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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-2016-0001-0331](#)

Comment from Stephanie Beckhorn, NA

Submitter Information

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General Comment

1. "State Level Equal Opportunity Officer" must report directly to the Governor.

Proposed section 38.28(a) states:

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 requirement. (emphasis added)

This new requirement directs Governors to create a new position and organize their staff in a specific and direct way without any additional resources. 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. Currently, states may structure equal opportunity staff as appropriate for their state structure. The proposal inserts an additional level of Equal Opportunity Officer - a "State Equal Opportunity Officer," and requires that the individual "reports directly to the Governor." This new position is not required under WIOA, and imposes additional staff without additional funding. Every recipient must also have "an EO Officer" and this is sufficient to enforce the requirements of WIOA. Having a state level EO officer overseeing a state agency-level EO officer would be duplicative and inefficient. The proposed

regulation adding a "State Level Equal Opportunity Officer" will divert much needed funding away from direct job training and toward additional administrative costs for duplicative functions. The preamble of the proposed regulations appears to justify the added "State Level Equal Opportunity Officer" because of a perceived lack of authority by the EO Officers. The current regulations make it clear that an EO Officer must be a "senior-level" employee and must report "directly to the appropriate official." The prior regulations also specified that the Equal Opportunity Officer must have "sufficient staff and resources" and "support of top management." DOL has authority, under the existing regulations, to make sure that the Equal Opportunity Officers have the authority and resources to do their jobs.

The Workforce Development Agency (WDA) recommends that section 38.28(a) be deleted.

2. Additional data collection and monitoring requirements not supported by additional resources.

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.

The WDA recommends 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."

The WDA also recommends deleting the inclusion of "limited English proficiency, preferred language" from section 38.51(b)(1).

3. Increased monitoring is not supported by WIOA: The proposed regulations specify in section 38.51 that WIOA grant recipients must be monitored annually. This is a significant change from the prior regulations in section 37.54 which required "periodic monitoring." Many states currently conduct WIOA grant recipient monitoring once every two years. The proposed regulations are doubling the workload and travel expenses for many states, and there is no additional funding. States are in the best position to determine when monitoring is appropriate, and WIOA does not require annual monitoring. In fact, section 121 of WIOA requires monitoring at least every three years in the area of accessibility of one-stop centers. Requiring monitoring of grant recipients every year will force states to reduce the quality of these reviews.

The WDA recommends that the phrase "annual" be replaced with "periodic" in section 38.51(b).