

## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

Nebraska Department of Labor (NDOL) Office of Employment and Training 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.2022 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	<b>Policy category</b> Nondiscrimination and Equal Opportunity
	<b>Effective date</b> September 25, 2017
	<b>Supersedes</b> Interim Policy on Equal Opportunity and Nondiscrimination (Rev. 11/6/2015)

## Nondiscrimination and Equal Opportunity, Change 1

### REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

### BACKGROUND

All recipients of WIOA Title I financial assistance must ensure nondiscrimination and equal opportunity in their provision of WIOA Title I services.<sup>1</sup>

Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the implementing regulations of WIOA Sec. 188, codified at 29 CFR Part 38, and are administered and enforced by the US Department of Labor Civil Rights Center (CRC).<sup>2</sup>

<sup>1</sup> 20 CFR § 683.285(a)(1)

<sup>2</sup> 20 CFR § 683.285(a)(2); 29 CFR § 38.20; TEGL 37-14

## CHANGES

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This Change 1 implements the following material changes to the State's<sup>3</sup> policy on Nondiscrimination and Equal Opportunity:

- [Section II\(a\)\(8\)\(iv\)](#) has been corrected to reflect a three (3) year retention period for records, rather than five (5) year period.

## ACTION

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This policy supersedes and cancels the State's policy on Nondiscrimination and Equal Opportunity (effective September 6, 2017).

This policy is effective on the date stated on page 1. The State provides a thirty (30) day review period on this policy, during which questions and comments may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board must:

- meet the obligation to ensure nondiscrimination and equal opportunity as described in detail in [Section I](#); and
- ensure equal access to programs and services as described in detail [Section II](#).

## POLICY

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The purpose of this policy is to:

- define recipient obligations regarding nondiscrimination and equal opportunity under WIOA Sec. 188 and 29 CFR Part 38, including:
  - applicability, meaning the recipients to which the obligations apply; and
  - prohibited activities and limitations on activities;
- establish the requirements and procedures regarding nondiscrimination and equal opportunity under WIOA Sec. 188 and 29 CFR Part 38; and
- identify the consequences for failure to comply with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and 29 CFR Part 38.

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<sup>3</sup> The term "State" refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor's behalf pursuant to the Governor's Executive Order No. 15-03).

This policy is organized in three (3) sections and two (2) appendices.

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## **Section I. Obligation to ensure Nondiscrimination and Equal Opportunity**

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All recipients of WIOA Title I financial assistance must comply with;

- the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and its implementing regulations provided at 29 CFR Part 38, including:<sup>4</sup>
  - the requirements of 29 CFR Part 32, Subparts B and C and Appendix A, which are the regulations requirements pertaining to employment practices and employment-related training, program accessibility and reasonable accommodation;<sup>5</sup>
  - the requirements of Titles I, II and III of the Americans with Disabilities Act of 1990 (ADA);<sup>6</sup> and
  - all applicable obligations the recipient may have under:<sup>7</sup>
    - the Equal Pay Act of 1963, as amended;
    - Title VII of the Civil Rights Act of 1964, as amended;
    - the anti-discrimination provision of the Immigration and Nationality Act of 1965, as amended;
    - Executive Order 11246 (c. 1965), as amended, pertaining to equal employment opportunity regarding Federal contractors and Federally-assisted constructions contractors and subcontractors;
    - the Age Discrimination in Employment Act of 1967, as amended;
    - Title IX of the Education Amendments of 1972, as amended;
    - Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to nondiscrimination and individuals with a disability;

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<sup>4</sup> 20 CFR § 683.285

<sup>5</sup> 29 CFR § 38.3(b)

<sup>6</sup> 29 CFR § 38.3(c)

<sup>7</sup> 29 CFR § 38.3(d)

- the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and
- the Age Discrimination Act of 1975, as amended; and
- Executive Order 13160 (c. 2000) pertaining to nondiscrimination and parents in Federally-conducted education and training programs.

