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# Policy Brief: Provisions in the Workforce Investment Act Relating to Nondiscrimination on the Basis of Disability and the Development by the Governor of a Written Methods of Administration

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Policy Brief

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# Provisions in the Workforce Investment Act Relating to Nondiscrimination on the Basis Of Disability and the Development by the Governor of a Written Methods of Administration

## Introduction

On August 7, 1998 President Clinton signed into law the Workforce Investment Act of 1998 (Public Law 105-220). Hereinafter in this policy brief, Public Law 105-220 will be referred to as "The Act" or "WIA." Title I of WIA provides assistance to states interested in establishing statewide and local workforce investment systems.

Interim final regulations issued by the Department of Labor on November 12, 1999 [Part 37 of Title 29 of the Code of Federal Regulations, 29 CFR Part 37] implement the nondiscrimination and equal opportunity provisions set out in Section 188 of the Act. Section 188 prohibits discrimination on the grounds of disability as well as race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program or activity. These regulations are modeled on regulations issued under the Job Training Partnership Act [29 CFR Part 34].

The purpose of this policy brief is to identify and describe the key provisions in the interim final regulations articulating the nondiscrimination and equal opportunity responsibilities of the Governor, recipients of WIA funds, and programs and activities that are part of the One-stop delivery system and that are operated by One-Stop partners. The focus of the policy brief will be on those provisions specifically addressing nondiscrimination and equal opportunity for persons with disabilities.

Of particular importance is the requirement in the interim final regulations that the Governor develop and maintain a written document called a "Methods of Administration" describing how the state plans on meeting its nondiscrimination and equal opportunity responsibilities. This document must be completed within 180 days of either the date on which the interim final rule is effective (May 12, 2000) or the date on which the Secretary of Labor gives final approval of the state plan, **whichever is later**.

## GENERAL PROVISIONS

### *What is the Purpose of the Regulation? [29 CFR 37.1]*

The purpose of the interim final regulation is to implement the nondiscrimination and equal opportunity provisions set out in section 188 of WIA. The regulations also provide uniform procedures for implementing these provisions.

### *To whom does this regulation apply? [29 CFR 37.2]*

The regulation applies to any recipient of assistance under Title I of WIA, including state-level agencies that administer, or are financed in whole or in part with WIA Title I funds, state and local workforce investment boards, local WIA grant recipients, One-Stop operators, service providers, and on-the-job training employers. The regulation also applies to programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners to the extent that the programs and activities are being conducted as part of the One-Stop delivery system.

### *What forms of discrimination do the Act and the implementing regulations prohibit? [29 CFR 37.5]*

No individual in the United States may, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA-Title I funded program or activity.

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### *What specific discriminatory actions based on disability are prohibited by the regulation? [29 CFR 37.7]*

The specific discriminatory actions based on disability follow generally the regulations implementing Title II of the Americans with Disabilities Act. [64 Federal Register 61692, November 12, 1999] **Discriminatory actions that are prohibited** by the regulation include [29 CFR 37.7(a)]:

- **Denying** a qualified individual with a disability the **opportunity** to participate in or benefit from the aid, benefits, services, or training;
- Affording such an opportunity that is **not equal** to that afforded others;
- Providing such an opportunity that is **not as effective** in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- Providing **different, segregated, or separate** opportunity to individuals with disabilities or any class of individuals with disabilities, **unless** such action is **necessary** to provide qualified individuals with disabilities with an opportunity that is as **effective** as that provided to others; and
- Otherwise **limiting** a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

In addition, a recipient:

