

# PUBLIC SUBMISSION

**As of:** March 29, 2016

**Tracking No.** 1k0-8op9-5ncc

**Comments Due:** March 28, 2016

**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-2016-0001-0314](#)

Comment from Deanna Asuncion, State of California Employment Development Department

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## Submitter Information

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**Organization:** State of California Employment Development Department

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## General Comment

Please see attached document

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## Attachments

WIOA DOL Notice RIN 1291-AA36 FINAL Section 188 - California Comments - Read Only

State of California  
Employment Development Department

WIOA 2016 Comments  
US Department of Labor (DOL) NPRM  
RIN 1291-AA36

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

**CFR Citation and Page Number:** 38.28(a), page 4559

**Language:** “State Level Equal Opportunity Officer” must report directly to the Governor. Specifically, 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 requirements.” (Emphasis added).

**Question or Concern:** In California, the Governor’s designee for the oversight of all WIOA Title I-financially assisted State programs is the Director of the State Employment Security Agency (the California Employment Development Department or EDD). This designee is the “recipient” for purposes of carrying out Title I responsibilities. The EO Officer responsible for Title I- section 188 enforcement reports directly to the Director of the Employment Development Department. By reporting directly to the Director, California’s EO Officer has the proper authority, visibility, and level of support needed to carry out his responsibilities.

Properly applied and monitored, the current rule is sufficient to ensure that the EO Officer has the authority and resources necessary to carry out his/her responsibilities. Under the current rule, states must biennially submit Methods of Administration (MOA) that describe the designation, position, and reporting structure of the EO Officer (MOA Element 1), along with the resources allocated to the EO program. Upon receipt of states’ MOAs, the Department of Labor’s Civil Rights Center (CRC) should conduct a thorough analysis of the MOAs and work immediately with the states, when needed, to ensure that the EO Officer has available resources and is placed in a position of authority with sufficient visibility and support to carry out his/her responsibilities.

The proposed language in section 38.28(a) will require states to designate an individual as a State level EO Officer **who reports directly to the Governor**. This individual would be responsible for statewide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA. This new provision appears to be part of the Governor’s oversight/joint and severally liability/responsibilities to implement the nondiscrimination and equal opportunity requirements of WIOA which are identical to the prior WIA requirement. California already has this process in place through the EO Officer under the Director of the Employment Development Department,

the recipient of Title I programs. The proposed section 38.28(a) appears to require the EO Officer report directly to the Governor.

Having a specific individual report to the Governor is burdensome, duplicative, confusing, and will create an undue hardship to most states that may have to create a new EO Officer position or restructure an old EO Officer position. Additionally, if this proposed section were to be adopted, invaluable institutional knowledge of the EO program will be lost as EO Officers will be appointees of the Governor and replaced with the change of administrations.

**If a concern, Proposed Solution/Recommendation:** California recommends that the proposed section 38.28(a) be revised to read "...who reports to the Governor or his or her designee".

**CFR Citation and Page Number:** 38.51(b), pages 4562 - 4563

**Language:** Annual Monitoring

**Question or Concern:** The proposed regulation specifies that WIOA grant recipients must be monitored **annually**. This is a change from the prior regulation which required "**periodic monitoring**." [Former section 37.54].

In California, EDD is already performing ongoing monitoring of WIOA grant recipients, which, in practice, has resulted in monitoring on an annual basis. However, due to the increased workload resulting from the transition from WIA to WIOA along with the anticipated final adoption of the federal regulations implementing WIOA, EDD recommends regulatory language which would give EDD and other states the latitude and flexibility to monitor on a biennial basis.

**If a concern, Proposed Solution/Recommendation:** California recommends that the phrase "annual" be replaced with "biennial" in section 38.51(b).