



Oklahoma Office of Workforce Development
900 N. Portland Ave.
Oklahoma City, OK 73107

OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #13-2017, CHANGE 2

TO: Workforce Development Board Chairs
Workforce Development Board Staff
Workforce Development Fiscal Agents

FROM: Erin E. Risley-Baird, Executive Director

DATE: January XX, 2018

SUBJECT: Nondiscrimination and Equal Opportunity Policy, Change 2

PURPOSE: To issue additional communication requirements to the State EO Officer with the addition of a recommended template, delete references to complaint processing procedures now included in a separate policy, clarify EO monitoring and sanctions, update reporting structure of Local EO Officers, and add EO Officer conflict of interest language.

The Oklahoma Office of Workforce Development (OOWD) as the Governor’s chosen Workforce Innovation and Opportunity Act (WIOA) administrative entity provides this issuance as guidance to communicate Oklahoma’s process and procedures regarding nondiscrimination and equal opportunity procedures. This policy applies to all Local Workforce Development Areas (LWDBs), and is effective immediately.

REFERENCES:

- Civil Rights Act of 1964 Titles VI and VII (42 USC §2000d et seq.)
Education Amendments of 1972 Title IX (20 USC § 1681 et seq.)
Rehabilitation Act of 1973 (Rehab Act) Title V, Section 504 (29 USC § 794 et seq.)
Age Discrimination Act of 1975 (42 USC § 6101 et seq.)
Americans with Disability Act of 1990 (ADA), as amended by American Disabilities Act Amendments Act (ADAAA) (42 USC §12101 et seq., Public Law 110-325, 122 Stat. 3553 (2008))
Workforce Innovation and Opportunity Act (WIOA) Sections 121(b), 183(c), and 188 ( 29 USC § 3151, 3243, and 3248)
Title 29 CFR Part 38

Table with 2 columns: RESCISSIONS (OWDI #13-2017, Change 1) and EXPIRATION DATE (Continuing)



**DEFINITION:**

**Recipient:** Any entity to which financial assistance under the WIOA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of WIOA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of 29 CFR Part 38, to the extent that they participate in the One-Stop delivery system (29 CFR § 38.4(z)).

**MESSAGE:**

**Provisions of the Nondiscrimination Plan**

In order to provide a reasonable guarantee of compliance with the nondiscrimination and equal opportunity (EO) provisions of Section 188 of the WIOA and 29 CFR Part 38, the Governor must establish and implement a Nondiscrimination Plan for state programs as outlined in 29 CFR Section 38.54(a)(1). Previously known as the MOA under WIA, the WIOA Nondiscrimination Plan must, at a minimum, describe how the requirements outlined below have been satisfied.

**Assurances**

Contracts, cooperative agreements, job training plans, and policies and procedures must contain the nondiscrimination assurance specified in 29 CFR § 38.25 and 38.26. The nondiscrimination assurance must state the grant applicant will “comply fully with the nondiscrimination and equal opportunity provisions of the WIOA” (29 CFR Part 38 Preamble) and acknowledge the government’s right to seek judicial enforcement of the nondiscrimination assurance. Also in accordance with 29 CFR § 38.25, each application for federal financial assistance under WIOA Title I must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or the DOL prior to, and as a condition of, receiving federal financial assistance under WIOA Title I (including both new and continuing assistance).

**Nondiscrimination Statement**

The Oklahoma Office of Workforce Development (OOWD), Recipients, and Subrecipients/Subgrantees must maintain a policy to provide equal opportunity in all services and activities. Discrimination is strictly prohibited on the grounds of race, ethnicity, orientation, religion, sex, gender, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I-financially assisted program or activity.

**Designation of Local EO Officers**

Each LWDB must designate an EO Officer who is responsible for coordinating its obligation under these regulations and who **has direct access to the Chief Elected Official (CLEO) and LWDB Chair**. The state requires that LWDBs notify the State Equal Opportunity (EO) Officer and

the Oklahoma Office of Workforce Development (OOWD) **within 5 business days** whenever the designation of the Local EO Officer changes.

