



**Workforce Innovation and Opportunity Act Policy**  
**Employment System Administration and Policy**

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Washington envisions a nationally recognized fully integrated One-Stop system with enhanced customer access to program services, improved long-term employment outcomes for job seekers and consistent, high quality services to business customers. In order to achieve this vision, Employment System Administration and Policy sets a common direction and standards for Washington's WorkSource system through the development of WorkSource system policies, information memoranda, and technical assistance.

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**Policy Number:** 5402 Revision 1  
**To:** Washington WorkSource System  
**Effective Date:** July 1, 2015

**Subject:** Equal Opportunity and Nondiscrimination

**1. Purpose:**

The purpose of this policy is to affirm the commitment of the Employment Security Department (ESD) to the principles of nondiscrimination and equal opportunity, and to provide for the observance and enforcement of those principles in the administration and operation of the programs and activities under its oversight.

**2. Background:**

All recipients under the Workforce Innovation and Opportunity Act (WIOA) Title I are responsible for ensuring equal opportunity (EO) and nondiscrimination in programs and activities funded in whole or in part under WIOA. This responsibility includes compliance with all nondiscrimination requirements in the administration and operation of programs, activities and employment as provided by WIOA Section 188 (Nondiscrimination) and 29 CFR Part 37 (Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act). The regulations apply to all programs and activities that are operated by One-Stop partners as part of the One-Stop delivery system. Recipients are defined at 29 CFR §37.4.

**Note:** The U.S. Department of Labor (DOL) issued final regulations (29 CFR part 38) for Section 188 of WIOA that replaced references to the "Workforce Investment Act of 1998" or "WIA" with "Workforce Innovation and Opportunity Act" or "WIOA" to reflect the proper statutory authority.

Compliance Standards

All recipients under WIOA Title I are directly responsible for compliance with:

- Federal nondiscrimination laws, regulations, guidelines, and directives;

- State nondiscrimination laws, executive orders, regulations, and guidelines;
- Local nondiscrimination ordinances;
- Equal opportunity and nondiscrimination policies, procedures, administrative directives, and the Washington State Methods of Administration (MOA); and
- Terms and conditions of contracts and agreements established by ESD.

They are also responsible for adhering to the MOA.

### **3. Policy:**

Washington is committed to providing equal opportunity and equal access in WIOA Title I programs and services to all individuals.

The following requirements are provided in 29 CFR Part 37, the EO/Nondiscrimination regulations for WIOA Section 188 (Nondiscrimination):

#### **a. Notice and Communication**

A recipient must provide initial, and continuing, notice that it does not discriminate in the delivery of programs and services or employment on the basis of race, color, religion, sex (including sexual orientation and gender identity or expression), national origin, age, disability, political affiliation or belief, and for customers only, citizenship or participation in a WIA Title I program or activity.

The following specific wording is placed on EO Notice posters and in written EO policy statements. The language may not be changed except to substitute the recipient's name in place of the term "recipient."

#### **Equal Opportunity is the Law**

"It is against the law for this recipient of Federal financial assistance to discriminate on the following basis:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Innovation and Opportunity Act of 2014 (WIOA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a

program or activity; or making employment decisions in the administration of, or in connection with, such a program activity.

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either: the recipient's Equal Opportunity Office (or person whom the recipient has designated for this purpose); or the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.”

This notice, in the form of Washington's WIOA EO Notice Poster, must be posted prominently in reasonable numbers and places where customers and staff frequent.

#### Universal Access

To demonstrate compliance, every reasonable action shall be taken to ensure that members of both sexes, racial and ethnic groups, various age groups and individuals with disabilities are given maximum opportunity as:

- Applicants and participants of employment and training services provided by WIOA.
- Members of councils and boards formed in conjunction with WIOA.
- Applicants for employment and employees in the administration and operation of programs and activities funded by WIOA.
- Recipients of procurement contracts for the purchase of goods and services.

