

Workforce Innovation and Opportunity Act

Nebraska Department of Labor
Office of Employment & Training

Interim Policy on Equal Opportunity and Nondiscrimination

References:

Workforce Innovation and Opportunity Act, Section 188; [Workforce Innovation and Opportunity Act – Notice of Proposed Rulemaking, 20 CFR § 683.285; 29 CFR 38; 28 CFR 35; TEGL 37-14.](#)

Background:

Recipients are obligated to ensure nondiscrimination and equal opportunity, as well as nonparticipation in sectarian activities. Any entity that receives financial assistance under Title I of WIOA is a recipient including State and Local Workforce Development Boards, One-Stop operators, service providers, Job Corps contractors, and subrecipients, as well as other types of individuals and entities.¹

Action:

After a 10 day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox, ndol.wioa_policy@nebraska.gov.

Local areas need to establish a policy on equal opportunity and nondiscrimination addressing the provisions identified in this policy as well as ensure their local WIOA Plan addresses the requirements set forth in this policy.

Policy:

The Workforce Innovation and Opportunity Act (WIOA) prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, against certain noncitizens, sex-based stereotypes (including stereotypes about how persons of a particular sex are expected to look, speak, or act). This includes:

Prohibition on Discrimination regarding Participation, Benefits, and Employment

No individual is to be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.²

¹ 20 CFR §683.285(a)(1)

² WIOA Section 188(a)(2)

Prohibition Involving Facilities for Sectarian Instruction or Religious Worship

Participants shall not be employed under WIOA Title I to carry out the construction, operation, or maintenance of any part of any facility that is used or is to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to WIOA participants).³

Prohibition on Discrimination on Basis of Participant Status

No person may discriminate against an individual who is a participant in a program or activity that receives funds under WIOA Title I with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.⁴

Prohibition on Discrimination Against Certain Noncitizens

Participation in programs and activities or receiving funds under WIOA Title I shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.⁵

Verification of Lawful Presence⁶

Each agency responsible for determining eligibility for WIOA benefits in Nebraska is required to:

1. Have each applicant for WIOA services attest that he or she is a U.S. citizen or a qualified alien. This must be done using the format prescribed by the Nebraska Department of Administrative Services (DAS).
 - If in the above Step 1, the applicant indicates he or she is an alien, then complete Step 2 as follows:
2. Verify his or her lawful presence in the United States using the SAVE (Systematic Alien Verification for Entitlements) Program operated by the U.S. Department of Homeland Security.

³ WIOA Section 188(a)(3)

⁴ WIOA Section 188(a)(4)

⁵ WIOA Section 188(a)(5)

⁶ Neb. Rev. Stat. § 4-108

Prohibition on Discrimination on the Basis of Disability

Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.⁷ For the purpose of applying these prohibitions against discrimination on the basis of disability, programs and activities funded or otherwise financially assisted in whole or in part under WIOA are considered to be programs and activities receiving Federal financial assistance.⁸ A recipient is obligated to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIOA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 188 of WIOA.⁹ Financial assistance provided under Title I of WIOA may be used to meet this obligation.¹⁰

Prohibition on Sex Discrimination against Lesbian, Gay, Bisexual and Transgender (LGBT) Individuals

Entities in the public workforce systems are prohibited from discriminating on the basis of sex-based stereotypes, including stereotypes about how persons of a particular sex are expected to look, speak, or act.¹¹ See [TEGL 37-14, Attachment 2](#) for a non-exhaustive list of examples of unlawful discrimination against LGBT individuals.

Equal Opportunity Officer

Every recipient must designate an Equal Opportunity Officer (EO Officer), except small recipients and service providers.¹² A small recipient is defined as serving fewer than 15 beneficiaries during the entire grant year and employing fewer than 15 employees on any given day during the grant year.¹³

The EO Officer should be a senior level employee of the recipient. He or she must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.¹⁴

The Nebraska Department of Labor is the WIOA Title I Grant Recipient Agency and Terri Slone is the EO Officer for State issues related to the grant. The EO Officer also serves as EO Officer for the Nebraska Department of Labor, and may be contacted at:

⁷ [29 USC § 794](#)

⁸ WIOA Section 188(a)(1)

⁹ 20 CFR §683.285(a)(3)

¹⁰ *Id.*

¹¹ TEGL 37-14, Attachment 2

¹² 29 CFR § 38.23

¹³ 29 CFR § 38.4

¹⁴ 29 CFR § 38.24

Terri Slone, EO Officer
Nebraska Department of Labor
550 S. 16th Street
P.O. Box 94600
Lincoln, NE 68509-4600
(402) 471-8358 TDD (800) 833-7352

The EO Officer is responsible for:

- Serving as the recipient's liaison with Civil Rights Center (CRC);
- Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I funds from the recipient, to make sure that the recipient and its sub-recipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I and 29 CFR Part 38;
- Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
- Developing and publishing the recipient's procedures for processing discrimination complaints and making sure that those procedures are followed;
- Reporting directly to the Director of Administrative Services and the Commissioner of Labor about equal opportunity matters;
- Undergoing training (at the recipient's expense) to maintain competency; and
- If applicable, overseeing the development and implementation of the recipient's Methods of Administration.¹⁵

Notice and Communication

Each recipient must provide initial and continuing notice that it does not discriminate on any prohibited grounds. The notice must be provided to: registrants, applicants, participants, applicants for employment and employees, unions or professional organizations that hold collective bargaining or professional agreements with the recipient, subrecipients that receive Title I funds from the recipient, and members of the public, including those with impaired vision or hearing. The recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.¹⁶

The specific wording in the notice is identified in 29 CFR § 38.30 and in Attachment A.

