Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual

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Originating Office: Commerce Regulatory Compliance

Subject: Equal Opportunity Notification, Communication, and Assurance

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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 requirement that the Local Workforce Development Board (LWDB), their American Job Centers, and service providers are responsible for ensuring that adequate systems are in place to notify and communicate their obligation to operate programs and activities in a nondiscriminatory manner.

References: WIOA Section 188 Non-Discrimination Regulations at 29 CFR Parts 38.34-40; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Age Discrimination Act of 1975 as amended; and Title XI of the Education Amendment Act of 1972, as amended.

Background: In addition to the protection of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is providing employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities that receive Federal assistance. Sections 501, 504 and 505, of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity that receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

Action: 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 as required by applicable laws and federal funding agreements entered into under Titles 1-4 of WIOA.

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

Attachment: None.

Equal Opportunity Notification, Communication, and Assurance

Table of Contents

Overview……..1

Discrimination Prohibited……1

Policy Applicability…….1

Equal Opportunity Notice and Communication Requirements……...2

Recipient Obligations to Disseminate Equal Opportunity Notice…….....2

Equal Opportunity Notice/Poster…….2

Recipient Obligations to Publish Equal Opportunity Notice……...3

Notice Requirement for Service Providers……..3

Publications, Broadcasts, and Other Communications……3

Communication of Notice in Orientations……...4

Affirmative Outreach……...4

Communications with Individuals with Disabilities……4

Nondiscrimination and Equal Opportunity Assurance……5

Continuing State Programs……..6

Duration and Scope of the Assurance……..6

Equal Opportunity Notification, Communication, and Assurance

Overview

Federal regulations at 29 CFR Part 38.34 require recipients to establish and maintain a notification and communication system that makes all registrants, applicants, eligible applicants/registrants, applicants for employment, employees, subrecipients that receive Workforce Innovation and Opportunity Act (WIOA) Title I-financial assistance from the recipient, and members of the public aware of its obligation not to discriminate. Further, this notification and communication system must clearly express the rights of members of these groups to file discrimination complaints at any available level. The objective is to ensure awareness of the non-discrimination and equal opportunity provisions of WIOA Section 188.

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 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 the purpose of 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 Notice and Communication Requirements

Recipient Obligations to Disseminate Equal Opportunity Notice-A recipient must provide initial and continuing notice as defined in 29 CFR Part 38.36 that it does not discriminate on any prohibited basis. This notice must be provided to:

- Registrants, applicants, and eligible applicants/registrants;
- Participants;
- Applicants for employment and employees;
- Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
- Subrecipients that receive WIOA Title I financial assistance from the recipient; and
- Members of the public, including those with impaired vision or hearing and those with limited English proficiency (LEP).

As provided in 29 CFR Part 38.15, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for LEP individuals as described in 29 CFR Part 38.9.

Equal opportunity Notice/Poster-The notice must contain the following specific wording:

Equal Opportunity Is the Law

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or 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 or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

What To Do If You Believe You Have Experienced Discrimination

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 Officer (or the 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 or electronically as directed on the CRC Web site at www.dol.gov/crc.

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 may file a complaint with CRC before receiving that Notice. 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.

Recipient Obligations to Publish Equal Opportunity Notice-At a minimum, the Equal Opportunity Notice required by 29 CFR Parts 38.34-35 must be:

- Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's Web site pages;
- Disseminated in internal memoranda and other written or electronic communications with staff;
- Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available; and
- Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.
- Provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments. Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment and employees with a visual impairment, a record that such notice has been given must be made a part of the employee's or participant's file.
- Provided to participants in appropriate languages other than English as required in 29 CFR Part 38.9.

Notice Requirement for Service Providers-The Governor or the LWDA grant recipient, as determined by the Governor and as provided in that State's Nondiscrimination Plan, will be responsible for meeting the notice requirement provided in 29 CFR Parts 38.34 and 38.35 with respect to a State's service providers.

Publications, Broadcasts, and other Communications-Recipients must indicate that the WIOA Title I-financially assisted program or activity in question is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities," in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIOA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or equally effective telecommunications system, such as a relay service, videophone, or captioned telephone used by the recipient, as required by 29 CFR Part 38.15.

Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the 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. A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis specified in 29 CFR Part 38.5, except as such treatment is otherwise permitted under Federal law or this part.

Communication of Notice in Orientations-During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted program or activity, in person or over the internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA and this part, including the right to file a complaint of discrimination with the recipient or the Civil Rights Center (CRC). This information must be communicated in appropriate languages as required in 29 CFR Part 38.9 and in formats accessible for individuals with disabilities as required in this part and specified in 29 CFR Part 38.15.

Affirmative Outreach-Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to:

- Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and
- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Communications with Individuals with Disabilities-A recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others. For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to an

aid, benefit, service, training, program, or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate. Additional guidance on services to persons with disabilities is available at 29 CFR Part 38.12-15.

Limited English Proficiency (LEP)-Federal regulations at 29 CFR Part 38.9 require recipients to take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity. Reasonable steps generally may include, but are not limited to, an assessment of an LEP individual to determine language assistance needs; providing oral interpretation or written translation of both hard copy and electronic materials, in the appropriate non-English languages, to LEP individuals; and outreach to LEP communities to improve service delivery in needed languages.

A recipient should ensure that every program delivery avenue (*e.g.*, electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides. As a recipient develops new methods for delivery of information or assistance, it is required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides. A recipient must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that these language assistance services are available free of charge.

To access LEP guidance and the equal opportunity and non-discrimination notices in English and other foreign languages please contact:

Kansas Department of Commerce
John M. Ybarra
WIOA EO Officer
Commerce Regulatory Compliance
1000 S.W. Jackson Street, Suite 100
Topeka, Kansas 66612-1354
(785) 296-5092 TDD: 1-800-766-3777
e-mail: John.Ybarra@ks.gov

Nondiscrimination and Equal Opportunity Assurance

Each application for financial assistance, under Title I of WIOA, as defined in 29 CFR Part 38.4, must include the following assurance:

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 has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:

Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States 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 against beneficiaries on the basis of either citizenship status or participation in any WIOA 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 educational programs.*

The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA 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.

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 agreement between the United States Department of Labor (USDOL) and the recipient, between the USDOL and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated in such grants, cooperative agreements, contracts, or other arrangements by reference.

Continuing State Programs-Each Strategic Four-Year State Plan submitted by a State to carry out a continuing WIOA financially assisted program or activity must provide the text of this assurance as a condition to the approval of the Four-Year Plan and the extension of any WIOA Title I assistance under the Plan. The State also must certify that it has developed and maintains a Nondiscrimination Plan under 29 CFR Part 38.54.

Duration and Scope of the Assurance-Where the WIOA Title I-financial assistance is intended to provide, or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient, or (in the case of a subsequent transfer) the transferee, for the longer of:

- The period during which the property is used either:
- For a purpose for which WIOA Title I financial assistance is extended; or
- For another purpose involving the provision of similar services or benefits; or
- The period during which either the recipient retains ownership or possession of the property; or
- The transferee retains ownership or possession of the property without compensating the Departmental grantmaking agency for the fair market value of that ownership or possession.

In all other cases, the assurance will obligate the recipient for the period during which WIOA Title I financial assistance is extended.