- May not deny a qualified individual with a disability the opportunity to participate in WIA Title I financially assisted programs or activities despite the existence of permissibly separate or different programs or activities. [29 CFR 37. 7(c)]
- Must administer WIA Title I financially assisted programs and activities in the **most integrated setting appropriate** to the needs of qualified individuals with disabilities. [29 CFR 37.7(d)]
- May not, directly or through contract or other arrangement, use **standards, procedures, criteria, or administrative methods** that have the purpose or effect of subjecting qualified individuals with disabilities to discrimination or defeating or substantially impairing accomplishment of the objectives of the WIA Title I financially assisted program or activity. [29 CFR 37.7(e)]
- In the **selection of contractors**, must not use **criteria** that subject qualified persons with disabilities to discrimination. [29 CFR 37.7(g)]
- Must not impose or apply **eligibility criteria** that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program or activity being offered. [29 CFR 37.7(i)]

Furthermore, with regard to aid, benefits, services, training, and employment, a recipient must provide **reasonable accommodation** to qualified individuals with disabilities who are applicants, registrants, participants, employees (or applicants for employment), unless providing the accommodation would cause undue hardship. [29 CFR 37.8(a)]

The term "reasonable accommodation" means modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment; modifications or adjustments that enable a qualified individual with a disability to receive aid, benefits, services, or training equal to that provided to nondisabled individuals or to perform the essential functions of a job; or modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges as are enjoyed by other similarly situated individuals without disabilities.[29 CFR 37.4]

A recipient must also make **reasonable modifications** in policies, practices, or procedures when the modifications are necessary to avoid discrimination unless making modifications would fundamentally alter the nature of the service, program, or activity. [29 CFR 37.8(b)]

In addition, recipients must take appropriate steps to ensure **communications** with beneficiaries, registrants, applicants, participants and members of the public who are individuals with disabilities are as effective as communications with others. This means, among other things, furnishing appropriate auxiliary

aids and services where necessary unless it would result in a fundamental alteration in the nature of a service, program, or activity. [29 CFR 37.9]

### *To what extent are employment practices covered by the regulation? [29 CFR 37.10]*

Discrimination is prohibited in employment practices in the administration of, or in connection with the following:

- Any WIA Title I financially assisted program or activity; and
- any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

Recipients that are also employers, employment agencies, or other entities covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. This rule does not preempt consistent state and local requirements.

### *What office in the Department of Labor is responsible for administering this regulation? [29 CFR 37. 12]*

The Civil Rights Center, in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions in WIA and the implementing regulations and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

## RECORDKEEPING AND OTHER AFFIRMATIVE OBLIGATIONS OF RECIPIENTS

### *What is the grant applicant's obligation to provide a written assurance of compliance with the nondiscrimination provisions of Section 188 of WIA? [29 CFR 37.20]*

As a condition to the award of financial assistance under Title I of WIA, the grant applicant must assure that it will comply fully with the nondiscrimination and equal opportunity provisions of WIA and other civil rights statutes such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

The WIA state plan must provide a statement that WIA Title I assisted programs and activities will be conducted in compliance with these laws and implementing regulations. The state must also certify that it has developed and maintains a Methods of Administration (which is described below).

### *What are the rules governing the designation and responsibilities of equal opportunity officers? [29 CFR 37.23-.28]*

Every recipient (except small recipients) must designate an equal opportunity officer. A small recipient means a recipient who has fewer than 15 beneficiaries per year and employs fewer than 15 employees. The individual should be a senior level employee of the recipient i.e., the individual should have the requisite education, training, and experience and have authority to direct the equal opportunity effort. The responsibilities of the equal opportunity officer include:

- Serving as a liaison with the Department of Labor's Civil Rights Center;
- Monitoring and investigating the recipient's activities;
- Reviewing the recipient's written policies;
- Developing and publishing the recipient's procedures for processing complaints;
- Reporting directly to appropriate officials (including the state WIA director and the Governor's WIA liaison) about equal opportunities matters;
- Undergoing ongoing training;
- If applicable, overseeing the development and implementation of the recipient's Methods of Administration.

### *What are a recipient's obligations to disseminate its equal opportunity policy? [29 CFR 37.29- .36]*

A recipient must provide initial and continuing notice that it does not discriminate on any prohibited ground to, among others, registrants, applicants, participants, and employees. During each presentation to orient new participants and new employees, and the general public, a recipient must include a discussion of the rights, including the right to file a complaint, under the nondiscrimination and equal opportunity provisions of WIA.