¹⁵ 29 CFR § 38.25

¹⁶ 29 CFR § 38.29

At a minimum, the notice must be:

- Posted prominently, in reasonable numbers and places;
- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks or manuals; and
- Made available to each participant, and made part of each participant's file.¹⁷

The notice must be provided in appropriate formats to individuals with visual impairments. Where notice has been given in an alternate format, a record that such notice has been given must be made a part of the participant's file.¹⁸ All brochures, pamphlets, and other publications which promote or broadcast WIOA program information must include the following tag line: "This WIOA Title I-financially assisted 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.¹⁹

Where a significant number or proportion of the population eligible to be served may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity, then the recipient must:

- Consider the scope of the program/activity and the size and concentration of the population that needs services or information in a language other than English, and
- Based on those considerations, take reasonable steps to provide services and information in appropriate languages.²⁰

In cases where there is not a significant proportion of the population that is limited-English-speaking, the recipient should still make reasonable efforts to meet the particularized language needs of individuals seeking services or information from the recipient.²¹ For more information, please see the NDOL Office of Employment and Training's Limited English Proficiency Plan. This plan is located at http://www.dol.nebraska.gov/answers/wia/plan/Newlep_plan.pdf.

To afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIOA Title I program or activity, a recipient must furnish (at no cost to the individual) appropriate auxiliary aids or services where necessary. In determining what

¹⁷ 29 CFR § 38.31(a)

¹⁸ 29 CFR § 38.31(b)

¹⁹ 29 CFR § 38.34

²⁰ 29 CFR § 38.35(a)

²¹ 29 CFR § 38.35(b)

type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability.²² Primary consideration means honoring the choice of the individual with a disability unless the agency can demonstrate that another effective means of communication exists, or that using the means chosen would result in a fundamental alteration in the service, program, or activity, or undue financial and administrative burdens.²³

Assurances

Each application for financial assistance under Title I of WIOA must include the following assurance:

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

- Section 188 of the WIOA, 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 WIOA Title I-financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin in programs or activities that receive federal financial assistance;
- Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the bases 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 Americans with Disabilities Act, as amended, which prohibits discrimination on the basis of disability;
- 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.

²² 29 CFR § 38.9(b)

²³ 28 CFR Part 35.160(b)(2), 28 CFR 35 Subpart E – Communications

The grant applicant also assures that 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.²⁴

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 WIOA is made available, whether or not it is physically incorporated in such document and whether or not there is a written agreement between USDOL and the recipient, between the U.S. Department of Labor and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.²⁵

Orientations

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted program or activity, a recipient must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIOA, including the right to file a complaint of discrimination with the recipient or Civil Rights Center Director.²⁶

A hard copy of "Equal Opportunity is the Law" should be provided and signed by all participants and employees and retained on file. An example form is provided in Attachment A.

Universal Access

Recipients must take appropriate steps to ensure that they are providing universal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. Such efforts may include, but are not limited to:

- 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; and

²⁴ 29 CFR § 38.20(a)(1)

²⁵ 29 CFR § 38.20(a)(2)

²⁶ 29 CFR § 38.36

- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.²⁷

Reasonable Accommodations

With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation 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. A recipient must not, directly or through contractual, licensing, or other arrangements, refuse to accommodate an individual's religious practices or beliefs unless to do so would result in undue hardship. Definitions of the terms "reasonable accommodation" and "undue hardship" are specified in 29 CFR § 38.4.²⁸

Complaints

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIOA or the regulations implementing the nondiscrimination provisions may file a written complaint, either by him/herself or through a representative. The complainant may file with either the recipient's Equal Opportunity Officer or to:

Director
Civil Rights Center
U.S. Department of Labor
Room N4123
200 Constitution Avenue, NW
Washington, D.C. 20210²⁹

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the CRC Director may extend the filing time.³⁰

Each complaint must be filed in writing, and must contain the following:

- Complainant's name and address (or another means of contacting the complainant);
- The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
- A description of the complainant's allegations. This description must include enough detail to allow the CRC Director or the recipient, as applicable, to decide

²⁷ 29 CFR § 38.42

²⁸ 29 CFR § 38.8(a)

²⁹ 29 CFR § 38.30 and § 38.71

³⁰ 29 CFR § 38.30

who has jurisdiction over the complaint, whether the complaint was filed on time, and the merit of the complaint (whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA or the regulations); and

- The complainant's signature or the signature of the complainant's authorized representative.³¹

If a complaint is filed with the recipient, the complainant 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 (CRC)³². If the recipient does not give the complainant a written Notice of Final Action within 90 days of the day the complaint was filed, the complainant does not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, the CRC complaint must be filed within 30 days of the 90-day deadline (in other words, within 120 days after the day on which the complainant filed the complaint with the recipient).³³ If the recipient does give the complainant a written Notice of Final Action on the complaint, but the complainant is dissatisfied with the decision or resolution, the complainant may file a complaint with CRC. The complainant must file the CRC complaint within 30 days of the date on which he/she received the Notice of Final Action.³⁴

Recipient's Discrimination Complaint Processing Procedures

The procedures that a recipient adopts and publishes must provide that the recipient will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed.

