



900 N. Stiles Avenue
Oklahoma City, OK 73104, USA
405-815-5251 | Toll Free 800-588-5959
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OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #05-2019

TO: Chief Local Elected Officials
Workforce Development Board Chairs
Workforce Development Board Staff
WIOA Equal Opportunity Officers
Oklahoma Works Core System Partners

FROM: Sarah Ashmore, Interim Executive Director

DATE: July 10, 2019

SUBJECT: Nondiscrimination and Equal Opportunity Corrective Actions and Sanctions Policy and Guidelines under Section 188 of WIOA and 29 CFR Part 38

PURPOSE:

To inform grant recipients of the sanctions that may be imposed for violation of the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), and to outline the procedures to achieve voluntary compliance via corrective action/remedy.

AUTHORITY:

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

BACKGROUND:

29 CFR Part 38.54 (c)(2)(vii) requires the Governor (or designee) of each state to establish procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found regarding the nondiscrimination and equal opportunity provisions of WIOA.

RESCISSIONS None	EXPIRATION DATE Continuing
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The Oklahoma Office of Workforce Development is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

REFERENCES:

- WIOA Section 188, which prohibits 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, and with regard to beneficiaries only, on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, as amended, which prohibits discrimination on the bases of race, color and national origin;
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as amended, which prohibits discrimination against qualified individuals with disabilities;
- The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, as amended, which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, 29 U.S.C. § 1681 *et seq.*, as amended, which prohibits discrimination on the basis of sex in educational programs.

MESSAGE:

When the Oklahoma Office of Workforce Development (OOWD), the administrative agency for WIOA, finds that a violation has occurred, the following steps will be taken to accomplish corrective action.

Corrective Action Process

Recipients at the state and local workforce development board level will apply corrective actions if voluntary efforts in seeking compliance fail, in particular when monitoring finds violations of the equal opportunity, nondiscrimination, or 29 CFR Part 38. Corrective actions are designed to completely address each violation and may result from an Equal Opportunity and Nondiscrimination monitoring review, a discrimination complaint, or both. Timeframes must be established to set the minimum time necessary in order to completely address the violation. Follow-up monitoring will occur as necessary to ensure that commitments to take corrective and remedial actions have been fulfilled. Local areas are required to establish policies and procedures for obtaining prompt corrective action. The LWDB Equal Opportunity (EO) Officer will notify the State-Level EO Officer of violation(s) discovered, corrective action(s) implemented, and timeframe(s) for completion. The LWDB EO Officer must also notify the State-Level EO Officer if they are contacted directly by USDOL Civil Rights Center regarding an alleged violation. Any corrective actions, when necessary, will be reported to USDOL Civil Rights Center.

Corrective action shall be implemented in the following circumstances:

- An assessment of the circumstances surrounding a discrimination complaint investigation reveals barriers to equal opportunity or equal access.
- A LWDB EO Officer or the State-Level EO Officer's monitoring review identifies a violation, a failure to follow through on written assurances, a barrier to accessibility, or significant differences in participation in programs or services without investigation, mitigation, or justification.
- An EEOC or independent investigation found violations related to complaints filed by individuals with a recipient.

Corrective actions should be completed by the date(s) provided in the review report. If a recipient does not undertake the corrective actions specified, a conciliation agreement (or an alternate dispute resolution per 29 CFR Part 38.85) should be initiated and completed, pursuant to 29 CFR Part 38.93.

1. *Initial Determination:* The State EO Officer will issue an Initial Determination containing the following:
 - a. Specific findings and relevant documentation underlying the finding of noncompliance;
 - b. The corrective or remedial action that the State EO Officer is proposing
 - c. The time by which the respondent must complete the corrective or remedial action; and
 - d. A statement offering the opportunity to engage in voluntary compliance negotiations.
2. *Written Assurance or Conciliation Agreement:* A written assurance may be issued when the respondent has, within 30 calendar days after receipt of the Initial Determination identifying the noncompliance, taken all corrective actions to remedy the noncompliance. If a respondent disagrees with the findings or proposed corrective or remedial action in the Initial Determination, the respondent must respond to the Initial Determination in writing within 30 calendar days explaining in detail its disagreement and/or the items over which it desires to negotiate. The State EO Officer will carefully review the response and contact the respondent to begin negotiation regarding a Conciliation Agreement that resolves the matter on mutually agreeable terms. The total time allotted to secure voluntary compliance must not exceed 90 calendar days.
3. *Final Determination:* In the event voluntary compliance cannot be secured through steps (1) and (2) above, or if the respondent breaches the agreed-upon Conciliation

Agreement, the State EO Officer will issue a Final Determination notice to the Executive Director of OOWD. This request for a final determination will specify the following:

- a. A statement of the efforts made to achieve voluntary compliance and a statement that those efforts have been unsuccessful;
- b. A statement of those matters upon which the respondent and State EO Officer continue to disagree;
- c. The apparent violation(s), relevant EO and Nondiscrimination provision(s) of state policy and 29 CFR Part38, and conflicts with the State's Nondiscrimination Plan (NDP).
- d. A list of any modifications to the Initial Determination;
- e. A description of the corrective or remedial actions that the respondent must take to come into compliance; and
- f. Notice that if the respondent fails to come into compliance within 10 calendar days of the date on which it receives the Final Determination, the OOWD may take actions outlined in the Sanctions Process.

The OOWD Executive Director may secure voluntary compliance with the recipient through a written assurance and/or conciliation agreement. The OOWD considers sanctions only if the recipient does not agree to take voluntary corrective action.

Sanctions

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 and Nondiscrimination compliance review. Sanctions will be considered a last resort.

Sanctions that may be imposed include, but are not limited to, the following:

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

If sanctions are necessary, the precise nature of the sanction will be determined by the deliberateness, seriousness, and frequency of the violation. In situations where sanctions are to be applied, the recipient will be notified and will be provided an opportunity to respond prior to sanctions being applied. The notice will indicate the violation, the corrective action to be taken, and the impending sanction(s). The recipient will have 30 calendar days to respond to the notice of impending sanction(s). The response from the recipient will be evaluated by the State EO Officer, the OOWD Executive Director, representatives from the U.S. Department of

Labor, and other individuals charged with oversight of WIOA. The State will have 90 calendar days to provide a final determination of any sanction(s).

At the LWDB level, it is the responsibility of the LWDB Executive Director to implement sanctions, if needed.

EQUAL OPPORTUNITY AND NONDISCRIMINATION STATEMENT: All Recipients, and Sub recipients/Sub grantees 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 sub-recipients. This policy is available at <http://oklahomaworks.gov/policy-center>.

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