The obligation to comply with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 or 29 CFR Part 38 are not excused or reduced by any:<sup>8</sup>

- state or local law or other requirement; or
- private organization rules or policies.

#### (a) Applicability

The requirements of WIOA Sec. 188 and 29 CFR Part 38 apply to:<sup>9</sup>

- each recipient of WIOA Title I financial assistance;
- each one-stop partner, and its programs and activities, that are part of the one-stop delivery system; and
- the employment practices of each recipient, to the extent the employment is in the administration of or in connection with programs and activities conducted under WIOA Title I or the one-stop delivery system.

The requirements of WIOA Sec. 188 and 29 CFR Part 38 do not apply to:<sup>10</sup>

- programs or activities that are financially assisted under laws other than WIOA Title I and are not part of the one-stop delivery system, including programs or activities implemented under the Workforce Investment Act of 1998;
- contracts of insurance or guaranty;
- Federal procurement contracts, with the exception of contracts to operate or provide services to Job Corps Centers.

#### (b) Prohibitions

In general, recipients are prohibited from using any method that has the purpose or effect of subjecting individuals to discrimination on a prohibited ground due to the recipient's administration of facilities and programs providing aid, benefits, service, or training.<sup>11</sup>

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<sup>8</sup> 29 CFR § 38.24

<sup>9</sup> 29 CFR § 38.2(a)

<sup>10</sup> 29 CFR § 38.2(b)

<sup>11</sup> TEGL 37-14

## (1) Discrimination and harassment<sup>12</sup>

WIOA Sec. 188 prohibits discrimination and harassment based on race, color, religion, sex (including pregnancy<sup>13</sup>), national origin, age, disability, or political affiliation or belief.

In addition, WIOA Sec. 188 prohibits discrimination against and harassment of any WIOA Title I program applicant or participant on the basis of citizenship status or participation in a WIOA Title I financially assisted program or activity.

Further, a recipient must not exclude any individual from, or restrict any individual's participation in, any program or activity based on the recipient's belief or concern that the individual will encounter limited future employment opportunities because of the individual's race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship status, or participation in a WIOA Title I financially assisted program or activity.<sup>14</sup>

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 described in 29 CFR § 38.5, except when such treatment is permitted under 29 CFR Part 38 or Federal law.<sup>15</sup>

## (2) Intimidation and retaliation

A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has, with regard to the requirements and obligations of WIOA Sec. 188 or 29 CFR Part 38:<sup>16</sup>

- filed a complaint alleging a violation;
- opposed a practice prohibited by the nondiscrimination and equal opportunity provisions;
- furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:
  - administration of the nondiscrimination and equal opportunity provisions;
  - exercise of authority under those provisions;
  - exercise of privilege secured by those provisions; or
  - otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions.

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<sup>12</sup> 29 CFR § 38.1; refer to 29 CFR §§ 38.6 – 38.12 for details on specifically prohibited actions.

<sup>13</sup> 29 CFR § 38.8

<sup>14</sup> 29 CFR § 38.24(c)

<sup>15</sup> 29 CFR § 38.38(c)

<sup>16</sup> 29 CFR § 38.19

### (3) Assistance for facilities for religious instruction or worship<sup>17</sup>

Except as described in [Section I\(c\)\(1\)](#), WIOA Title I program funds must not be used to subsidize the *employment* of individuals participating in WIOA Title I programs where the participant would be carrying out the *construction, operation, or maintenance* of any part of any facility that is used or will be used for religious instruction or worship.

#### (c) Exceptions and limitations

##### (1) Facilities for religious instruction or worship<sup>18</sup>

The prohibition against use of WIOA Title I funds for facilities for religious instruction or worship, as described above, does not apply to maintenance of a facility that is not primarily or inherently devoted to religious instruction or worship when the organization operating the facility is part of a program or an activity providing services to WIOA Title I participants.