The procedures must include the following elements:

- An initial, written notice to the complainant that contains an acknowledgment that the recipient has received the complaint and notice that the complainant has the right to be represented in the complaint process.
- A written statement of the issue(s), provided to the complainant, that includes the following information – a list of the issues raised in the complaint, and for each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection. If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant in writing, immediately. This Notice of Lack of Jurisdiction must include a statement of the reasons for that determination and notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant

³¹ 29 CFR § 38.73

³² 29 CFR § 38.30

³³ 29 CFR § 38.80

³⁴ 29 CFR § 38.79

receives the Notice. The recipient may want to correspond through certified mail in order to verify date of receipt.

- A period for fact-finding or investigation of the circumstances underlying the complaint.
- A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR). The ADR procedures must provide that the choice whether to use ADR or the customary process rests with the complainant. The procedures must allow for a party to any agreement reached under ADR to file a complaint with the CRC Director in the event the agreement is breached. If that happens, then the non-breaching party may file a complaint with the CRC Director within 30 days of the date on which the non-breaching party learns of the alleged breach and the CRC Director must evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the CRC Director will waive the time deadline for filing such a complaint. If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC Director.
- A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed. The Notice of Final Action must contain for each issue raised, a statement of either the recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue. In addition, it must include notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if he or she is dissatisfied with the recipient's final action on the complaint.³⁵

Where state or local laws explicitly bar discrimination based on gender identity and/or sex stereotyping, EO officers should advise participants and employees that additional state and local laws may also cover their claims, and how to file a complaint.³⁶

Failure to Comply

Whenever the United States Secretary of Labor finds that a State or other recipient of funds under WIOA Title I has failed to comply with this provision of the law, the Secretary shall notify such State or recipient and shall request that compliance takes place. If within a reasonable period of time, not to exceed 60 days, the State or recipient fails or refuses to comply, the Secretary may:

- Refer the matter to the United States Attorney General with a recommendation that an appropriate civil action be instituted; or

³⁵ 29 CFR § 38.76

³⁶ TEGL 37-14

- Take such other action as may be provided by law.³⁷

Once a referral is received or if the United States Attorney General has reason to believe that a State or other recipient of WIOA Title I funds is engaged in a pattern or practice of discrimination, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.³⁸

Data and Information Collection and Maintenance

Each recipient must collect and maintain records to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of the WIOA.

Records must be collected and maintained on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status of the specified groups. These records must be maintained for a period of not less than three years from the close of the applicable program year.³⁹

The information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting, determining eligibility for WIOA Title I-financially assisted programs/activities, or other uses authorized by law.⁴⁰

Each recipient must maintain, and submit upon request of the State EO Officer or the Civil Rights Center, a log of complaints that allege discrimination. The log must include the name and address of the complainant, the status of the complainant (i.e., employee, WIOA participant, applicant, etc.), the grounds for the complaint, a description of the complaint, the date the complaint was filed, the disposition and date of disposition of the complaint, and whether or not the complaint utilized an alternative dispute resolution (ADR) process. The USDOL Civil Rights Center requires that all Discrimination Complaint Logs are submitted utilizing the electronic format they have established. The State Equal Opportunity Officer shall provide this electronic form on request. Records regarding complaints and actions taken on the complaints must be maintained for a period of not less than three years from the date of resolution of the complaint.⁴¹

When any administrative enforcement action or lawsuit is filed against a grant applicant and recipient alleging discrimination on the ground(s) of race, color, religion, sex, 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, the grant applicant

³⁷ WIOA Section 188(b)

³⁸ WIOA Section 188(c)

³⁹ 29 CFR § 38.37(b)

⁴⁰ *Id.*

⁴¹ 29 CFR § 38.37(c)

and recipient must promptly notify the Director of the Civil Rights Center. This notification must include: the names of the parties to the action or lawsuit; the forum in which each case was filed; and the relevant case numbers.⁴²

Disclaimer:

This policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

⁴² 29 CFR § 38.38

ATTACHMENT A
EXAMPLE

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, national origin, age, disability, political affiliation or belief; and

against any beneficiary of programs financially assisted under Title I of the Workforce Innovation and Opportunity Act (WIOA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her 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.

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:

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.

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 do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. 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 the Director of the CRC (at above address). You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

29 CFR 38.30

I, _____, acknowledge
that I have received a copy of the Equal Opportunity is the Law Notice.

NAME _____ DATE _____