



INDIANA
WORKFORCE
DEVELOPMENT
AND ITS **WorkOne** CENTERS

TO: Indiana's Workforce Investment System

FROM: Jaclyn Dowd *JFD*
Senior Deputy Commissioner for Policy, Education and Training

DATE: September 17, 2012

SUBJECT: DWD Policy 2012-04
Nondiscrimination and Equal Opportunity Requirements of the Workforce Investment Act

Purpose

To communicate the nondiscrimination and equal opportunity requirements of the Workforce Investment Act, define the role of the Local and State Equal Opportunity Officer, and denote the responsibilities for entities receiving Workforce Investment Act funding.

Rescission

DWD Policy 2006-22, Nondiscrimination Requirements of the Workforce Investment Act, issued May 15, 2007.

Contents

Section 188 of the Workforce Investment Act (WIA) prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I – financially assisted program or activity. The following requirements are taken from 29 Code of Federal Regulations (CFR) Part 37 and must be incorporated into the systems and practices of all recipients for assurances of nondiscrimination. Any program or activity that receives federal financial assistance under WIA Title I is a recipient and therefore subject to these requirements.

DESIGNATION OF THE EQUAL OPPORTUNITY OFFICER

Every recipient must designate an Equal Opportunity (EO) Officer except small recipients and service providers. A small recipient is defined as serving fewer than 15 beneficiaries during the grant year and employing fewer than 15 employees on any given day during the grant year.

The EO Officer must be:

- 1) A senior level employee;
- 2) Qualified in education, experience and training;
- 3) In a position that would not pose a conflict of interest; and
- 4) Staffed sufficiently to carry out his/her responsibilities.

Each WIA grant recipient must designate and publish the name and contact information for its Local EO Officer by May 31 of each year. Such EO designation shall be communicated to the State EO Officer in the Policy Department at the Indiana Department of Workforce Development, 10 North Senate Avenue, Room SE-304, Indianapolis, IN 46204 or to StateEqualOpportunityOfficer@dwd.in.gov. The Local EO Officer's identity and contact information shall appear on all internal and external communications about the WIA grant recipient's nondiscrimination and equal opportunity programs.

RESPONSIBILITIES OF THE EQUAL OPPORTUNITY OFFICER

The duties of the State and Local EO Officer are provided below.

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

- 1) Providing training and technical assistance to the Local EO Officers;
- 2) Overseeing the development and implementation of the Methods of Administration¹;
- 3) Establishing procedures for the periodic monitoring of programs and activities operated under WIA Title I; and
- 4) Investigating discrimination appeals submitted to the state-level.

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

- 1) Handling complaints of discrimination;
- 2) Conducting periodic monitoring reviews to ensure compliance of recipients receiving WIA Title I funding;
- 3) Conducting Americans with Disabilities Act (ADA) surveys at the WorkOne offices;
- 4) Reviewing the WIA grant recipient's written policies to ensure they are nondiscriminatory; and
- 5) Facilitating the assurances of the nondiscrimination requirements.

NOTICE AND COMMUNICATION REQUIREMENTS

Each WIA grant recipient must provide initial and continuing notice that it does not discriminate on any prohibited ground. The WIA grant recipient must also ensure that communication with individuals with disabilities are as effective as communication with others.

All One-Stop Operators, Regional Operators, Workforce Investment Boards and Regional Workforce Boards must ensure that the "Equal Opportunity is the Law" notice is provided to:

- Registrants, applicants, and eligible applicants/registrants;
- Participants;
- Applicants for employment and employees;
- Unions or professional organizations that hold collective bargaining or professional agreements with the WIA grant recipient;
- Sub-recipients that receive WIA Title I funds from the recipients; and
- Members of the public, including those with impaired vision or hearing.²

¹ The Methods of Administration (MOA) is a federally-mandated report submitted bi-annually to the US Department of Labor Civil Rights Center. The MOA provides information on how the state will comply, and is complying, with the nondiscrimination and equal opportunity provisions of WIA.

The “Equal Opportunity is the Law” notice (as attached in DWD Policy 2012-05) must be displayed prominently in reasonable numbers and places, disseminated in internal memoranda and other written or electronic communications and included in handbooks or manuals. Participants in WIA programs are to provide acknowledgement of the notice, either electronically or by their signature to the notice, where case files are maintained. Where a notice has been provided in an alternate format to a participant with a visual impairment, a record that such notice has been given must be made a part of the case file. The notice must also be provided in languages other than English where need is determined.

In addition, during each presentation to orient new participants, new employees, and/or the general public to its WIA Title I-financially assisted program or activity, the WIA grant recipient must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIA. The discussion of rights can include, but is not limited to, the “Program Application/Enrollment” form participants receive during the WIA enrollment process.

All brochures, pamphlets and other publications which promote WIA programs must include the following language: “This WIA Title I-funded program/activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.” Where a telephone number is provided, the materials must also include a TDD/TTY or relay service number.