### *What are the recipient's responsibilities to collect and maintain data and other information? [29 CFR 37.37-.41]*

Each recipient must record the disability status (where known) of every applicant, registrant, terminee, applicant for employment, and employee. This

information must be stored in a manner ensuring confidentiality. Recipients must also maintain logs of complaints alleging discrimination. The most important purposes of the equal opportunity data and information collection and maintenance system are to assist the CRC and those assigned by the state in monitoring performance by recipients, identifying instances or areas of discrimination and identifying individuals or groups of individuals who have been discriminated against. A vital element of a system is the ability of the reviewer to correlate aggregate data to individual records.

***What are a recipient's responsibilities under the regulation regarding the provision of universal access to WIA Title I financially assisted core services? [29 CFR 37.42]***

Recipient's responsibilities include:

- Advertising the recipient's program in the media;
- Sending notices to schools and community service groups that serve various populations;
- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations to broaden the pool of those considered for participation in One-Stops and other WIA-assisted programs and activities.

## GOVERNOR'S RESPONSIBILITIES TO IMPLEMENT THE NONDISCRIMINATON AND EQUAL OPPORTUNITY REQUIREMENTS OF WIA

***What are the Governor's Oversight Responsibilities? [29 CFR 37.51]***

The Governor is responsible for oversight of all WIA Title I financially assisted state programs. This responsibility includes ensuring compliance with the nondiscrimination and equal opportunity provisions.

***To what extent may a Governor be liable for the actions of a recipient he or she has financially assisted under WIA Title I? [29 CFR 37.52]***

The Governor is jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions by recipients unless the Governor has:

- Established and adhered to a Methods of Administration (see below);
- Entered into a contract with the recipient that clearly establishes the recipient's responsibilities;
- Acted with due diligence to monitor the recipient's compliance;
- Taken prompt and appropriate corrective action to effect compliance.

***What are a Governor's oversight responsibilities regarding recipients' recordkeeping? [29 CFR 37.53]***

The Governor must ensure that recipients collect and maintain prescribed records in an appropriate manner.

***What are a Governor's responsibilities to develop and maintain a Methods of Administration? [29 CFR 37.54]***

Each Governor must establish and adhere to a Methods of Administration (MOA) for state programs under WIA Title I. The MOA must be designed to give reasonable guarantee that all recipients will comply and are complying with the nondiscrimination and equal opportunity provisions of WIA and the implementing regulations. The MOA must be in **writing** (with **narrative and documentation**), **reviewed and updated periodically** (at least every two years), and **signed** by the Governor.

At a minimum, each Methods of Administration must:

- Describe how the state programs and recipients have satisfied the requirements concerning—
  - ♦ assurances,
  - ♦ equal opportunity officers,
  - ♦ notice and communication,
  - ♦ data and information collection and maintenance,
  - ♦ universal access,
  - ♦ Governor's oversight responsibilities regarding recipient recordkeeping, and
  - ♦ complaint processing procedures;
- Include a system for determining whether a grant applicant or service provider is likely to conduct its programs and activities in a nondiscriminatory way;
- Include a system for periodically monitoring the compliance of recipients which must include—a statistical or other quantifiable

analysis of records and data, an investigation of any significant differences identified, and an assessment to determine whether the recipient has fulfilled its administrative obligations (e.g., assurances, equal opportunity officers, notice and communication, data and information collection and maintenance, universal access, and complaint processing procedures) and any duties assigned to it under the MOA (e.g., monitoring, sanctions and corrective actions, and policy development, communication and training);

