




**DISTRICT OF COLUMBIA  
WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)  
WORKFORCE IMPLEMENTATION GUIDANCE LETTER (WIGL)**

**DATE:** February 16, 2017

**NO:** DC-WIGL-2017-005-WIOANondiscriminationandEOProvisions

**TO:** LOCAL WORKFORCE DEVELOPMENT SYSTEM STAKEHOLDERS  
AMERICAN JOB CENTERS  
WIOA YOUTH SERVICE PROVIDERS  
WIOA ELIGIBLE TRAINING PROVIDERS  
DEPARTMENT OF EMPLOYMENT SERVICES (DOES)  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION (OSSE)  
DEPARTMENT ON DISABILITY SERVICES (DDS)  
DEPARTMENT OF HUMAN SERVICES (DHS)

**FROM:** DIANE PABICH   
Interim Executive Director, Workforce Investment Council (WIC)

**SUBJECT:** Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act

**1. Purpose.**

To impart to the District of Columbia workforce development system the Final Rule for implementing Section 188 of WIOA. This Rule is codified as Part 38 of Title 29 of the Code of Federal Regulations and enforced by the Civil Rights Center (CRC) of USDOL.

**2. References.**

WIOA Section 188  
29 CFR Part 38  
Training and Employment Notice (TEN) No. 20-16  
All Policy Guidance to be housed at <http://dcworks.dc.gov>

**3. Definitions.**

WIGL – Workforce Implementation Guidance Letter  
WIC – District of Columbia Workforce Investment Council  
DOES – District of Columbia Department of Employment Services  
AJC – American Job Center  
LWDA – Local Workforce Development Area

LWDB – Local Workforce Development Board (the DC WIC)

WIA – Workforce Investment Act

WIOA – Workforce Innovation and Opportunity Act

USDOL – United States Department of Labor

R – Revised. When updates are made to WIGL letters, the R will serve as an indicator that a revision has been made, along with a revision number if multiple adjustments are made.

#### **4. Background.**

Section 188 prohibits discrimination against individuals in any program or activity that receives financial assistance under Title I of WIOA, as well as by the one-stop partners listed in WIOA Section 121(b) that offer programs or activities through the one-stop/American Job Center system. Section 188 prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity. Section 188 specifically identifies WIOA Title I programs and activities as being subject to certain civil rights laws, including Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794.), and Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

The CRC enforces Section 188 of WIOA. In order to fulfill the statutory deadline to implement Section 188 of WIOA and avoid a gap in coverage, CRC issued a final rule creating 29 CFR Part 38, on July 23, 2015, that contained only technical amendments to 29 CFR Part 37 (changing references from “WIA” to “WIOA”). On January 26, 2016, CRC issued a Notice of Proposed Rulemaking (NRPM) to update the Part 38 regulations (81 FR 4494) to reflect recent developments in equal opportunity and nondiscrimination jurisprudence, as well as practices such as the use of computer-based and Internet-based systems to provide aid, benefits, services, and training. This Final Rule reflects changes made resulting from public comments on that NPRM.

#### **5. Guidance.**

In its discussion of the revisions to Part 38, CRC notes that the Final Rule improves the overall readability of the 2015 rule through revisions, limited reorganization of sections, and more explicit descriptions of recipient obligations. The CRC also replaced the former question-and-answer format with more straightforward text to mirror closely other nondiscrimination and equal opportunity regulations issued by USDOL. CRC notes that revisions to nondiscrimination and equal opportunity provisions now align with current law and legal principles. CRC also notes enforcement of the nondiscrimination obligations of recipients will follow case-law principles developed under (among other statutes) Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education

Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). Finally, CRC notes that the Final Rule improves the Effectiveness of CRC's enforcement program to support compliance with the Rule. Notable areas of revision in this new Part 38 rulemaking include:

- Establishing that discrimination against individuals who are limited English proficient (LEP) is discrimination on the basis of national origin.
- Updates based on disability discrimination jurisprudence, particularly regarding access to programs and activities.
- Expanded requirements to ensure "vital information" about aids, benefits, services, and training is accessible, in print and online, by LEP individuals and individuals with a disability.
- Establishing that pregnancy discrimination as a type of sex discrimination is redefined in terms of Title IX of the Education Amendments of 1972 and the Pregnancy Discrimination Act.
- Establishing that discrimination based on sex stereotyping, transgender status, or gender identity is discrimination on the basis of sex. New definitions of "harassment" are given.
- Establishing the responsibility of all recipients to appoint an EO officer, and the creation of an overall State EO Officer, with specific directives about dedicated time, access, and resources.

#### **6. Action Requested.**

**The Part 38 regulations took effect on January 3, 2017.** Because of the substantial revisions to these rules compared to those rules previously in effect under the Workforce Investment Act of 1999, the WIC strongly recommends administrative and managerial personnel and contractors in the workforce system become familiar with the contents, and educate staff, as appropriate.

The complete text of the rulemaking, as originally published, may be found online at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-27737.pdf>. The online text for Part 38 that is part of the electronic Code of Federal Regulations (e-CFR) reflecting this Final Rule may be found at: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=f93578defc0df53d553a30c5b65b1edd&mc=true&r=PART&n=pt29.1.38>.

The following actions must be implemented according to the regulations:

- The designation of EO officers in accordance with subparts 38.28-38.33.
- The updated Equal Opportunity Notices required by subparts 38.34 and 38.35 must be initially published and provided within 90 days of January 3, 2017. This

includes electronic (online) sites as well as workforce development system physical sites and points of service.

- Beginning on January 3, 2019, each recipient must record the limited English proficiency and preferred language of each applicant, registrant, participant, and trainee. 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 financially assisted programs or activities;
  - determining the extent to which the recipient is operating its WIOA financially assisted program or activity in a nondiscriminatory manner; or
  - other use authorized by law.

**7. Attachments.**

None.

**8. Inquiries.**

Inquiries regarding this guidance should be directed to:

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**9. Expiration.**

Continuing.