Kansas Department of Commerce
Workforce Development
Policy and Procedures Manual

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Originating Office: Commerce Regulatory Compliance

Subject: Equal Opportunity Data and Information Collection and Maintenance

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Program: Programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of the Workforce Innovation and Opportunity Act (WIOA).

Purpose: To transmit state policy and guidance regarding the collection, use, storage, and confidentiality of documents related to all WIOA applicants/registrants, eligible applicants, participants, terminees, employees, and applicants for employment.

References: 29 CFR Part 38: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014 (WIOA); WIOA Section 188.

Background: The Governor must ensure that all WIOA Title I-financially assisted program operators collect and maintain records in a manner consistent with the provisions of 29 CFR Part 38.41-45 and ensure that such programs can provide data and reports to ensure nondiscrimination and equal opportunity.

Action: As required by applicable laws and federal funding agreements entered into under Titles 1-4 of WIOA make this policy available to all programs and activities that are part of the one-stop delivery system and operated by one-stop partners listed in section 121(b) of WIOA.

Contact: Contact: Questions should be directed to John M. Ybarra, WIOA EO Officer, Commerce Regulatory Compliance, (785) 296-5092; TDD: 1-800-766-3777 , e-mail: John.Ybarra@ks.gov.

Attachments: None

Equal Opportunity Data and Information Collection and Maintenance

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Equal Opportunity Data and Information Collection and Maintenance

Overview

Recipients must collect data and information to verify that they are taking appropriate steps to provide universal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups.

Discrimination Prohibited

29 CFR Part 38.5 states: No individual in the United States may, 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 or participation in any WIOA 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 WIOA Title-I financially assisted program or activity.

Policy Applicability

This policy applies to any recipient, as defined in 29 CFR Part 38.4; to programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the one-stop delivery system; as required by applicable laws and federal funding agreements entered into under Titles 1-4 of WIOA; and as provided in 29 CFR Part 38.18, to the employment practices of a recipient and/or one-stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as part of the WIOA Title I or the one-stop delivery system.

The term "recipient" means any entity to which financial assistance under Title I of WIOA is extended, directly from USDOL or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). Entities connected to the workforce development system may be recipients for purposes of Section 188 and these procedures even if they do not receive assistance in the form of money. For example, recipients subject to these procedures include entities with agreements, arrangements, contracts, sub-contracts, or other instruments for the provision of assistance or benefits under WIOA Title I. For this policy, one-stop partners, as defined in section 121(b) of WIOA are treated as "recipients," and are subject to these non-discrimination and equal opportunity requirements. "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 unemployment compensation agencies; State and Local Workforce Development Boards; Local Workforce Development Area (LWDA) grant recipients; One-Stop Operators; service providers including eligible training providers (ETP); On-the-Job Training (OJT) employers; Job Corps contractors and center operators; outreach and admissions agencies, placement agencies and other National Program recipients including: Migrant and Seasonal Farmworkers Programs, Native American Programs, National Dislocated Worker Grant Programs, and Youthbuild programs. The United State Department of Labor Civil Rights Center (CRC) notes however, that whether an entity is an additional one-stop partner subject to Section 188 is based on whether that entity has signed a Memorandum of Understanding as an additional partner per the requirements of Section 121 of WIOA and not merely whether that entity is working with or contributing something to a WIOA Title I program.

Equal Opportunity Data and Information Collection and Maintenance (29 CFR Part 38.41)

All WIOA Title I-financially assisted programs and activities must maintain data on applicants/registrants, eligible applicants, participants, terminees, employees, and applicants for employment for providing information on whether employment practices, services, and/or procedures have a disparate impact on any group based on race/ethnicity, sex, age, and disability status. Each recipient of Title I funds must collect such data and maintain such records, in accordance with procedures prescribed by the United States Department of Labor Civil Rights Center (CRC), as the CRC finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA or this part. The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIOA and this part.

Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee. 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 Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

Any medical or disability-related information obtained about an individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

Knowledge of disability status or medical condition and access to information in related files. Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:

- Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.
- First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.
- Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws.

Knowledge of disability status or medical condition only. Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

Discrimination Complaint Log (29 CFR Part 38.41) Each recipient must maintain, and submit to CRC via the State Equal Opportunity Officer, upon request, a log of complaints filed with the recipient that allege discrimination on the basis(es) of race, color, religion, sex (including pregnancy, childbirth, and related medical

conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity. The log must include: the name and address of the complainant; the basis of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of an individual as having filed a complaint must be kept confidential. Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used. A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or LWDA grant recipient, as provided in the State's Nondiscrimination Plan.

Information Submission Requirements (29 CFR Part 38.42)

Each grant applicant and recipient must promptly notify the CRC when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of 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, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity. This notification must include: the names of the parties to the action or lawsuit; the forum in which each case was filed; and the relevant case numbers.

Each recipient (as part of a compliance review conducted under 29 CFR Part 38.63, or monitoring activity carried out under 29 CFR Part 38.65) must provide the following information:

- The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
- Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include: the names of the parties; the forum in which each case was filed; and the relevant case numbers.

At the discretion of the CRC, grant applicants and recipients may be required to provide, in a timely manner, any information and data that the CRC considers necessary to investigate complaints and conduct compliance reviews on bases prohibited under the nondiscrimination and equal opportunity provisions of WIOA and this part. At the discretion of the CRC, recipients may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the CRC considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part. At the discretion of the CRC, grant applicants may be required to submit, in a timely manner, the particularized information that the

CRC considers necessary to determine whether the grant applicant, if financially assisted, would be able to comply with the nondiscrimination and equal opportunity provisions of WIOA or this part. Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

Required Maintenance of Records by Recipients (29 CFR Part 38.43)

Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three years from the close of the applicable program year: the records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and such other records as are required under this part or by the CRC. Where a discrimination complaint has been filed or compliance review initiated, every recipient that possesses or maintains any type of hard-copy or electronic record related to the complaint (including records that have any relevance to the underlying allegations in the complaint, as well as records regarding actions taken on the complaint) or to the subject of the compliance review must preserve all records, regardless whether hard-copy or electronic, that may be relevant to a complaint investigation or compliance review, and maintain those records for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review.

Access to Data and Information Sources (29 CFR Part 38.44)

Each grant applicant and recipient must permit access by CRC or the CRC's designee during its hours of operation to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, or monitoring activities associated with a State's development and implementation of a Nondiscrimination Plan, and for inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA or this part.

Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC or the CRC's designee, and will not bar CRC from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part. Whenever any information that the CRC asks a grant applicant or recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the grant applicant or recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the grant applicant or recipient made to obtain it.

Confidentiality Responsibilities of Grant Applicants, Recipients, and USDOL (29 CFR part 38.45)

Grant applicants, recipients and the CRC must keep confidential to the extent possible, consistent with a fair determination of the issues, the identity of any individual who furnishes information relating to, or assists in, an investigation or a compliance review, including the identity of any individual who files a complaint. An individual whose identity is disclosed must be protected from retaliation.