




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

☒ **POLICY & GUIDANCE** ☐ **INFORMATION & UPDATES**

DATE: July 22, 2021

NO: DC-WIGL-2017-005-WIOANondiscriminationandEOProvisions-R1

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)
UNIVERSITY OF THE DISTRICT OF COLUMBIA COMMUNITY COLLEGE (UDC-CC)

FROM: Ahnna Smith 
Executive Director, Workforce Investment Council (DC WIC)

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

PURPOSE:

To inform recipients, as defined at 29 C.F.R. § 38.4(zz), of the District of Columbia's nondiscrimination and equal opportunity responsibilities under Section 188 of the Workforce Innovation and Opportunity Act and its implementing regulations found at 29 CFR Part 38 including, but not limited to, requirements for data collection, assurances, taglines, and *Equal Opportunity is the Law* notices.

REFERENCES:

WIOA Section 188; 29 CFR Part 38; Training and Employment Notice (TEN) No. 20-16; District of Columbia Nondiscrimination Plan, including appendices at <https://dcworks.dc.gov/page/district-columbia-nondiscrimination-plan>; All Policy Guidance to be housed at <http://dcworks.dc.gov>

DEFINITIONS:

The U. S. Department of Labor Civil Rights Center (CRC) enforces Section 188 of WIOA.



The Mayor of the District of Columbia performs duties assigned to the Governor and the Chief Elected Official under WIOA.

“Recipient” means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Mayor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. In instances in which a Governor (or, the Mayor in the District of Columbia) operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to the Mayor under WIOA Title I (rather than disbursing the funds to another recipient), the Mayor is also a recipient. In addition, for purposes of this part, one-stop partners, as defined in section 121(b) of WIOA, are treated as “recipients,” and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the one-stop delivery system. “Recipient” includes, but is not limited to: State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds; State Workforce Agencies; State and Local Workforce Development Boards; grant recipients; One-stop operators; Service providers, including eligible training providers; On-the-Job Training (OJT) employers; Job Corps contractors and center operators; Job Corps national training contractors; Outreach and admissions agencies, including Job Corps contractors that perform these functions; Placement agencies, including Job Corps contractors that perform these functions; Other National Program recipients.

BACKGROUND:

Section 188 prohibits discrimination by a “recipient” against individuals in any program or activity that receives financial assistance under Title I of WIOA. Section 188 prohibits discrimination based on race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries based on either citizenship status or participation in any 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.).

In the preamble to the regulations implementing WIOA Section 188 at 29 C.F.R. Part 38, the CRC notes that revisions to nondiscrimination and equal opportunity provisions align with current law and legal principles and that 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 regulations at 29 C.F.R. Part 38 improve the effectiveness of CRC’s enforcement program to support compliance with WIOA’s Section 188 nondiscrimination and equal opportunity mandates. Notable areas of revision at 29 C.F.R. Part 38 include:

- Establishing that discrimination against individuals who are limited English proficient (LEP) is discrimination on the basis of national origin, and mandating that, starting January 3, 2019, the preferred language of a limited English proficient individual must be recorded in the individual’s record.
- Updates based on disability discrimination jurisprudence, particularly regarding access to programs and activities and emphasis on promoting competitive, integrated employment of individuals with disabilities.
- 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 based on 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.
- Adding requirements for affirmative outreach to service area populations.

WIOA Section 188 also retained important provisions, such as designation of Equal Opportunity Officers with sufficient training, resources, and staffing to implement WIOA Section 188 responsibilities (29 C.F.R. §§ 38.28-38.33), assurances (29 C.F.R. §§ 38.25-38.27), taglines (29 C.F.R. § 38.38(a), and providing initial and recurring *Equal Opportunity is the Law* notice to beneficiaries and potential beneficiaries (29 C.F.R. §§ 38.34-38.39) as key, critical compliance measures.

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 29 C.F.R. Part 38 may be found at: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=f93578defc0df53d553a30c5b65b1edd&mc=true&r=PART&n=pt29.1.38>.

Because of the substantial revisions to these rules compared to those rules previously in effect under the Workforce Investment Act of 1999, the DC WIC strongly recommends administrative and managerial personnel and contractors in the workforce system become familiar with the contents, and that staff undergoes initial and recurring training on requirements at 29 C.F.R. Part 38, as appropriate.

ACTION REQUESTED:

Required assurances

Any arrangement pertaining to the delivery of WIOA Title I financially assisted programs or activities shall include required assurances. *See Appendix A Assurances.*

1. Where required

Pursuant to the District of Columbia’s Nondiscrimination Plan, the following categories of current, open arrangements and all future arrangements shall include the required assurances language at 29 CFR 38.25, WIOA Title I-related:

- Contracts;
- Grants;
- Memoranda of Understanding;
- Cooperative Agreements;
- Requests for Proposals;
- Job training plans; and
- Any other WIOA Title I-related arrangements.

The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract, or other arrangement whereby Federal financial assistance under Title I of WIOA is made available, whether it is explicitly incorporated in such document and whether there is a written arrangement between the Department and the recipient, between the Department and the District of Columbia, between the District of Columbia and the recipient, or between recipients. However, it is the District of Columbia's policy that, to comply with WIOA Section 188, the language must be specifically embedded in the written arrangement. This is designed to ensure that the parties to the arrangement have notice of their responsibilities under WIOA Section 188.

2. Annual review

Annually, each recipient is required to review each existing and pending WIOA Title I-related arrangement (*e.g.*, contract, grant, memorandum of understanding, cooperative agreement, request for proposal, and other similar arrangement) to which the recipient is a party to ensure compliance with this policy. If the assurance language is not present, the parties to the written arrangement must sign an addendum incorporating the required assurances provided in Attachment A.