REVIEW ASSURANCES, JOB TRAINING PLANS, CONTRACTS, POLICIES

Each applicant for financial assistance under Title I of WIA, as defined in §37.4, must include the following assurance language:

“As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity;

² An applicant or registrant means an individual who is interested in being considered for WIA Title I-financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient. Recipient means any entity to which financial assistance under WIA Title I is extended. Eligible applicant/registrant means an individual who has been determined eligible to participate in one or more WIA Title I-financially assisted programs or activities. Participant means an individual who has been determined to be eligible to participate in, and who is receiving aid, benefits, services or training under, a program or activity funded in whole or in part under Title I of WIA. Applicant for employment means a person or persons who make(s) application for employment with a recipient of Federal financial assistance under WIA Title I. Employee means paid staff of an organization that receives WIA funding to provide services.

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA 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.”

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 the WIA is made available.

UNIVERSAL ACCESS

WIA grant recipients must take appropriate steps to ensure that they are providing universal access to the WIA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to broaden the composition of the pool of those considered for participation or employment in their programs and activities in an effort to include members of both sexes, various racial and ethnic groups, individuals with disabilities and individuals in differing age groups.

“Reasonable efforts” may include contacts with community groups, schools, organizations that provide services to the disabled and also minority organizations. One-Stop Operators, Regional Operators, Workforce Investment Boards and Regional Workforce Boards must have a strategy for meeting this requirement and be prepared to provide such information upon request to the State EO Officer.

COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973

In providing any aid, benefits, services or training under a WIA Title I-funded program or activity, a recipient must not, directly or through contractual licensing or other arrangements, deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services or training on the basis of disability.

WIA grant recipients must provide for reasonable accommodations, modifications or programs and architectural accessibility for individuals with disabilities.³ Programs and activities must be administered in the most integrated setting. Communications with persons with disabilities must be as effective as communications with others. WIA grant

³ A reasonable accommodation and/or modification is any change in the application or registration process, and/or the delivery of programs, policies, practices, procedures, and/or the environment that allows customers with a disability to have equal opportunity to utilize WIA services.

recipients 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.

DATA AND INFORMATION COLLECTION AND MAINTENANCE

Each WIA grant recipient must collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, those terminated, employees and applicants for employment to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA. Each WIA grant recipient must record the race/ethnicity, sex, age, and where known, disability status of the specified groups.

The records must be stored in a manner that ensures confidentiality and used only for purposes of recordkeeping and reporting, determining eligibility for WIA Title I-funded programs or activities or other uses authorized by law.

In addition, the Local EO Officer must maintain a log of complaints received that allege discrimination on the grounds of WIA Section 188 and submit quarterly to the State EO Officer, every January 5, April 5, July 5, and October 5. The log is located at <http://www.in.gov/dwd/files/SF46001.xls>.

Each WIA grant recipient must maintain records for a period of not less than three years from the close of the applicable program year. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

WIA grant applicants and recipients must notify the State EO Officer of any administrative enforcement actions or lawsuits filed regarding discrimination.

MONITORING RECIPIENTS FOR COMPLIANCE

The State EO Officer is charged with establishing procedures and providing guidance to the Local EO Officer for the periodic monitoring of programs and activities operated under WIA Title I to ensure continued compliance with the nondiscrimination requirements.

The procedures will provide for:

- 1) A statistical analysis of records and data;
- 2) An investigation of any significant differences noted in the data analysis;
- 3) An assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188, e.g. recordkeeping and notice requirements; and
- 4) Obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.

CORRECTIVE ACTIONS / SANCTIONS

Where violations of WIA Section 188 are found and voluntary compliance has not been achieved, DWD may implement the sanction procedures as provided by DWD policy.

Effective Date

Immediately

Ending Date

Upon rescission

Ownership

State Equal Opportunity Officer

DWD Policy

Indiana Department of Workforce Development

10 North Senate Avenue, Room SE-304

Indianapolis, IN 46204

E-mail: StateEqualOpportunityOfficer@dwd.in.gov

Action

All One-Stop Operators, Regional Operators, Workforce Investment Boards and Regional Workforce Boards are to ensure that the nondiscrimination and equal opportunity requirements outlined in this policy are communicated to persons responsible for ensuring compliance with the nondiscrimination and equal opportunity provisions of WIA.

Documented assurances are required to give reasonable guarantee that all WIA grant recipients will comply and are complying with the nondiscrimination and equal opportunity provisions of WIA. The State EO officer will provide training and guidance on the Methods of Administration for these provisions.

All One-Stop Operators, Regional Operators, Workforce Investment Boards and Regional Workforce Boards are to designate and publish the name and contact information of its Local EO Officer by May 31 of each year. Such EO designation shall be communicated to the State EO Officer at the Indiana Department of Workforce Development, 10 North Senate Avenue, Indianapolis, IN 46204, Room SE-304, or to StateEqualOpportunityOfficer@dwd.in.gov.