##### (2) Employment and training in religious activities<sup>19</sup>

WIOA Title I funds may be used to support employment and training in religious activities when the assistance is indirect.

Financial assistance for employment in religious activities is considered *indirect* when the participant has been provided with a genuine and independent opportunity to choose the provider of the employment, even where the local WIOA Title IB service provider pays the provider of employment directly.

Financial assistance for training in religious activities is considered *indirect* when the participant:

- is given a genuine and independent private choice among training providers or program options, which must be provided in a manner that maximizes informed consumer choice; and
- can freely elect, from among those options, to receive training in religious activities.

For training in religious activities, individual training accounts (ITAs) are considered *indirect* assistance.

## **Section II. Requirements and Procedures**

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In addition to the specific requirements described in this section, each local board, in general, must ensure that its local American Job Center(s) provides equal access to programs and services.<sup>20</sup>

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<sup>17</sup> WIOA Sec. 188(a)(3)

<sup>18</sup> Ibid.

<sup>19</sup> TEGL 1-05

<sup>20</sup> TEGL 37-14

## (a) Requirements

### (1) Accessibility

**Physical Accessibility.**<sup>21</sup> Each recipient must insure that no qualified individual with a disability is 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.

**Programmatic accessibility.** Each recipient must insure that all WIOA Title I financially assisted programs and activities are programmatic accessible, which includes:<sup>22</sup>

- 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.

### (2) Reasonable accommodations and modifications

With regard to employment and aid, benefits, service, and training, 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;<sup>23</sup> and
- 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.<sup>24</sup>

### (3) Communications

Each recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, including communications with

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<sup>21</sup> 29 CFR § 38.13(a)

<sup>22</sup> 29 CFR § 38.13(b)

<sup>23</sup> 29 CFR § 38.14(a)

<sup>24</sup> 29 CFR § 38.14(b)

program applicants and participants, applicants for employment and employees, members of the public, and their companions.<sup>25,26</sup>

#### (4) Assurances<sup>27</sup>

Each recipient of WIOA Title I financial assistance must provide written assurances that it will adhere to and comply with the requirements of WIOA Sec. 188 and 29 CFR Part 38.

- In the case of a local board, the assurances are included in the local board's WIOA grant agreement with the Nebraska Department of Labor (NDOL).
- For all other recipients of WIOA Title I financial assistance provided through the local board, the assurances must be provided in writing as part of an appropriate written agreement between the recipient and the local board or its authorized designee.

#### (5) Equal Opportunity Officers<sup>28</sup>

Every recipient must designate an Equal Opportunity Officer (EO Officer), except small recipients and service providers.

1. The EO Officer should be a senior-level employee of the recipient.
2. The EO Officer must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.
3. The EO Officer is responsible for:
  - a. serving as the recipient's liaison with CRC;
  - b. monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations;
  - c. reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
  - d. developing and publishing the recipient's procedures for processing discrimination complaints and making sure that those procedures are followed;
  - e. reporting directly to the Commissioner of Labor and the NDOL State-level EO Officer (identified below) on nondiscrimination and equal opportunity matters;

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<sup>25</sup> 29 CFR § 38.15(a)

<sup>26</sup> *Companion* means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training, program, or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate [29 CFR § 38.15(a)(ii)].

<sup>27</sup> 29 CFR §§ 38.25 and 38.26

<sup>28</sup> 29 CFR §§ 38.28 – 38.33



- f. undergoing training (at the recipient's expense) to maintain competency as an EO Officer; and
- g. if applicable, overseeing the development and implementation of the recipient's Methods of Administration.

