

**Region 4 Workforce Development Board
Equal Opportunity Policy and Complaint Procedures**

Purpose

To provide initial guidance regarding the observance and enforcement of the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations.

References: WIOA Section 188; 29 CFR Part 38, "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act" Final Rule (January 3, 2017);
DWD policy 2016-09

Element 1. Designation of the Tecumseh Area Equal Opportunity (EO) Officer [29 CFR Part 38].

Mellisa Leaming, Director of Operations for Tecumseh Area Partnership, Inc., is the designated EO Officer. Her office is at 976 Mezzanine Drive, Suite C; Lafayette, Indiana 47905. She can be reached by telephone at (765) 807-0888 (Voice), (765) 471-7830 (Fax). Her E-mail address is mleaming@tap.lafayette.in.us

She reports directly to the Chief Operations Officer of Tecumseh Area Partnership, Inc.

The EO Officer is responsible for coordinating the Region 4 Workforce Development Board (R4WDB) obligations set forth in 29 CFR part 38. Those responsibilities include, but are not limited to:

- Reporting EO/Nondiscrimination matters to the State EO Officer;
- Processing and investigating regional discrimination complaints;
- Monitoring compliance of regional WIOA Title I recipients;
- Undergoing training and providing training for staff and service providers (participation required for quarterly conference calls and training sessions conducted by DWD's State EO Officer);
- Surveying WorkOne offices to ensure compliance with applicable accessibility requirements;
- Reviewing the Region's policies to ensure they are nondiscriminatory;
- Conducting outreach and education about EO and nondiscrimination requirements and how an individual may file a complaint; and
- Ensuring overall implementation of the NDP.

Element 2. Notice and Communication [29 CFR 38].

A copy of the R4WDB's prescribed EO Policy Assurance Notice is attached to and made a part of this policy. The EO Officer's name and contact information will be prominently posted at each WIOA Title I recipient and subrecipient office in the Economic Growth Region 4 as part of each office's EO Assurance Notice. The Notice will be posted in English and Spanish. It will contain the EO Officer's TDD/TTY/Relay Indianan telephone number to accommodate the hearing impaired.

Recipient and subrecipient recruitment brochures and other materials routinely made available to the public as well as program-related information published or broadcast in the news media will include the statements "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities." Where a telephone number is included on brochures or materials, a TDD/TTY/Relay Indiana number will also be included.

Element 3. Review assurances, job training plans, contracts, and policies and procedures [29 CFR 38].

The R4WDB will incorporate the required EO assurance into each grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of WIOA is made available. Each application for financial assistance under Title I of WIOA will include the following assurance language:

"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 will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Workforce Investment and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States 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 basis 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 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 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."

Job training plans, contracts, assurances, and other similar agreements entered into by the R4WDB will be both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity. Subrecipients will be required to assure that their issuances are not discriminatory either in intent or effect. In lieu of including the assurance language in its entirety for smaller contracts or agreements (such as OJT contracts, etc.), the following reference to the language may be used:

"The equal opportunity and nondiscrimination assurances at 29 CFR Part 38.25 apply to this contract/agreement."

Each grant applicant, and each training provider seeking eligibility, must be able to provide programmatic and architectural accessibility for individuals with disabilities.

Element 4. Universal Access [29 CFR 38]

The R4WDB and its sub recipients will make continued efforts to broaden the composition of those considered for participation or employment in their programs and activities, including members of both sexes, various racial and ethnic groups, various age groups, and individuals with disabilities. Those efforts will include maintaining ongoing contacts with community groups, schools, organizations that provide services to the disabled, and minority organizations.

The R4WDB will establish its criteria for determining priority of service and publish its plans to expand the pool of those considered for participation or employment in its programs through its Local Workforce Plan.

Element 5. Compliance with section 504 of the Rehabilitation Act of 1973, as amended and 29 CFR part 38

The R4WDB and its sub recipients will meet their obligation not to discriminate on the basis of disability by providing the following:

- Reasonable accommodation for individuals with disabilities.
- Reasonable steps to ensure meaningful access to limited English proficiency (LEP) individuals via every delivery method (written, electronic, and in person).
- Reasonable modification of policies, practices and procedures, as required.
- Architectural accessibility for individuals with disabilities.
- An annual schedule that will be adhered to for the purpose of evaluating job qualifications to ensure that the qualifications do not discriminate on the basis of disability.
- A limitation on pre-employment/employment medical inquiries to those permitted by and in accordance with WIOA section 188, Section 504, the Americans with Disabilities Act of 1990, and their implementing regulations.