- Include a review of recipient policy issuances to ensure they are nondiscriminatory;
- Include a system for reviewing recipient's job training contracts and other similar agreements to ensure that they are nondiscriminatory and contain required language;
- Include procedures for ensuring that recipients comply with section 504 of the Rehabilitation Act (e.g., provide reasonable accommodation, reasonable modifications to policies and procedures, program and architectural accessibility, administer the program in the most integrated setting appropriate, and ensure effective communication);
- Include a system of policy communication and training to ensure that personnel are aware of and can effectively carry out these responsibilities;
- Include procedures for obtaining prompt corrective action (including in the case of a finding of discrimination, procedures for retroactive relief e.g., back pay, and prospective relief e.g., training, policy development and communication to ensure that the discrimination does not recur), or, as necessary, applying sanctions when noncompliance is found; and
- Include supporting documentation to show that the commitments made in the Methods of Administration have been and or are being carried out, including—policy and procedural issuances, copies of monitoring instruments and instructions, evidence that nondiscrimination and equal opportunity policies have been developed and communicated, information reflecting the extent of training, reports of monitoring reviews and reports of follow-up actions taken (e.g., use of sanctions), and copies of any notices made.

***When must the Governor carry out his or her obligations with regard to the Methods of Administration? [29 CFR 37.55]***

The Methods of Administration must be completed within 180 days of either the date on which the interim final rule is effective (May 12, 2000) or the date on which the Secretary of Labor gives final approval of the state plan, whichever is later.

## COMPLIANCE PROCEDURES (INCLUDING COMPLAINT RESOLUTION PROCEDURES)

***How does the Director of the Civil Rights Center, Department of Labor, evaluate compliance with the nondiscrimination and equal opportunity provisions in WIA and the implementing regulations? [29 CFR 37. 60-.68]***

The Director may conduct pre-approval compliance reviews of grant applicants and post-approval compliance reviews of recipients. The Director may also investigate and resolve complaints. Further, the Director may periodically review the adequacy of the Methods of Administration as well as the adequacy of the Governor's performance under the MOA.

***Who may file a complaint and with whom? [29 CFR 37.70-.89]***

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination may file a written complaint, either by him/herself or through a representative. The complaint may be filed with either the recipient or the Director of the Civil Rights Center.

***What are the required elements of a recipient's complaint resolution procedures? [29 CFR 37.76]***

At a minimum, procedures must:

- Provide for a notice of final action within 90 days from the date the complaint is filed;
- Contain specified elements (e.g., notice that complaint has been received, written statement of issues and whether recipient will accept or reject the issue for investigation,

period for fact-finding or investigation, period for voluntary resolution, and a written notice of final resolution which must include a notice of right to file an appeal with the CRC); and

- Provide for alternative dispute resolution.

***Are there any circumstances in which the Director will send a complaint to another authority? [29 CFR 85]***

Yes. Where a case involves an allegation of employment discrimination under the ADA, the Director may refer the complaint to the Equal Employment Opportunity Commission.

Where the complaint alleges discrimination by an entity that operates a program or activity financially assisted by a grantmaking agency other than the Department of Labor, but that participates as a partner in a One-Stop delivery system, the Civil Rights Center in DOL and the Office for Civil Rights in the grantmaking agency (e.g., the Department of Education where the partner is the state vocational rehabilitation agency) will have dual jurisdiction over the complaint. Under these circumstances, the Director of the Civil Rights Center will refer the complaint to the grantmaking agency for processing.

According to the preamble to the interim final regulations, local workforce investment boards, when developing and entering into memoranda of understanding with One-Stop partners should include attention to equal opportunity issues that may affect the One-Stop partners or the delivery system. Such issues include how discrimination complaints will be handled and how the cost of reasonable accommodations will be shared. [64 FR 61697, November 12, 1999]

***If the Director concludes that compliance cannot be secured by voluntary means what actions must he or she take? [29 CFR 37.99]***

If the Director concludes that compliance cannot be secured by voluntary means, he or she must either issue a final determination (which could result in withholding in whole or in part of WIA Title I funds), refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted, or take such other action as may be provided by law.


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