In Nebraska, NDOL is the WIOA Title I grant recipient agency and Terri Slone is the State-level EO Officer for state issues related to the grant. The State-level EO Officer also serves as a State-level EO Officer for NDOL and may be contacted at:

Terri Slone  
State-level EO Officer  
Nebraska Department of Labor  
550 South 16<sup>th</sup> Street  
PO Box 94600  
Lincoln, NE 68509-4600  
(402) 471-8358  
TDD (800) 833-7352

Service providers are not required to designate an EO Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and 29 CFR Part 38 rests with the Governor or local area grant recipient (*i.e.*, Chief Elected Official), as specified in the state's nondiscrimination plan.<sup>29</sup>

#### (6) Equal Opportunity Notice<sup>30</sup>

Each recipient of WIOA Title I financial assistance must provide initial and continuing notice that it does not discriminate on any prohibited basis. 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 WIOA Title I financial assistance from the recipient; and
- members of the public, including those with impaired vision or hearing and those with limited English proficiency.

The notice must contain the specific wording identified in 29 CFR § 38.35, which is provided as [APPENDIX II](#) of this policy.

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<sup>29</sup> 29 CFR § 38.33

<sup>30</sup> 29 CFR § 38.34

(i) Publications, broadcasts, and other communications

**Publication of the Equal Opportunity Notice.**<sup>31</sup> At a minimum, the Equal Opportunity Notice must be:

- posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's web site 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; and
- made part of each participant's and employee's file and be a part of both paper and electronic files, if both are maintained.

In addition, the Equal Opportunity Notice must be:

- provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments;
- provided to participants in appropriate languages other than English;<sup>32</sup> and
- initially published and provided within ninety (90) calendar days of the latter of:
  - January 3, 2017; or
  - the first date the requirements of WIOA Sec. 188 and 29 CFR Part 38 apply to the recipient (*i.e.*, within ninety (90) days of first becoming a recipient).

**IMPORTANT.** Where the Equal Opportunity 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 that the alternate-format notice has been given must be made a part of the employee's or participant's file.

**Printed and electronic materials and verbally-provided information.**<sup>33</sup> Recipients must indicate that:

- the WIOA Title I financially assisted program or activity in question is an *equal opportunity employer/program*; and
- *auxiliary aids and services are available upon request to individuals with disabilities.*

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<sup>31</sup> 29 CFR § 38.36

<sup>32</sup> 29 CFR § 38.9

<sup>33</sup> 29 CFR § 38.38(a)

This requirement applies to 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 WIOA Title I financially assisted program or activities or the requirements for participation by recipients and participants.

When these materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or other equally effective telecommunications system, such as a relay service, videophone, or captioned telephone used by the recipient.

**Information provided through news media.**<sup>34</sup> Recipients that publish or broadcast program information in the news media must ensure that the publications and broadcasts state that:

- the WIOA Title I financially assisted program 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
- *auxiliary aids and services are available upon request to individuals with disabilities.*

#### (ii) 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 CRC Director.<sup>35</sup> This information must be communicated in appropriate languages and in formats accessible for individuals with disabilities.<sup>36</sup>

When possible, the Equal Opportunity Notice should be provided in print and signed by WIOA Title I program participants and employees of the recipient and retained on file.

#### (7) Affirmative outreach<sup>37</sup>

Recipients must take appropriate steps to ensure that 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 under 29 CFR Part 38, including but not limited to:

- individuals with limited English proficiency;
- individuals with disabilities;
- persons of different sexes and age groups; and
- persons of various racial and ethnic/national origin groups and religions.

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<sup>34</sup> 29 CFR § 38.38(b)

<sup>35</sup> 29 CFR § 38.36

<sup>36</sup> 29 CFR §§ 38.9, 38.15, and 38.39

<sup>37</sup> 29 CFR § 38.40

## (8) Collection and maintenance of EO data<sup>38</sup>

Each recipient must collect data and maintain records the CRC Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and 29 CFR Part 38.

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

Records must be collected and maintained on:

- program 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 groups specified above.

Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee.

This collected information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of:

- recordkeeping and reporting;
- determining eligibility, where appropriate, for WIOA Title I financially assisted programs or activities;
- determining the extent to which the recipient is operating its WIOA Title I financially assisted program or activity in a nondiscriminatory manner; or
- other use authorized by law.