#### **b. Minimum Requirements for Ensuring Equal Opportunity and Nondiscrimination:**

The following EO/Nondiscrimination requirements will followed:

- i. Local Workforce Development Board (LWDB) Equal Opportunity Officer

All LWDBs will designate an EO Officer who is responsible for ensuring EO/Nondiscrimination in the administration and operation of programs and services within the One-Stop system in the workforce development area.

Job duties of LWDB EO Officer will include, in part:

- Conducting EO/Nondiscrimination monitoring reviews of One-Stop Centers, affiliates and other service providers that are part of the local One-Stop system to ensure compliance with the provisions of this policy and 29 CFR Part 37, and adhering to the MOA;
- Conducting EO training for staff and service providers;
- Processing and investigating discrimination complaints;
- Reviewing LWDB written policies to ensure they are nondiscriminatory;
- Developing or publishing LWDB procedures for processing discrimination complaints;
- Coordinating responsibilities under 29 CFR Part 37;
- Reporting EO matters directly to his or her top official;
- Ensuring implementation of the MOA; and,
- Undergoing EO/Nondiscrimination training to maintain competency.

## ii. EO Tagline and Washington Relay Service

Recruitment brochures and other materials, including pamphlets, flyers, and other publications distributed or communicated in written or oral form, electronically or on paper, for customers, staff or the general public that describe “WIOA Title I-funded program[s] or activity[ies]” (see definitions at 29 CFR §37.4) will include the following approved EO Tagline:

“(name of recipient) is an equal opportunity employer and provider of employment and training services. Auxiliary aids and services are available upon request for individuals with disabilities.”

Program information that is broadcast in the news media and electronically such as on television and radio or on a large screen monitor must also include the tagline.

If a phone number is included, a TTY/TDD number or the Washington Relay Service number must also be provided. This should be: Washington Relay Service – 711, which can alternatively be placed at the end of the EO tagline. An unused TTY/TDD should be kept, although not necessarily on a dedicated line, to allow individuals with hearing or speaking disabilities the equal opportunity to call out from a service provider facility as would others without a disability.

### iii. Language Services

Language services, interpretation or translation, must be made available free of charge for limited English proficiency (LEP) individuals. When a significant number or proportion of the eligible population needs information in a language other than English to be effectively informed about the program or to be able to participate, the following four factors must be considered in determining the language services to provide:

- 1) The number or proportion of LEP persons served or encountered in the eligible service population;
- 2) The frequency with which LEP individuals come in contact with the program;
- 3) The nature and importance of the program, activity or service provided; and,
- 4) The resources available and costs.

It may be determined, as a result of the analysis, that different language assistance measures are sufficient for the different programs or activities provided.

Regardless of the number or proportion of individuals, reasonable efforts must be made to meet the particular language needs of LEP individuals.

### iv. Assurance

Each contract, agreement or application for financial assistance under Title I of WIOA will include, in its entirety without changes, the following EO/Nondiscrimination assurance language found at 29 CFR Part 37.20(a):

“As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) Title I, which prohibits discrimination against all individuals in the United States on the basis of race, color religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.

The grant applicant also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. The assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program and activity, and to all agreements the grant application makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance."

In lieu of including the assurances language in its entirety for smaller contracts or agreements (such as OJT contracts, etc.), the following reference to the language may be used: "The assurances at 29 CFR §37.20(a) apply to this contract/agreement."

**v. Programmatic and Architectural Accessibility**

Each program or activity, when viewed in its entirety, must be operated in a manner that makes it readily accessible to qualified individuals with a disability. A qualified individual with a disability is an individual who, with or without a reasonable accommodation for his or her disability, meets eligibility requirements.

This does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by qualified individuals with disabilities. However, if a program is available in only one location, that facility must be made accessible or the program must be made available at an alternative accessible facility.

An entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. If an entity finds, after consulting with the individual with a disability, that there is no method of complying other than making a significant alteration in its existing facilities, the entity may refer the qualified individual with a disability to other providers of that service that are accessible.