Moreover, for purposes of conducting required monitoring, discrimination complaint investigations, or compliance reviews under WIOA Section 188, the assurances language, where required, must include provisions providing the CRC, State Equal Opportunity Officer (or designees), and DOES Equal Opportunity Officer (or designees) access to the premises, records, databases, and other materials as needed.

Required taglines

1. Generally

The following taglines shall appear on all communications (*i.e.*, written, oral, electronic, paper) to staff, clients, and the public at large related to WIOA Title I-financially assisted programs and activities:

Equal Opportunity Employer/Program.
Auxiliary aids and services are available upon request to individuals
with disabilities.

29 C.F.R. § 38.38(a). "Communications" include, but are not limited to, the following:

- Brochures and other informational materials
- Orientation documents
- Marketing and recruitment materials
- Personnel and program manuals, handbooks, directives, correspondence, and procedures
- Business cards
- Broadcast scripts¹

¹ See 29 C.F.R. § 38.38(b) for specific guidance on broadcast script information: "Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that WIOA Title I-financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities."

- Written advertising
- Email signature blocks
- Website pages related to WIOA Title I-financially assisted programs and activities.

2. Use of telephone numbers

Where a telephone number is listed on any communication, an alternative, equally effective means of communication (*e.g.*, text telephone, relay service, videophone, captioned telephone) must also be provided. 29 C.F.R. §§ 38.15(b) and 38.38(a). Examples include, but are not limited to, letterhead, business cards, website pages, brochures, email communications, outreach and engagement materials.

3. Ongoing review and compliance

Each recipient shall conduct initial and ongoing review all communications to ensure the foregoing taglines are present and that, wherever a telephone number is listed, an alternative, equally effective means of communication is provided.

Review of communications for taglines shall be part of annual monitoring of recipients. If the taglines are not present on existing written materials, then (1) type the taglines on self-adhesive stickers, and (2) place a sticker on each WIOA-related written document (*e.g.*, brochure, pamphlet, handbook) that does not have the required taglines. All written communications, existing and future, must include these taglines. For website pages, it is desired that the taglines appear in the header or footer to ensure their presence regardless of point of entry.

“Equal Opportunity is The Law” Notice and Posting

1. Required Text

Each recipient, as defined at 29 C.F.R. § 38.4(zz), is required to comply with all *Equal Opportunity is the Law* notice and posting requirements at 29 C.F.R. § 38.34-38.37. **Regulatory content in the *Equal Opportunity is the Law* notice cannot be modified or altered in any way by the recipient.**

2. Publication and data recording requirements

To ensure initial and ongoing notice to the public and staff, each recipient must publish and/or post the Equal Opportunity is the Law notice:

- Prominently, in reasonable numbers and places, in available and conspicuous locations and on recipient’s Web site;
- In internal memoranda and other written or electronic communications with staff;
- In employee and participant handbooks or manuals regardless of form, including electronic and paper form, if both are available;
- Provided to each participant and employee (the notice must be made part of each employee’s and participant’s file; it must be part of both paper and electronic files, if both are maintained); and
- Provided during orientation sessions for new employees, new participants, and/or to the public (*e.g.*, in-person, virtually), and a recipient must include a discussion of rights and

responsibilities under the nondiscrimination and equal opportunity provisions of WIOA, including the right to file a discrimination complaint with the recipient or CRC Director. Information delivered during the orientation session must be communicated in appropriate languages for limited English proficient persons and accessible formats for individuals with disabilities.

The District of Columbia interprets posting “prominently, in reasonable number and places,” to mean that the *Equal Opportunity is the Law* notice is displayed at every public entrance to a recipient’s facility as well as at the entrance and exit of every room in the facility that is open to the public (e.g., training, orientation, counselling, self-service) in English and the appropriate languages for limited English proficient individuals. For open spaces with cubicles, the notice must be posted in English and relevant languages for LEP individuals at the public entrance and exit locations to the open space. The notice is also required to be published on the recipient’s web sites in English and the appropriate languages.

Each of the following individuals must receive the *Equal Opportunity is the Law* notice, and receipt must be documented in their paper and electronic files:

- Registrants
- Applicants
- Eligible applicants/registrants
- Participants
- Applicants for employment
- Employees
- Unions or professional organizations that hold collective bargaining or professional agreements with the recipient (29 C.F.R. § 38.34(a)(4))
- Subrecipients that receive WIOA Title I financial assistance from the recipient (29 C.F.R. § 38.34(a)(5))

3. Alternative formats and appropriate languages required

The *Equal Opportunity is the Law* notice is deemed a “vital” document. For individuals who are blind or have low vision as well as individuals who are limited English proficient, recipients shall provide the notice in Braille, large print (i.e., 18-point font), and appropriate languages other than English, as required at 29 C.F.R § 38.9. The District of Columbia-approved *Equal Opportunity is the Law* notice is provided languages other than English for limited English proficient individuals via the District’s [WIOA Nondiscrimination Plan](#).

A record that the *Equal Opportunity is the Law* notice has been given in an alternative format or language other than English must be made part of the employee’s or participant’s paper and electronic file.

ATTACHMENTS:

Attachment A—Assurances

INQUIRIES:

Inquiries regarding this guidance should be directed to the DC WIC Executive Director.

EXPIRATION:

DC-WIGL-2017-005-WIOANondiscriminationandEOProvisions (Dated February 16, 2017)