### (i) Medical and disability-related information

Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms.

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<sup>38</sup> 29 CFR § 38.41

All such information, whether in hard copy, electronic, or both, must be:

- maintained in one (1) or more separate files, apart from any other information about the individual; and
- treated as confidential.

Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

(ii) **Complaints**<sup>39</sup>

Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with the recipient that allege discrimination on the basis of:

- race;
- color;
- religion;
- sex (including pregnancy, childbirth, and related medical conditions);
- national origin;
- age;
- disability;
- political affiliation or belief;
- citizenship; or
- participation in a WIOA Title I financially assisted program or activity.

The log must include:

- the name and address of the complainant;
- the basis of the 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.

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<sup>39</sup> 29 CFR 38.41(c)

Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or local area grant recipient, as provided in the state's nondiscrimination plan.

(iii) Information to be provided to CRC

(A) Notification of administrative enforcement actions or lawsuits<sup>40</sup>

Each recipient must promptly notify the CRC Director 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);
- 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:

- names of the parties to the action or lawsuit;
- forum in which each case was filed; and
- relevant case numbers.

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<sup>40</sup> 29 CFR § 38.42(a)

## (B) Compliance reviews and complaint investigations<sup>41</sup>

Each recipient, as part of a compliance review<sup>42</sup> or monitoring activity<sup>43</sup> conducted or carried out by the CRC Director, must provide the following information:

- the name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
- information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity.

This information must include the:

- names of the parties;
- forum in which each case was filed; and
- relevant case numbers.

At the discretion of the CRC Director, recipients may be required to provide, in a timely manner, any information and data that the Director considers necessary to investigate complaints and conduct compliance reviews on bases prohibited under the nondiscrimination and equal opportunity provisions of WIOA and this part.

At the discretion of the CRC Director, recipients may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the CRC Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part.

Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

### (iv) Records retention<sup>44</sup>

Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three (3) years from the close of the applicable program year:

- records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and
- other records as are required under 29 CFR Part 38 or by the CRC Director.

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<sup>41</sup> 29 CFR § 38.42(b)

<sup>42</sup> 29 CFR § 38.63

<sup>43</sup> 29 CFR § 38.65

<sup>44</sup> 29 CFR § 38.43

Where a discrimination complaint has been filed or compliance review initiated, every recipient that possesses or maintains any type of hard-copy or electronic record related to the complaint (including records that have any relevance to the underlying allegations in the complaint, as well as records regarding actions taken on the complaint) or to the subject of the compliance review must preserve all records, regardless whether hard-copy or electronic, that may be relevant to a complaint investigation or compliance review, and maintain those records for a period of not less than three (3) years from the date of final action related to resolution of the complaint or compliance review.

#### (v) Records access<sup>45</sup>

Each recipient must permit access by the CRC Director or the Director's designee during its hours of operation to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, or monitoring activities associated with a state's development and implementation of a nondiscrimination plan, and for inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA or this part.

Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 and 29 CFR Part 38.

Whenever any information that the Director asks a recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the recipient made to obtain it.

#### (b) Procedures

##### (1) Complaint filing<sup>46</sup>

Any individual, or individual's representative, who believes that the individual or any specific class of individuals, has been or is being subjected to discrimination, harassment, or retaliation prohibited under WIOA Sec. 188 or 29 CFR Part 38 may file a written complaint. The complaint may be filed with the:

- recipient's EO Officer; or
- Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, DC 20210.

Generally, a complaint must be filed within one hundred eighty (180) days of the alleged discrimination, harassment, or retaliation. However, for good cause shown, the CRC Director may

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<sup>45</sup> 29 CFR § 38.44

<sup>46</sup> 29 CFR § 38.69



extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent

#### (i) Required contents

Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

- the complainant's name, mailing address, and, if available, email 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, which must include enough detail to allow the CRC Director or the recipient, as applicable, to decide whether:
  - CRC or the recipient, as applicable, has jurisdiction over the complaint;
  - the complaint was filed in time; and
  - the complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 or 29 CFR Part 38; and
- the written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

A complaint may be filed by completing and submitting CRC's Complaint Information Form and Privacy Act Consent, which may be obtained either from the recipient's EO Officer or from CRC. The forms are available electronically on CRC's website<sup>47</sup> and in hard copy via postal mail upon written request to Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, DC 20210.

