

WIOA Guidance Notice No. 3-17

TO: Workforce Development Boards

FROM: Vickie Elkins, EO Officer
Management Analysis Section

SUBJECT: Equal Opportunity Monitoring

EFFECTIVE DATE: July 1, 2017

I. REFERENCE

Workforce Innovation and Opportunity Act (WIOA), Section 188; Code of Federal Regulations 20 CFR 38, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the WIOA (Sections 38.51 and 38.53).

BACKGROUND

The State of West Virginia has a primary function to ensure that any recipient receiving financial assistance under Title I of WIOA is committed to, and in compliance with the nondiscrimination provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and the implementing regulations at 29 CFR Part 38 and: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Vocational Rehabilitation Act of 1973, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990 and many other federal as well as state legislative enactment's. The State of West Virginia ensures compliance with a variety of means including compliance reviews and investigations of allegations of discrimination.

Section 188 of WIOA and the implementing regulations at 29 CFR Part 38 require each recipient of financial assistance under Title I of WIOA to prohibit the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with, any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA.

The regulations at 29 CFR Part 38 contain general provisions, record keeping and other affirmative action obligations for recipients and the Governor's responsibilities to implement the nondiscrimination and equal opportunity requirements of WIOA. Also, discussed in this part are such items as the designation of EO Officers' and oversight and monitoring.

PURPOSE

The main objective of monitoring reviews is to measure the compliance of recipients receiving financial assistance to administer a WIOA Title I financially assisted program or activity to ensure compliance with Section 188 WIOA and 29 CFR Part 38. Categories under review include but are not limited to:

- 1) Operation of the equal opportunity program at the administrative level of the seven Workforce Development Boards (WDBs).
- 2) Administration of the equal opportunity program at the service provider level.
- 3) Accessibility of the programs at WorkForce West Virginia (WVWV) American Job Centers (AJCs) and the service providers.

PRE-REVIEW ACTIVITIES

These activities are designed to notify the recipient of the on-site dates and obtain information to be reviewed prior to the on-site visit. The pre-review activities are designed to assist the reviewer to identify and resolve potential problems prior to the review, if possible.

A. There are two segments to the pre-audit review:

- 1) Prior to the on-site review a desk review is conducted for the WDB under review. Source data can be obtained prior to the review from the entity being reviewed and will be used to assist in the development of the scope of the review. Source data not furnished prior to the on-site review will be obtained while on-site and utilized during the review activities dependent upon the pre-audit review determination of field activity. All source data will be requested in written form or by telephone with written confirmation. The source data used for the pre-audit review is as follows:
 - A copy of the most current organizational chart.
 - A copy of the position description and/or the job description for the EO Officer.
 - Copies of the current discrimination complaint procedures for staff and program participants.
 - Participant and staff characteristic data.
 - Copies of any printed material used for information or recruitment purposes.

- Current equal opportunity, sexual harassment policy statements.
- A listing of equal opportunity notices required to be posted.
- Copy of most recent 504 self-evaluation.

A desk review work paper has been developed for use to ensure accountability and uniformity. These work papers will be used to gather and review pertinent information prior to the review.

2) A meeting will be held between staff conducting the review and the entity being reviewed to discuss the review and how review activities will be conducted.

- B. The recipient will be notified at least 21 days prior to the review by letter. The letter includes the review dates, the date and time of the entrance conference, the scope of the review and a request for information.
- C. The information requested in the notification letter will be reviewed to determine if any compliance issues exist within the basic structure of the recipient's EO program.
- D. A follow-up letter will be sent seven (7) days prior to the review for the purpose of finalizing review activities.

ON-SITE ACTIVITIES

The purpose of the on-site activities is to determine compliance with the equal opportunity requirements of Section 188 of WIOA and 29 CFR Part 38. This is achieved through the review of documents, interviews with staff and participants as well as observations of the operations of the recipient.

- A. An entrance conference will begin the on-site activities. The purpose of the entrance conference is to introduce team members, describe the scope of the review, set an estimated timetable for the completion of the review, establish a schedule of appointments to interview staff and participants, and to set a schedule of visits to training sites.
- B. The areas to be reviewed include, but are not limited to: EO assurances and policy statements; designation of an EO Officer; record keeping; structural and program accessibility; civil rights posters and notifications; complaint system/logs; outreach/recruitment; staff training; participant data; policy issuances; job training plans; contracts and assurances; statistical and quantifiable data related to equal opportunity and nondiscrimination; confidentiality agreements. Any information not furnished, which was asked for on the pre-review information request, will be requested during the on-site.
- C. Additional information which is requested during the on-site includes, but is not limited to:
 - Training provider agreements for review for EO assurances.

- Operational plans for reviews for EO assurances.
- Memorandum of Understanding (MOU) for EO assurances.

