

# PUBLIC SUBMISSION

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**Docket:** [DOL-2016-0001](#)

Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act

**Comment On:** [DOL-2016-0001-0001](#)

Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act

**Document:** [DOL-2016-0001-0355](#)

Comment from Scott Bowers, Colorado Dept. of Labor and Employment

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## Submitter Information

**Name:** Scott Bowers

**Organization:** Colorado Dept. of Labor and Employment

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## General Comment

See attached file(s)

Please see attached document from the Colorado Dept. of Labor and Employment.

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## Attachments

Proposed comments to Notice of Proposed Rulemaking to implement the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act

## **Proposed comments to NPRM to Implement the WIOA Nondiscrimination and Equal Opportunity Provisions**

### **§ 38.2 Applicability.** (a) This part applies to:

- (1) Any recipient, as defined in § 38.4;
- (2) Programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and
- (3) As provided in § 38.18, the employment practices of a recipient and/or One-Stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as a part of WIOA Title I or the One-Stop delivery system

### **Comments:**

WIOA requires that a large number of federally funded partner agencies participate in the one-stop system and make their career services available through the system. In some cases, this may involve collocation at a one-stop center; or the services can be offered through cross trained staff or virtual technology, when the partner is not on site. The services and method of access are covered in an MOU between the local board and the partner. Questions then arise as to how the EO requirements apply to the participating partners and what monitoring of partners must occur:

- Do all sections of the regulations apply to every partner?
- Will the partner agencies be monitored by the EO officer for compliance with section 188? If so, this means the addition of up to 12 agency reviews in each local area. Colorado, for example, has ten local areas and 10 sub-areas of one local area. The impact on monitoring would be astronomical.
- We recommend against requiring all partner agencies to comply with these regulations unless co-located within a one-stop center. Otherwise, these requirements may put partnerships at risk and undermine the intent of the WIOA.

**§38.4(ttt)** Vital information means information, whether written, oral or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service and/or training; necessary for an individual to obtain any aid, benefit, service, and/or training; or required by law. Examples of documents containing vital information include, but are not limited to applications, consent, and complaint forms; notices of rights and responsibilities; notices advising LEP individuals of their rights under this part, including the availability of free language assistance; rulebooks; written tests that do not assess English language competency, but rather assess competency for a particular license, job, or skill for which English proficiency is not required; and letters or notices that require a response from the beneficiary or applicant, participant, or employee.

**Comments:** The proposed regulations increase the extent of the requirements for one-stop centers (and partners) to translate key documents into multiple languages. This may place an increased burden on the WIOA operators and partners in terms of time and resources needed for compliance, and constitutes an unfunded mandate. We recommend against the expansion of this requirement to partners unless the partner is collocated within a one-stop center.

**§38.4(zz)** “*Recipient*” means entity to which financial assistance under Title 1 of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity.... In addition, for purposes of this part, *One-Stop Partners, as defined in section 121(b) of WIOA are treated as “recipients,”* and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system. “*Recipient*” includes, but is not limited to:

- (1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
- (2) State Workforce Agencies
- (3) State and local Workforce Investment Boards;
- (4) LWIA grant recipients;
- (5) One-Stop operators;
- (6) Service providers, including eligible training providers;
- (7) On-the-Job Training (OJT) employers;
- (8) Job Corps contractors and center operators;
- (9) Job Corps national training contractors;
- (10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- (11) Placement agencies, including Job Corps contractors that perform these functions;
- (12) Other National Program recipients

**Comments:** This significantly expands the definition of “recipient,” and will cause confusion because it is not in accordance with current OMB guidance. We do not support this definition and recommend staying with the OMB definition.

**§38.28 Designation of Equal Opportunity Officer.** (a) Every Governor must designate an individual as a State Level Equal Opportunity Officer (EO Officer), who reports directly to the Governor and is responsible for statewide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA and this part, including but not limited to §§ 38.51, 38.53, 38.54 and 38.55. The State Level EO Officer must have staff and resources sufficient to carry out these requirements.

(b) Every recipient except small recipients and service providers, as defined in 38.4(fff) and 38.4(eee) must designate an EO Officer and staff and resources sufficient to carry out the requirements of this section and §38.31 of this part. The responsibilities of small recipients and service providers are described in §§ 38.32 and 38.33.

**§38.29 Recipient obligations regarding its Equal Opportunity Officer.** The recipient has the following obligations related to its EO Officer:

- (a) Ensuring that the EO Officer is a senior level employee reporting directly to the Chief Executive Officer, Chief Operating Officer, or equivalent official...
- (e) Assigning sufficient authority, staff and resources to the EO Officer, and support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part....

**Comments:**

§38.4(fff) should be 38.4(ggg); §38.4(eee) should be 38.4(hhh).

