



I am writing in response to the proposed regulations for Section 188 of the Workforce Innovation and Opportunity Act (WIOA). I first would like in general applaud the strengthening of the non-discrimination and equal opportunity provisions under WIOA. As an advocate for citizens with disabilities, I believe these proposed regulations will significantly enhance the ability of citizens with disabilities to fully access and benefit from services funded under Title I of WIOA.

Despite the overall strength of these regulations, there is one specific area where I have significant concerns - specifically what I see as unnecessary and overly restrictive requirements regarding confidentiality of disability information, which while well-intended in terms of legal protections, could actually work to the detriment of citizens with disabilities, in terms of fully benefitting from the workforce development system.

§ 38.41 Collection and maintenance of equal opportunity data and other information, states the following in terms of maintaining confidentiality of information:

“(2) Such 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.

(3) 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. All such information, whether in hard copy, electronic, or both, must be maintained in one 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).”

I fully appreciate these requirements, and as an advocate for citizens with disabilities applaud efforts to maintain confidentiality of disability information. However, it is critically important to recognize the distinctions between Title I of the Americans with Disabilities Act (the employment provisions) and Title II (the provision that apply to public entities), and specifically the respective differences in requirements in terms of disability inquiries and disclosure under Title I and II of the ADA. I do not feel these proposed regulations properly make this distinction.

The proposed regulations indicate that the only rationale for staff to have knowledge of disability status for service recipients is strictly for eligibility for Title I of WIOA. I am concerned that this is overly restrictive, and goes beyond the requirements of Title II of the ADA, and will

actually result in a lack of ability of WIOA Title I programs to be fully responsive to the needs of individuals with disabilities as service recipients. There are numerous circumstances, beyond WIOA Title I eligibility, where it would be of benefit for the Title I WIOA staff to have knowledge of disability issues, in order to properly assist an individual with their employment and training needs. Examples include providing guidance on reasonable accommodations in both service delivery and as part of the job search and placement process; informing individuals about their legal protections as a result of their disability; providing referral and access to services which an individual may qualify for as a result of disability (e.g., public vocational rehabilitation, Ticket to Work, etc.); access to services that are intended specifically for individuals with disabilities that may be of benefit (e.g, Work Incentive Planning and Assistance, Independent Living Centers, etc.). I want to make clear that knowledge of disability status by workforce system staff who are assisting with service delivery should occur only if the individual voluntarily chooses to disclose their disability status, and the confidentiality of such information should be fully maintained. However, I am requesting that the proposed regulations be modified so as to indicate that a person with a disability may voluntarily disclose their disability status during the course of service delivery, and this information may be used by workforce system staff to: a) work with the individual to provide guidance on disability-related issues which impact the service recipient's employment and training needs such as development of reasonable accommodations, and legal protections as a qualified individual with a disability; b) to identify additional services and supports that the individual may qualify for, have access to, and benefit from, as a result of the individual's disability status. The regulations should also reflect that, in the case where disability status is voluntarily disclosed by a service recipient during the course of service delivery, this information is to be kept confidential by workforce system staff. I believe that without these changes in the proposed regulations, WIOA Title I programs will experience significant challenges in being fully responsive to the needs of service recipients with disabilities, ultimately to the detriment of individuals with disabilities who are need of employment and training assistance and supports and their ability to fully benefit from WIOA.

Sincerely,

David Hoff

Co-Chair - Public Policy Committee

National APSE - The Association for People Supporting Employment First