D. At the conclusion of the review, an exit conference will be conducted with the entity being reviewed. The review team will discuss the findings and recommendations from the review activities, citing the applicable law, standard, regulation or policy. At that time the entity being reviewed can offer additional information pertinent to the findings. If after an exit conference, additional findings are noted or if a previous finding has been significantly modified, the entity will be notified prior to the issuance of the report. No findings will appear in a report without prior knowledge of the entity being reviewed.

POST REVIEW AND REPORTING ACTIVITIES

The post review includes a review of all work papers and documents gathered during the on-site activities and the development of the report.

- A. All work papers will be reviewed for accuracy and will assist in the reporting of the findings and recommendations discussed in the exit conference.
- B. The report will be developed and include the following elements: the background, scope and a summary of the review activities. Any findings of noncompliance should include the cite, regulation, policy or procedure and be followed by a suggested corrective action.

On-site follow-up visits will be conducted to assure that the entity being reviewed has complied with all issues of non-compliance that were identified in the report. These visits will be conducted by the appropriate State level EO Officer. If discriminatory conduct has been identified, corrective action will be implemented. Copies of documents and/or reports related to any corrective action will be forwarded to the appropriate Workforce Development Board Executive Director and the Local WDB EO Officer. The WorkForce West Virginia is responsible for the generation of monitoring reports for recipients of WIOA Title I-financially assisted programs or activities.

WDB EO OFFICER RESPONSIBILITIES

Routine monitoring of service providers will be conducted by the respective WDB EO Officer. Copies of any findings or reports will be provided to the State level EO Officer within (sixty) 60 days of the completion of the review. The Local WDB EO Officer is responsible for reporting any non-compliance issues to the State level EO Officer. The State level EO Officer and respective WDB EO Officer will coordinate all corrective action and follow-up efforts.

FILE MAINTENANCE

All records of applicants, eligible applicants/registrants, participants, terminees, employees, and applicants must be maintained for a period of not less than three years from the close of the applicable program year. Records regarding discrimination complaints and actions taken on these complaints will be maintained for a period of not less than three years from the date of resolution of the complaint. The State level EO Office will maintain the official records regarding discrimination complaints.

Monitoring review files are maintained for each review which include any work papers, documents obtained for the review, correspondence, the report and any other pertinent documents. These records will be maintained for a period of not less than three years from the close of the applicable program year.

FAILURE TO PROVIDE REQUESTED DATA, RECORDS AND/OR OTHER INFORMATION

In accordance with Section 188 of WIOA and the implementing regulations at 29 CFR Part 38, if a recipient of WIOA Title I financial assistance fails to provide the requested information within thirty (30) days, resulting in the inability to issue findings, the WFWV may issue a Notice to Show Cause. Reasons for issuing a Notice to Show Cause would include, but is not limited to:

- Failure to submit requested information, records, and/or data within thirty (30) days of receiving the Notification Letter.
- Failure to submit, in a timely manner, information, records, and/or data requested during a compliance review or other action to determine compliance.
- Failure to provide the WFWV with access, in a timely manner, to the premises, records, or employees during a compliance review.

All remedial or corrective action plans submitted to WFWV will list each violation and specify the corrective or remedial action to be taken. The recipient has thirty (30) days in which to come into compliance. A written assurance or Conciliation Agreement may be required which will also provide a specific time frame for periodic status review of the corrective or remedial action, and state the recipient's assurance that the violation(s) will not recur. Every assurance or agreement will contain provisions for enforcement should a breach occur.

The WFWV will conclude that compliance cannot be secured by voluntary means if: the grant applicant or recipient fails or refused to correct violations within the required time frames outlined in the Letter of Findings, Notice to Show Cause or Initial Determination; no extension has been requested or granted; WFWV receives no notification that the grant applicant or recipient has agreed to voluntary compliance; WFWV has disapproved a written assurance or Conciliation Agreement; WFWV receives notice that the recipient will not voluntarily comply. Should voluntary compliance not occur, a Final Determination will be issued to the grant applicant or recipient.

The Notice of Final determination will contain:

- A statement that the matter will be referred to the Department of Labor, Director Civil Rights Center for action.
- A statement of the efforts made to achieve voluntary compliance and a statement that those efforts have been unsuccessful.
- A statement of the issues upon which WFWV and the recipient disagree.
- A list of modifications to the findings or conclusions set forth in either the Initial Determination, Finding of Non-Compliance or Notice to Show Cause.
- A statement to the recipient of their liability and the extent of that liability, if appropriate.
- A description of the corrective or remedial actions that the recipient must take to come into compliance.
- Notice that if the recipient fails to come into compliance within ten (10) days of the date on which it receives the Final Determination, one or more of the following consequences may result:
 - 1) After the opportunity for a hearing, WIOA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied.
 - 2) The Director, Civil Rights Center may refer the case to the Department of Justice with a request to file suit against the recipient.
 - 3) The Director, Civil Rights Center may take any other action against the recipient that is provided by law.
 - 4) Notice of the grant applicant's or recipient's right to request a hearing.

Please direct inquiries about this policy to:

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