### **Local EO Officers**

The Local EO Officer's responsibilities include the following:

- Serving as the liaison with the State EO Officer and OOWD.
- Investigating and monitoring the Local Area's and its subrecipients' WIOA Title I funded activities and programs.
- Reviewing the Local Area's organizations' and its subrecipients' written policies.
- Developing, publishing, and enforcing the Local Area's discrimination complaint procedures.
- Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with 29 CFR § 38.40, and how an individual may file a complaint consistent with 29 CFR § 38.69.
- Participating in continuing training and education, and ensuring that assigned staff receives the necessary training and support to maintain competency.
- Informing participants, employees, and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint process works.

**An EO Officer may not be assigned any other (non-EO related) duties or activities that create either a real or apparent conflict of interest with responsibilities of an EO Officer.**

Local Areas will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of the WIOA and 29 CFR Part 38. Local Areas must submit a copy of their EO Officer's position description and organizational chart showing the relationship **of EO Officer to the CLEO and LWDB Chair**. Please submit the required documents via electronic mail to the following address: [eoofficer@osuokc.edu](mailto:eoofficer@osuokc.edu)

The Local Area EO Officer's contact information such as name, position title, business address, including email address, and telephone number (voice and Telecommunications Device for the Deaf, which is also known as teletypewriter [TTY]), must be publicized at the local level through a variety of means, including posters, handouts, and listings in local directories.

The Local Area EO Officer's identity and contact information must appear on all internal and external communications related to equal opportunity issues.

Attending one annual training each program year is required and additional periodic trainings are recommended for the LWDB EO Officer and assigned staff to keep abreast of equal opportunity issues. Resources for nondiscrimination and equal opportunity are available on the [U.S. Department of Labor](#) and [Civil Rights Center](#) websites and through the state EO Officer.

## **Notice and Communication of EO Policy and Procedures**

A recipient must provide initial and continuing notice that it does not discriminate on any prohibited basis, including display and distributions of the notice/poster relating to “Equal Opportunity is the Law.”

This notice/poster must meet the following criteria:

- Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient’s website pages.
- Disseminated in internal memoranda and other written or electronic communications with staff.
- Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available.
- Provided to each participant and employee; the notice must be made part of each employee’s and participant’s file. It must be a part of both paper and electronic files, if both are maintained (29 CFR § 38.36(a)).

The notice must be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, and applicants for employment and employees and participants with visual impairments. Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment and employees with a visual impairment, a record such notice has been given must be made part of the employee’s or participant’s file. The notice must be provided in appropriate languages other than English (29 CFR § 38.36(b)).

As it concerns communication, recipients must indicate that the WIOA Title I-financially assisted 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.” This must be included on recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper to staff, clients, or the public at large, to describe programs financially assisted under WIOA Title I or the requirements for participation by recipients and participants.

Where such materials indicate that the recipient may be reached by voice telephone, the materials must also provide the TTY number or equally effective communications system, such as a videophone, captioned telephone, or a relay service.

Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted programs or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law) and indicate that auxiliary aids and services are available upon requests to individuals with disabilities.

A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis, except as such treatment is otherwise permitted under federal law or regulation.

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted programs or activity, whether this be in person or over the internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR Part 38, including the right to file a complaint of discrimination with the recipient or the Director of the Civil Rights Center (CRC). This information must be communicated in appropriate languages as required in 29 CFR § 38.9 and in formats accessible for individuals with disabilities as required in 29 CFR Part 38 and specified in Section 38.15.

#### **Data and Information Collection and Maintenance**

Each recipient must collect and maintain nondiscrimination data. The system and format in which the records and data are kept must be designed to allow the Governor and the CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of the WIOA and 29 CFR Part 38.

Per 29 CFR § 38.42, each recipient must promptly notify the CRC Director, State EO Officer, and Executive Director of OOWD when any administrative enforcement actions or lawsuits are filed against it alleging discrimination 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, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity. This notification must include the information required by 29 CFR § 38.42(a).