Program accessibility requires the provision of auxiliary aids or services, such as: qualified interpreters on-site or through video remote interpreting service; exchange of written notes; voice, text and video-based telecommunications products and systems; videotext displays; telephone handset amplifiers, assistive listening systems or other effective aids for individuals with hearing impairments.

Audio recordings, Brailled materials and displays; large print materials; accessible electronic and information technology or other effective aids must be provided for individuals with visual impairments. In addition, acquisition or modification of equipment or devices, including assistive technology devices or software must be provided as appropriate.

**c. EO/Nondiscrimination Compliance Monitoring**

The LWDB EO Officer and, at times the State/ESD EO Officer, will monitor all service provider programs, services and activities at least every two years. The purpose of the review is to ensure programs are administered in a nondiscriminatory manner in compliance with the EO/Nondiscrimination requirements of this policy and 29 CFR Part 37, and that adheres to the

MOA. LWDB EO Officers must use a monitoring instrument approved by the State EO Officer and must develop review reports that include findings and due dates for violations. LWDB EO Officers must submit review reports with follow-up actions to the State EO Officer prior to the State EO Officer's monitoring review.

EO data will be collected for all WIOA Title I financially assisted programs for applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment by race/ethnicity, sex, age, and where known, disability status. While it is required that the data is requested from the individual, in most cases the person cannot be required to provide the information.

Monitoring reviews must include a statistical analysis of records and data including analyses by race/ethnicity, sex, age and disability status. The analyses must determine if there are any significant differences in participation in programs in services. An investigation of significant differences will be conducted to determine if these differences may be caused by adverse impact discrimination. Adverse impact discrimination is non-intentional discrimination occurring when a neutral policy or practice has an adverse effect on a demographic group. If found and unless adequate justification is provided, the effects must be eliminated or mitigated.

Discrimination complaints must be investigated or mediated by, or under the direction of, the LWDB EO Officer in accordance with the direction provided in the WorkSource Complaint Handbook – Attachment A of [WorkSource System Policy 1012 – Customer Concern and Complaint Resolution](#).

The LWDB EO Officer must maintain discrimination complaint logs with the name and address of the complainant, the basis of the alleged discrimination (e.g., race, color, religion, sex, national origin, etc), a brief description of the complaint, the date filed and the disposition of the complaint.

The State EO Officer will monitor the operation of the State Workforce Development Board every two years for meeting the nondiscrimination requirements of this policy and 29 CFR Part 37.

#### **d. Corrective Action and Sanctions**

Recipients at the state and LWDB level will apply corrective actions, or sanctions if voluntary efforts in seeking compliance fail, when they find violations of this policy or 29 CFR Part 37. Corrective actions are to be designed to completely address each violation and may result from an EO/Nondiscrimination monitoring review, a discrimination complaint or both. Timeframes must be established as necessary setting the minimum time necessary to completely redress the violation. Follow-up monitoring will occur as necessary to ensure that commitments to take corrective and remedial actions have been fulfilled. Local areas are required to establish policies and procedures for obtaining prompt corrective action. The LWDB EO Officer will notify the State/ESD EO Officer of violation(s) discovered, corrective action(s) implemented, and timeframe(s) for completion.

Corrective action is indicated in the following circumstances:

- An assessment of the circumstances surrounding a discrimination complaint investigation reveals barriers to equal opportunity or equal access.
- An LWDB EO Officer or the State Officer's monitoring review identifies a violation, a failure to follow through on written assurances, a barrier to universal access, or significant differences in participation in programs or services without investigation, mitigation or justification.

Corrective actions should be completed by the date(s) provided in the review report. If a recipient does not undertake the corrective actions specified, a conciliation agreement should be initiated and completed. Instructions on developing and implementing a conciliation agreement are found in the MOA and at 29 CFR §37.97.

Sanctions will be considered as a last resort. Sanctions may be necessary when a recipient refuses to implement voluntary corrective action, submit requested data or documentation, or refuses to provide access to premises or records during an EO/Nondiscrimination compliance review.