- Administration of their WIOA Title I-financially assisted programs and activities so that each individual with a disability participates in the most integrated setting appropriate to that individual.
- Communication with persons with disabilities that is as effective as with others.

Element 6. Data and Information Collection and Maintenance [29 CFR 38].

The R4WDB and its sub recipients will assist the Indiana Department of Workforce Development to ensure EO compliance by ensuring the following:

- R4WDB and its sub recipients will collect EO data for applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment and record the race/ethnicity, sex, age, and where known, disability status. Beginning on January 3, 2019, each Recipient must also record LEP and preferred language.
- Records, particularly those containing medical information, will be treated in a manner that ensures their confidentiality.
- A log of complaints that allege discrimination will be maintained and submitted to the Indiana Department of Workforce Development, as required by IDWD policy. State Form 46001 will be used for this purpose.
- All such data and records will be maintained for a period of three years from the close of the applicable program year. Records regarding complaints and actions taken on complaints will be maintained for a period of three years from the date of resolution of the complaint.
- IDWD will be notified of administrative enforcement actions and lawsuits filed that allege discrimination on one or more of the bases prohibited by WIOA section 188.

Element 7. Monitor Subrecipients for Compliance [29 CFR 38].

The R4WDB will establish procedures to periodically monitor all aspects of its subrecipients' compliance with WIOA section 188 and 29 CFR part 38 (e.g., assurances, notice and communication). The R4WDB will monitor programs and activities to determine whether discrimination is occurring. The monitoring of programs and activities will involve, at a minimum:

Analysis of the data and records collected by the subrecipient pursuant to 29 CFR 38 through 41, to determine whether any differences based upon race/ethnicity or sex have practical or statistical significance.

Where significant differences are found, follow-up investigations to determine, through records review, interviews, and other appropriate investigative techniques, whether the differences are due to discrimination.

Element 8. Complaint Processing [29 CFR 38].

A copy of the R4WDB's Complaint Procedure is attached to and made a part of this policy.

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Element 9. Corrective Actions/Sanctions [29 CFR 38]

The R4WDB's grant oversight processes involve ongoing desktop and field monitoring to identify strengths and weaknesses. Deficiencies are addressed through technical assistance and corrective action requirements. In this manner, the R4WDB affords maximum opportunity to address problem areas and comply with legal mandates.

The R4WDB will assess adherence to EO requirements throughout the grant period by various review processes. The R4WDB may require sub recipients to take certain corrective actions, including the requirement to develop plans to correct deficiencies or situations which, if not corrected, could result in the subrecipient not complying with or continuing not to comply with the EO requirements.

An essential prerequisite for issuance or continuation of a grant is a good faith response by the sub recipient to the R4WDB's corrective action or clarification requirements. Failure to respond in good faith to the R4WDB's corrective action or clarification requirements will lead to progressive sanction activity.

Lack of good faith is defined as: 1) the subrecipient does not respond to the corrective action plan or clarification requirements within the timeframe allowed (or fails to negotiate an acceptable timeframe); 2) the response is inadequate and the subrecipient fails to develop an adequate response within the timeframe allowed; or 3) the response is adequate, but the subrecipient fails to fully implement the corrective action plan or implement/follow the clarification provided within the timeframe agreed upon.

Before the imposition of any sub recipient sanctions, the R4WDB will transmit a letter to the subrecipient indicating the violation. The letter will address the possible sanctions if the violation or problem is not remedied, appropriate clarifications are not submitted and adhered to, or the appropriate needed corrective action has not yet been undertaken. The letter may include a request for a meeting between the relevant parties and R4WDB staff to review the violation(s) and discuss appropriate corrective and other actions and will also include timelines for instituting corrective action. This meeting should take place within 15 working days after receipt of the letter as indicated by certified mail.

If this meeting or the subrecipient's response and corrective action plan fails to resolve the difficulty, the R4WDB will notify the subrecipient and relevant parties of its intent to impose a specific sanction. Such notification shall be received by the parties involved at least ten (10) working days before the scheduled imposition of sanctions, as evidenced by certified mail. The letter will also reiterate the violation, the corrective action needed, and the appeal process.