#### **Communication of Equal Opportunity Issues to State EO Officer**

For any communication identifying an equal opportunity and nondiscrimination issue with a LWDB, or for any matter that may quickly escalate to a formal complaint, the State EO Officer must be notified at [eoofficer@osuokc.edu](mailto:eoofficer@osuokc.edu) within three (3) business days of receipt. All equal opportunity and nondiscrimination related communications, including non-written communications, not recorded on the Discrimination Complaint Log, as explained in the WIOA Section 188 Discrimination Complaint Procedures shall be recorded on the Communications Log (see WIOA Section 188 Discrimination Complaint Procedures policy). The purpose of the Communications Log is to keep track of any EO issue that arises, regardless of whether it constitutes a complaint.

These communications must also be logged on a Communication. Each EO Officer must submit a Communications Log quarterly to the State EO Officer at [eoofficer@osuokc.edu](mailto:eoofficer@osuokc.edu) on or before each of the following dates:

- March 31
- June 30
- September 30
- December 31

### **Affirmative Outreach**

The guidelines found in 29 CFR § 38.40 require recipients to take appropriate steps to ensure they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by 29 CFR Part 38 including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, limited English proficiency (LEP) individuals, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to, the following:

- Advertising the recipient's programs and/or activities in media such as newspapers or radio programs that specifically target various populations.
- Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations.
- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

### **Discrimination Prohibited Based on Disability**

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, whether directly or through contractual, licensing, or other arrangements, on the basis of disability, a recipient must not do any of the following:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings.
- Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others.
- Provide a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.
- Provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the

requirements of the Rehabilitation Act as amended by the WIOA, including those provisions that prioritize opportunities in competitive integrated employment.

- Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards.
- Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.

### **Accessibility Requirements**

No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR Part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the Americans with Disabilities Act (ADA) that is not enforced by the CRC. As indicated in Section 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

All WIOA Title I-financially assisted programs and activities must be programmatically accessible. This 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 to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

### **Reasonable Accommodation and Reasonable Modifications for Individuals with Disabilities**

With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. For more information on what would constitute undue hardship as it relates to a reasonable accommodation of individuals with disabilities, please see the definition of "undue burden or undue hardship" in 29 CFR § 38.4(rrr)(1).

With regard to any aid, benefit, service, training, and employment, a recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity, which would constitute a fundamental alteration. For more information, see the definition of "fundamental alteration" found in 29 CFR § 38.4(z).

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration only after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy to the State EO Officer of the statement of reasons to the individual(s) who requested the accommodation or modification.

If a requested accommodation would result in undue hardship or a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such hardship or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient. In addition, a recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others.

#### **Intimidation and Retaliation Are Prohibited**

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following:

- A violation of the WIOA.
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA.
- Furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

#### **Sanctions**

Sanctions are available for any violation of a nondiscrimination and equal opportunity issue within this policy and under 29 C.F.R. Part 38. Sanctions include any remedy legally available under WIOA laws and regulations.

#### **Governor's Oversight and Monitoring Responsibilities for State Programs**

The State EO Officer will conduct, at a minimum, annual monitoring reviews, which may include onsite visits. As the administrative entity, OOWD may conduct desk reviews, on-site or virtual monitoring in addition to annual monitoring, of any issues identified or closely related to the equal opportunity and nondiscrimination issues raised in this policy. A corrective action plan must be submitted to the State EO Officer at [eoofficer@osuokc.edu](mailto:eoofficer@osuokc.edu) with remedies for all issues identified in the corrective action plan to be completed within 30 days or within a reasonable



time frame agreed upon by all parties. The purpose of this is to ensure that all equal opportunity and nondiscrimination issues identified are proactively and promptly addressed to avoid intentionally or inadvertently violating civil rights.

**EQUAL OPPORTUNITY AND NONDISCRIMINATION:** All providers must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination 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, 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.

**ACTION REQUIRED:** This Oklahoma Workforce Development Issuance (OWDI) is to become a part of your permanent records and made available to appropriate staff and subrecipients.

**INQUIRIES:** If you have any questions about this issuance, please contact the State EO officer in the Oklahoma Office of Workforce Development. Contact information can be found at <http://www.oklahomaworks.gov/about/>.