#### (ii) Right to representation

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.<sup>48</sup>

### (2) Complaint processing procedures for recipients<sup>49</sup>

The procedures that a recipient adopts and publishes for processing complaints permitted under WIOA Sec. 188 and 29 CFR Part 38 must state that the recipient will issue a written notice of final action on complaints within ninety (90) calendar days of the date on which the complaint is filed.

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<sup>47</sup> The Complaint Information Form and Privacy Act Consent Form are accessible at <https://www.dol.gov/oasam/programs/crc/filing-complaint.htm>.

<sup>48</sup> 29 CFR § 38.71

<sup>49</sup> 29 CFR § 68.72

At a minimum, the procedures must include the following elements:

- initial, written notice to the complainant that contains the following information:
  - an acknowledgment that the recipient has received the complaint; and
  - notice that the complainant has the right to be represented in the complaint process;
  - notice of rights contained in 29 CFR § 38.35; and
  - notice that the 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 into the non-English languages as required in 29 CFR §§ 38.4(h) – (i), 38.34, and 38.36.
- 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.
- a period for fact-finding or investigation of the circumstances underlying the complaint;
- a period during which the recipient attempts to resolve the complaint which must include alternative dispute resolution (ADR), as described in 29 CFR § 38.72(c) and [Section II\(b\)\(2\)\(i\)](#);
- a written notice of final action, provided to the complainant within ninety (90) calendar days of the date on which the complaint was filed, that contains the following information:
  - for each issue raised in the complaint, 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; and
  - notice that the complainant has a right to file a complaint with CRC within thirty (30) days of the date on which the notice of final action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

### (i) Alternative dispute resolution (ADR)<sup>50</sup>

The recipient's ADR procedures must provide for the following.

- The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.
- The choice whether to use ADR or the customary process rests with the complainant.
- A party to any agreement reached under ADR may notify the CRC Director in the event the agreement is breached. In such circumstances, the following rules will apply.
  - The non-breaching party may notify with the CRC Director within thirty (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 the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC Director as described in 29 CFR §§ 38.69 – 38.71.

### (3) Complaint processing procedures for service providers<sup>51</sup>

The Governor or the local area grant recipient (*i.e.*, Chief Elected Official), as provided in the state's nondiscrimination plan, must develop and publish, on behalf of its service providers, the complaint processing procedures required in 29 CFR § 38.72. The service providers must then follow those procedures.

### (4) Notice of recipient's lack of jurisdiction<sup>52</sup>

If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing within five (5) business days of making such determination. 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 thirty (30) days of the date on which the complainant receives the notice.

### (5) Notice of Final Action<sup>53</sup>

If the recipient issues a notice of final action before the ninety (90) calendar day period ends, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or

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<sup>50</sup> 29 CFR § 38.72(c)

<sup>51</sup> 29 CFR § 38.73

<sup>52</sup> 29 CFR § 38.74

<sup>53</sup> 29 CFR §§ 38.75 and 38.76

the complainant's representative may file a complaint with the CRC Director within thirty (30) days after the date on which the complainant receives the notice.

If, by the end of ninety (90) calendar days from the date on which the complainant filed the complaint, the recipient has failed to issue a notice of final action, the complainant or the complainant's representative may file a complaint with the CRC Director within thirty (30) calendar days of the expiration of the ninety (90) calendar day period. In other words, the complaint must be filed with the CRC Director within one hundred twenty (120) calendar days of the date on which the complaint was filed with the recipient.