This new requirement directs both Governors and recipients to create new positions within their organizations, and organize their staff in a specific and direct way without any additional resources. This is problematic for several reasons:

- The current regulations require the designation of an “Equal Opportunity Officer” for each recipient of WIOA funds and do not dictate how a State must organize this function.
- §38.4(zz) expands the definition of recipient to include not just State Workforce Agencies, but also state-level partner agencies, state and local workforce boards, one-stop operators, etc. The requirement will therefore expand the number of EO Officers and increase duplication of effort and expense, and could discourage the participation of non-mandatory partners.
- The proposal inserts additional levels of Equal Opportunity Officers (i.e. State, State-level agencies, local agencies, private employers, etc.), dictates the placement of the position within each entity’s organizational structure, and specifies that the EO officer at each level will be provided staff and resources.
- The requirement imposes additional staff, without additional funding, and will divert much needed funding away from direct client services and job training and toward additional administrative costs for duplicative funding.
- The requirement does not take into consideration the flexibility that WIOA gives the states to organize and administer their workforce development systems, and the wide range of differences that exist between states. In Colorado, for example, the local Workforce Investment Boards are unstaffed and consist of volunteers who do not have the capacity to hire, pay and oversee staff. In some states or local areas, a one-stop operator may be a single individual who coordinates the activities of the one-stop partners.
- The inclusion of On-the-Job Training (OJT) employers could kill the OJT program in most states.
  - We recommend that §38.28(a) be deleted.
  - We recommend that §38.28(b) be revised to retain the current language and requirements.

**§38.30 Requisite skill and authority of Equal Opportunity Officer....** Depending upon the size of the recipient, the size of the recipient’s WIOA Title I-financially assisted programs or activities, and the number of applicants, registrants, and participants serviced by the recipient, the EO Officer may, nor may not, be assigned other duties....

**Comments:** Size is not defined -- at what point is a recipient large enough to warrant a dedicated EO Officer? The requirement dictates what an agency can and cannot do with their staff, and is unnecessarily intrusive. We recommend against this provision.

**§38.31 Equal Opportunity Officer responsibilities.** An Equal Opportunity Office is responsible for coordinating a recipient’s obligations under this part. Those responsibilities include, but are not limited to: (a) Serving as a 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 under WIOA Title I and this part, which includes monitoring the collection of data required....

**Comments:** There is no mention of how (or whether) the State EO Officer and the EO Officers for each recipient will coordinate monitoring activities. As written, a one-stop operator would be monitored a minimum of three times a year: by the State EO Officer, by the EO Officer of at least one state-level agency partner, and by the local Workforce Investment Board or LWIA grant recipient (four if you include the State Workforce Investment Board.) This would be time-consuming and costly for all of the agencies involved, and is not a prudent or judicious use of government funds. Clarification is needed.

**§38.36 Recipients' obligations to publish equal opportunity notice.** (a) At a minimum, the Equal Opportunity Notice required by §§ 38.34 and 38.35 must be:....

(3) Included in employee and participant handbooks or manuals, regardless of form, including electronic and paper form if both are available; and

(4) Provided to each participant and employee; the notice must be made part of each employee's and participant's file....

(c) The notice must be provided to participants in appropriate languages other than English as required in 38.9....

**Comments:** This is an unfunded mandate for partner agencies. We recommend against this unless the partner is co-located within a one-stop center.

**§38.41 Collection and maintenance of equal opportunity data and other information.....(2)**

Such records must include, but not limited to: records 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, or every applicant, registrant, participant, terminee, applicant for employment, and employee. For applicants, registrants, participants, and terminees, each recipient must also record the limited English proficiency and preferred language of an individual.....

**Comments:** Proposed section 38.41 adds two new data elements to be collected by all WIOA grant recipients. Recipients must now "record the limited English proficiency and preferred language of an individual." These new elements must now be included as part of the monitoring conducted by the Governor under section 38.51. Adding these requirements to existing systems will involve a cost. Without additional funding, it is unknown as to how changes to data collection and maintenance systems can be implemented. These new data collection requirements arguably are outside of the scope of WIOA, as neither element is mentioned in section 188 which authorizes the nondiscrimination regulations.

- We recommend deleting the following sentence from section 38.41: "For applicants, registrants, participants, and terminees, each recipient must also record the limited English proficiency and preferred language of an individual."
- We recommend deleting the inclusion of "limited English proficiency, preferred language" from section 38.51(b)(1).

**§38.51 Governor's oversight and monitoring responsibilities for State programs.** The Governor is responsible for oversight and monitoring of all WIOA Title I-financially assisted State Programs. This responsibility includes:...

(b) Annually monitoring the compliance of recipients with WIOA section 188 and this part, including a determination as to whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way....

**Comments:** This is a change from the prior regulations which required “periodic monitoring.” [old section 37.54]. States are in the best position to determine when monitoring is appropriate, and WIOA does not require annual monitoring. Many states currently conduct WIOA grant recipient monitoring once every two years. The proposed regulations are doubling the workload for many states, and there is no additional funding.

- We recommend that the phrase “annual” be replaced with “periodic” in section 38.51(b).