If satisfactory evidence of needed corrective action initiation is presented to the R4WDB within this ten (10) working day period, the R4WDB may postpone the initiation of sanctions until either the completion of the action within the R4WDB approved timelines or attainment of any IDWD imposed deadline without completion of the action. In the former case, the implementation of the sanctions may be lifted; in the latter, sanctions will be imposed.

Sanctions which may be imposed by the R4WDB upon sub recipients include the following (in order of increasing severity):
Sanctions that may be imposed include, but are not limited to:

- Termination of future funding;
- Disallowance of selected costs;
- Restriction from bidding on competitive or discretionary funds; and
- Reduction in funding.

Appeals may be made to the R4WDB designee within ten (10) working days after receipt of notification of pending sanctions. Such an appeal, however, will not forestall the initiation of sanctions (unless the R4WDB designee extends the deadline).

If satisfactory evidence of needed corrective action initiation is presented to the R4WDB within this ten (10) working day period, the R4WDB may postpone the initiation of sanctions until either the completion of the action within the R4WDB approved timelines or attainment of the IDWD deadline without completion of the action. In the former case, the implementation of the sanctions may be lifted; in the latter, sanctions will be imposed.

Effective Date: July 2018

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);

Mellisa Leaming, Equal Opportunity Officer; Region 4 Workforce Board; 976 Mezzanine Drive, Suite C; Lafayette, IN 47905 or electronically at mleaming@tap.lafayette.in.us.

or

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 website 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.

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The Complaint Resolution Process by Investigation

A written complaint must be signed and dated by the complainant. The complainant must sign and include his/her name and address, the identity of the person the complaint is made against, and a detailed description of the Complainant's allegations. The Recipient's Equal Opportunity (EO) Officer will assist the Complainant in filing his/her complaint. The Recipient will provide a written acknowledgement of receipt of the complaint to the Complainant within 7 calendar days from the date the complaint is filed. The Recipient will notify the Complainant of the following:

- His/her right to be represented in the complaint process;
- A list of the issues raised in the complaint; for each issue, a statement that the Recipient will accept the issue for investigation or reject it; and, if rejected, the reason for each rejection;
- The option of resolving the complaint by the *Alternative Dispute Resolution (ADR) or Mediation Process* instead of an investigation (see below);
- That there will be a period of 15 calendar days (Days 8 – 22) during which the EO Officer will investigate the facts underlying the complaint;
- That there will be a period of 8 calendar days (Days 23 – 30) during which the Recipient will attempt to resolve the complaint, including the ADR Process; and
- A statement that the Complainant is due a decision or *Notice of Final Action* within 60 days after receipt of the complaint.

The *Notice of Final Action* will contain, for each issue raised in the complaint, either a statement of the Recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue. The *Notice of Final Action* will advise the Complainant that if he/she is dissatisfied with the decision, he/she must appeal the local decision to the Indiana Department of Workforce Development (IDWD) EO Officer within 5 days of receipt of the decision. The IDWD EO Officer will issue a response to the appeal within 25 days after receipt or 90 days after the initial filing date of the complaint, whichever is later. The *Notice of Final Action* will also advise the Complainant of his/her right to file a complaint with the Civil Rights Center within 30 days of the date on which the IDWD EO Officer issues a response to the his/her appeal if he/she is dissatisfied with that response.

The Complaint Resolution Process by Alternative Dispute Resolution or Mediation

If the Complainant chooses to have his/her complaint resolved by the Alternative Dispute Resolution (ADR) or Mediation process rather than by investigation, the Recipient will provide the following:

- An impartial mediator who is trained in mediation techniques and the principles of equal opportunity;
- That both parties to the complaint must sign a consent form affirming that the contents of the mediation will be kept confidential and that both parties agree not to involve the mediator in any litigation;
- That any successful resolution obtained shall be recorded in a written settlement agreement and signed by both parties. There should be no written record or other recording made of the meeting; and
- That if the parties cannot reach agreement under the ADR process, the Complainant may file directly with the Civil Rights Center (at the address provided herein) within 180 days of the alleged act of discrimination. In the event the agreement is breached, the non-breaching party may file the complaint directly with the Civil Rights Center within 30 days of the date on which the non-breaching party learns of the alleged breach.

The Recipient's EO Officer, Ms. Mellisa Leaming, can be contacted at (765) 807-0888 (Voice), Relay Indiana 800-743-3333 (TTY) for assistance in filing a complaint.