### **Section III. Failure to Comply<sup>54</sup>**

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Whenever the Secretary of Labor finds that a state or other recipient of WIOA Title I financial has failed to comply with the requirements of WIOA Sec. 188 or 29 CFR Part 38, the Secretary must notify the state or recipient and must request that compliance takes place. If within a reasonable period of time, not to exceed sixty (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
- take such other action as may be provided by law.

Once a referral is received or if the United States Attorney General has reason to believe that the state or recipient of WIOA Title I financial assistance 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.<sup>55</sup>

### **DISCLAIMER**

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules and guidance released by the US Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

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<sup>54</sup> WIOA Sec. 188(b)

<sup>55</sup> WIOA Sec. 188(c)

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.<sup>56</sup>

### 1. aid, benefits, service, or training

*Aid, benefit, service, or training* means WIOA Title I-financially assisted services, financial or other aid, training, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. *Aid, benefit, service, or training* includes, but is not limited to:<sup>57</sup>

- career services;
- education or training;
- health, welfare, housing, social service, rehabilitation, or other supportive services;
- work opportunities;
- cash, loans, or other financial assistance to individuals; and
- any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIOA.

### 2. applicant

*Applicant* means an individual who is interested in being considered for any WIOA Title I financially assisted aid, benefit, service, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient.<sup>58</sup>

### 3. financial assistance

*Financial assistance* means any of the following:<sup>59</sup>

- any grant, subgrant, loan, or advance of funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- provision of the services of grant making agency personnel, or of other personnel at the grant making agency's expense;

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<sup>56</sup> Additional definitions relating to nondiscrimination and equal opportunity are provided in 29 CFR § 38.4.

<sup>57</sup> 29 CFR § 38.4(b)

<sup>58</sup> 20 CFR § 38.4(c)

<sup>59</sup> 29 CFR § 38.4(x)

- a grant or donation of real or personal property or any interest in or use of such property, including:
  - transfers or leases of property for less than fair market value or for reduced consideration;
  - proceeds from a subsequent sale, transfer, or lease of such property, if the grant making agency's share of the fair market value of the property is not returned to the grant making agency; and
  - the sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:
    - without consideration;
    - at a nominal consideration; or
    - at a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;
    - waiver of charges that would normally be made for the furnishing of services by the grant making agency; and
    - any other agreement, arrangement, contract or subcontract (other than a procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under the statute or policy that authorizes assistance by the grant making agency.

#### 4. participant

For purposes of the policy, *participant* means an individual who has been determined to be eligible to participate in, and who is receiving any aid, benefit, service, or training under, a program or activity financially assisted in whole or in part under WIOA Title I. *Participant* includes, but is not limited to, individuals receiving any service(s) under state employment service programs, and claimants receiving any service(s) or benefits under state unemployment insurance programs.<sup>60</sup>

#### 5. pass-through entity

The term *pass-through entity* means a non-Federal entity, like a local board, that provides a subaward to a *subrecipient* to carry out some or all of the activities permitted or required under a Federal program.<sup>61</sup>

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<sup>60</sup> 29 CFR § 38.4(oo)

<sup>61</sup> 2 CFR § 200.74

## 6. programmatic accessibility

*Programmatic accessibility* means policies, practices, and procedures providing effective and meaningful opportunity for individuals with disabilities to participate in or benefit from aid, benefits, services, and training.<sup>62</sup>

## 7. qualified individual with a disability<sup>63</sup>

*Qualified individual with a disability* means:

- with respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position;
- with respect to aid, benefits, services, or training, 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 for the receipt of such aid, benefits, services, or training.

