

# PUBLIC SUBMISSION

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**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-2016-0001-0316](#)

Comment from Karla Aguirre, Utah Department of Workforce Services

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## Submitter Information

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**Organization:** Utah Department of Workforce Services

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## General Comment

Comments from Utah Department of Workforce Services on the proposed regulations at 29 CFR Part 38. The comments are attached." Thank you for your consideration.

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## Attachments

NPRM Comments on 29 CFR Part 38 Utah

## **NPRM Comments on 29 CFR Part 38 - Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act Proposed Rule (RIN 1291-AA36)**

Submitted by Utah Department of Workforce Services

March 25, 2016

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### **Section 38.28**

According to the summary, this proposed rule change is intended to provide the state-wide EO Officer with sufficient authority to carry out the required responsibilities. The current regulations require the designation of an “EO Officer” for WIOA funds but do not indicate how a state must organize this function. 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 currently has authority, under the existing regulations, to make sure that the Equal Opportunity Officers have the authority and resources to do their jobs.

The new proposal indicates an additional level of EO officer reporting directly to the Governor but would have no more authority than the EO officer who is currently designated by the Governor, reporting to State Workforce Agency (recipient agency.)

In fact, this new proposed requirement could make the position vulnerable to politics and political pressure. With the state-wide EO officer position directly reporting to the Governor, the position would be subject to frequent turnover because a governor’s staff changes when there is a change in the administration. These changes would negatively impact performance and continuity of a complicated and important program. In addition, a Governor’s office does not typically have the expertise in areas of equal opportunity and non-discrimination, as in the Workforce Agencies. These agencies have the historical knowledge and expertise built into their programs and services and this new requirement would be

Staff who are appointed by, and report directly to the Governor are considered at “at-will” and serve at the pleasure of the Governor, without career service protection. The Governor may terminate the employment of these individuals for any or no reason. Career service protection is important in this type of compliance position; without it, the incumbent might be less inclined to take an unpopular stance about non-compliance due to fear of losing their position.

Additionally, it is more efficient for the EO officer to work in the State Workforce Agency, where they have ready access to the program experts and staff, can maintain positive relationships, and provide technical expertise in order to assure compliance. This is consistent with the integrated services model implemented with WIOA.

### ***Recommendation:***

***Section 38.28(a) be deleted.***

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### **Section 38.41**

**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.

**Recommendation:**

**Delete 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.”**

**Delete the inclusion of “limited English proficiency, preferred language” from section 38.51(b)(1).**

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**Section 38.51**

**Increased monitoring is not supported by WIOA**

States should have some flexibility in monitoring, and are in the best position to determine when monitoring is appropriate. In addition, the statute does not require annual monitoring. There is no statistical justification in the summary as to why monitoring annually was the most effective option, thus making this rule appear arbitrary.

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.

**Recommendations:**

**Replace the phrase “annual” with “periodic” in section 38.51(b).**