At the state level, after all efforts for voluntary compliance have been exhausted, the State EO Officer notifies the ESD Commissioner in writing. This request for a final determination specifies the following:

- Efforts made to achieve voluntary compliance, along with the areas of disagreement (if known);
- The apparent violation(s) and relevant EO/Nondiscrimination provision(s) of this policy and 29 CFR Part 37, and conflict with the MOA;
- The corrective action the recipient must take to address the violation(s).

The ESD Commissioner may secure voluntary compliance with the recipient through a written assurance and/or conciliation agreement. The ESD Commissioner considers sanctions only if the recipient does not agree to take voluntary corrective action. Sanctions that may be imposed include, but are not limited to:

- Termination of future funding;
- Disallowance of selected costs;
- Restriction from bidding on competitive or discretionary funds; and
- Reduction in funding.

If sanctions are necessary, the precise nature of the sanction will be determined by the deliberateness, seriousness, and/or frequency of the violation. In situations where sanctions are to be applied, the recipient will be notified and will be provided an opportunity to respond prior to sanctions being applied.

At the LWDB level, it is the responsibility of the LWDB Executive Director to implement sanctions, if needed. LWDB's will follow the above model for applying corrective actions and sanctions.

#### **4. Definitions:**

None.

#### **5. References:**

- WIOA Section 188
- 29 CFR Part 37, "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act" (November 12, 1999);
- Title VI of the Civil Rights of 1964, as amended (P.L. 88-352) and USDOL regulations at 29 CFR Part 31;
- Title VII of the Civil Rights Act as amended by the Equal Opportunity Act (P.L. 92-261) and the Pregnancy Discrimination Act (P.O. 95-555), and the guidelines established by the Equal Employment Opportunity Commission (EEOC) including:
  - "Guidelines on Sexual Harassment in the Workplace" (29 CFR Part 1604);
  - "Guidelines on Discrimination on the Basis of Religion" (29 CFR Part 1605);
  - "Guidelines on Discrimination on the Basis of National Origin" (29 CFR Part 1606);
  - "Guidelines of Employee Selection Procedures" (29 CFR Part 1607);
- The Rehabilitation Act of 1973, as amended (P.L. 93-112) Section 504 and regulations established by USDOL at 29 CFR Part 32;
- The Age Discrimination Act (P.L. 94-135) and USDOL regulations at 29 CFR Part 35;
- The Age Discrimination in Employment Act of 1967, as amended (P.L. 95-256) and regulations established by the U.S. EEOC (29 CFR, Parts 1625 and 1627);
- Title IX of Education Amendments of 1972, as amended (P.L. 92-318);
- American with Disabilities Act of 1990, as amended (P.L.101-336).

Other Federal laws, regulations, guidelines, and directives may also apply and their omission here is not be construed as exclusions.

#### State Laws, Executive Orders, Regulations, and Guidelines:

- The Washington Law Against Discrimination (RCW 49.60) and regulations established by the Washington State Human Rights Commission, including:
  - Pre-Employment Inquiries (WAC 162.12);
  - Employment Discrimination (WAC 162.16);
  - Age Discrimination in Public Employment (WAC 162.20);
  - Public Accommodations, Disability Discrimination (WAC 162.26); and
  - Sex Discrimination (WAC 162.30)
- Washington State Building Code (RCW 19.27);
- Washington State Rules and Regulations for Barrier Free Design (Title 51 WAC)

#### **6. Supersedes:**

WIA Title I-B Policy 3445

**7. Website:**

[http://www.wa.gov/esd/1stop/policies/wioa\\_title1.htm](http://www.wa.gov/esd/1stop/policies/wioa_title1.htm)

**8. Action:**

Local Workforce Development Boards and their contractors, as well as Employment Security Regional Directors, should distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

**9. Attachments:**

None.

**Direct Inquiries To:**

*State EO Officer  
Human Resources and Operational Support Division  
Employment Security Department  
P.O. Box 9046  
Olympia, WA 98507-9046  
Telephone: (360) 902-9454  
Fax: (360) 586-4600  
WA Relay Service: 711*

**Direct Other Inquiries To:**

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