiration of the 90-day period (i.e., within 120 days of filing date).

H. Compliance Monitoring (38.51)

EO Officers, at both the State and Local level, are responsible for annually monitoring all services, programs, and activities to ensure compliance with WIOA Section 188 and the Final Rule. Such monitoring must include:

- A statistical or other quantifiable analysis of records and data kept by Recipients, including analyses by race/ethnicity, sex, LEP, age, and disability status;
- An investigation of any significant differences noted in the analyses to determine whether these differences appear to be caused by discrimination; and
- An assessment to determine whether the Recipient has fulfilled its administrative obligations under WIOA Section 188 and the Final Rule (e.g., recordkeeping, notice and communication), and any duties assigned to it under the NDP.

I. Corrective Actions/Sanctions (38.86 – 38.115)

Corrective actions, or sanctions if voluntary efforts in seeking compliance fail, may be imposed for violations of the EO/Nondiscrimination requirements. Corrective actions are to be designed to completely address each violation and may result from an EO/Nondiscrimination monitoring review, a discrimination complaint, or both. Recipients must have procedures in place for obtaining prompt corrective action. Local EO Officers must notify the State EO Officer of violations discovered, corrective actions implemented, and timeframes for completion.

If the State EO Officer determines a violation has occurred, the Recipient will be notified and a corrective action plan will be developed. Corrective actions should be completed by the date(s) provided by the State EO Officer. If a Recipient does not undertake the corrective actions specified, a conciliation agreement should be initiated and completed based on the model outlined in the Final Rule.

Sanctions will be considered as a last resort. Sanctions may be necessary when a Recipient refuses to implement voluntary corrective action, submit requested data or documentation, or refuses to provide access to premises or records during an EO/Nondiscrimination compliance review. Sanctions that may be imposed include, but are not limited to:

- Termination of future funding;
- Disallowance of selected costs;
- Restriction from bidding on competitive or discretionary funds; and
- Reduction in funding.

At the Local level, Recipients and Local EO Officers will follow the above procedures for applying corrective actions and sanctions.

Effective Date

Immediately

Ending Date

Upon Rescission

Contact for Questions

EO@dwd.in.gov

Action

Recipients must ensure that the nondiscrimination and equal opportunity requirements outlined in this guidance are followed within their respective region.

Attachments

A: Equal Opportunity is the Law Notice/Poster

B: Required Assurance Language

Attachment A

Equal Opportunity Is the Law

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas: Deciding who will be admitted, or have access, to any WIOA Title I financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

What To Do If You Believe You Have Experienced Discrimination

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

Recipient's Local Equal Opportunity Officer
INSERT LOCAL EO INFO HERE - The
recipient's Equal Opportunity Officer (or
the person whom the recipient has
designated for this purpose)

or

The Director, Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue NW.
Room N- 4123
Washington, DC 20210

or electronically as directed on the CRC Web site at www.dol.gov/crc.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above). If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient). If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action

Attachment B

Required Assurance Language (38.25)

(1) Each application for financial assistance, under Title I of WIOA, as defined in § 38.4, must include the following assurance:

- (i) As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:
 - (A) Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I financially assisted program or activity;
 - (B) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
 - (C) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
 - (D) The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
 - (E) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

- (ii) The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.