## 8. reasonable accommodation<sup>64</sup>

The term *reasonable accommodation* means:

- modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or
- modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. these modifications or adjustments may be made to:
  - the environment where work is performed or aid, benefits, services, or training are given; or
  - the customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or
- modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

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<sup>62</sup> 29 CFR § 38.4(tt)

<sup>63</sup> 29 CFR § 38.4(ww)

<sup>64</sup> 29 CFR § 38.4(yy)

## 9. recipient<sup>65</sup>

For purposes of this policy, the term *recipient* means any entity that receives WIOA Title IB funds either directly from the US Department of Labor or through the Governor or another recipient, including, but not limited to:

- local workforce development boards;
- one-stop operators;
- one-stop delivery system partners;
- Job Corps contractors and center operators, excluding the operators of federally-operated Job Corps centers;
- Job Corps national training contractors;
- outreach and admissions agencies, including Job Corps contractors that perform these functions;
- placement agencies, including Job Corps contractors that perform these functions; and
- other national program recipients, including:
  - Native American program recipients;
  - Migrant and Seasonal Farmworker Program recipients; and
  - YouthBuild recipients; and
- other subrecipients, except for service providers.

Individuals participating in WIOA Title IB programs are not recipients.

## 10. service provider

*Service provider* means any:<sup>66</sup>

- operator of, or provider of aid, benefits, service, or training to:
- program or activity that receives WIOA Title I financial assistance from or through any state or local area grant recipient; or
- participant, through that participant's Individual Training Account (ITA); or
- entity that is selected and/or certified as an eligible provider of training services to participants.

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<sup>65</sup> 29 CFR § 38.4(zz)

<sup>66</sup> 29 CFR § 38.4(ggg)



## 11. small recipient<sup>67</sup>

A *small recipient* is defined as a *recipient* that:

- serves fewer than fifteen (15) program participants during the one (1) grant year (*i.e.*, program year); or
- employs fewer than fifteen (15) employees on any given day during one (1) grant year (*i.e.*, program year).

## 12. subrecipient<sup>68</sup>

The term *subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out some or all of the activities permitted or required under a Federal program (*e.g.*, WIOA Title IB Youth, Adult, and Dislocated Worker programs).

The term *subrecipient* also refers to any entity to which a local board provides a subaward for the administration of some or all of the requirements of the subaward provided to the local board by NDOL for administration of WIOA Title IB Youth, Adult, and Dislocated Worker activities.

Individuals participating in WIOA Title IB programs are not *subrecipients*.

## 13. WIOA Title I financial assistance

*WIOA Title I financial assistance* means any of the following, when authorized or extended under WIOA Title I:<sup>69</sup>

- any grant, subgrant, loan, or advance of federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- provision of the services of Federal personnel, or of other personnel at Federal expense;
- a grant or donation of Federal real or personal property or any interest in or use of such property, including:
  - transfers or leases of property for less than fair market value or for reduced consideration;
  - proceeds from a subsequent sale, transfer, or lease of such property, if the Federal share of the fair market value of the property is not returned to the Federal Government; and

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<sup>67</sup> 29 CFR § 38.4

<sup>68</sup> 2 CFR § 200.93

<sup>69</sup> 29 CFR § 38.4(y)

- the sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:
  - without consideration;
  - at a nominal consideration; or
  - at a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;
  - waiver of charges that would normally be made for the furnishing of government services; and
  - any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIOA Title I.

#### 14. WIOA Title I financially assisted program or activity<sup>70</sup>

WIOA Title I financially assisted program or activity means:

- a program or activity, operated by a recipient and financially assisted, in whole or in part, under Title I of WIOA that provides either:
  - any aid, benefit, service, or training to individuals; or
  - facilities for furnishing any aid, benefits, services, or training to individuals;
    - aid, benefit, service, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIOA Title I; or
    - aid, benefit, service, or training provided with the aid of any non-WIOA Title I financial assistance, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIOA Title I financial assistance. See the definition of “aid, benefit, service, or training” in this section.

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<sup>70</sup> 29 CFR § 38.4(xxx)

## APPENDIX II. Example of an Equal Opportunity Notice<sup>71</sup>

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### 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), 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 the:

- recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or
- 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](http://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.

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<sup>71</sup> 29 CFR 38.35