



MEMORANDUM

To: Portia Wu, Administrator, Employment and Training Administration
Naomi Barry-Perez, Director, Civil Rights Center
U.S. Department of Labor

From: Stephen Parker, National Governors Association
Julie Squire, National Association of State Workforce Agencies

Subject: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act; **Proposed Rule** by Department of Labor (DOL), Office of the Secretary on **01/26/2016**
RIN 1291-AA36

Date: March 28, 2016

The National Governors Association (NGA) and the National Association of State Workforce Agencies (NASWA) are pleased to submit joint comments on the proposed nondiscrimination and equal opportunity regulations (RIN 1291-AA36) under Section 188 of the Workforce Innovation and Opportunity Act (WIOA).

The National Governors Association (NGA) is the bipartisan organization of the nation's governors. Since 1908, NGA has functioned as the governors' collective voice on national policy and a vehicle for the development of innovative solutions that improve state government and support the principles of federalism. Our members are the governors of the 55 states, territories and commonwealths.

The National Association of State Workforce Agencies (NASWA) is a private non-profit membership organization serving as the advocate for state workforce programs and policies on behalf of all 50 states, the District of Columbia, Puerto Rico and Guam. NASWA functions as a liaison to federal workforce system partners, and a forum for the exchange of information and best practices. Founded in 1937, NASWA has strengthened the workforce system through information exchange, liaison, and advocacy. NASWA features several committees of the membership, including an Equal Opportunity Committee. Thirty-six states are currently represented on NASWA's Equal Opportunity Committee.

Workforce training is a key part of every governor's agenda and equity is at the center of that work. When every individual – regardless of their background - is given the opportunity to prepare for a successful career, states and their economies are stronger. The Workforce Innovation and



Opportunity Act (WIOA) ensures that states have the flexibility to determine how to improve access to high-quality workforce training programs.

Section 188 of WIOA prohibits discrimination in connection with programs and activities funded in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, political affiliation or belief. It is important to note that section 188 of WIOA is identical to its predecessor, the Workforce Investment Act (WIA) of 1998. On July 23, 2015, DOL issued regulations implementing section 188 that substituted all WIA references with “WIOA.”

On January 26, 2016, DOL issued new proposed regulations on Section 188. These proposed regulations represent a significant departure in several important aspects to the current regulations and create new and unnecessarily burdensome requirements for states not authorized by WIOA. Three aspects of the proposed regulations are particularly troubling for states and take away flexibility for states to determine their own path to workforce training equity.

1. “State Level Equal Opportunity Officer” must report directly to the governor.

Proposed section 38.28(a) states:

“Every Governor must designate an individual as a State Level Equal Opportunity Officer (EO Officer), **who reports directly to the Governor** and is responsible for statewide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA and this part, including but not limited to §§ 38.51, 38.53, 38.54 and 38.55. The State Level EO Officer must have staff and resources sufficient to carry out these requirements.” (emphasis added)

This new requirement directs governors to create a new position and organize their staff in a specific and direct way. The current regulations require the designation of an “Equal Opportunity Officer” for each recipient of WIOA funds and do not dictate how a state must organize this function. Currently, states may structure equal opportunity staff as appropriate for their state governance structure, which grants them flexibility to make equity a part of the day-to-day operations of their workforce training programs.

The proposal inserts an additional level of a “State Equal Opportunity Officer,” and requires that the individual “reports directly to the Governor.” This new position is not required under WIOA, and imposes additional staff without additional funding. The preamble of the proposed regulations appears to justify the added “State Level Equal Opportunity Officer” because of a perceived lack of authority by the EO Officers.

The current regulations make it clear that an EO Officer must be a “senior-level” employee and must report “directly to the appropriate official.” The current regulations also specified that the



Equal Opportunity Officer must have “sufficient staff and resources” and “support of top management.” DOL has authority, under current regulations, to make sure that the Equal Opportunity Officers have the authority and resources to do their jobs.

- NGA and NASWA recommend that section 38.28(a) be deleted.

2. Additional data collection and monitoring requirements not supported by additional resources.

Proposed section 38.41 adds two new data elements to be collected by all WIOA grant recipients. Recipients must now “record the limited English proficiency and preferred language of an individual.” These new elements must now be included as part of the monitoring conducted by the governor under section 38.51. Adding these requirements to existing systems will involve a cost. Without additional funding, it is unknown how changes to data collection and maintenance systems can be implemented. These new data collection requirements are outside the scope of WIOA, as neither element is mentioned in section 188.

- NGA and NASWA recommend deleting the following sentence from section 38.41: “For applicants, registrants, participants, and terminees, each recipient must also record the limited English proficiency and preferred language of an individual.”
- NGA and NASWA recommend deleting the inclusion of “limited English proficiency, preferred language” from section 38.51(b)(1).

3. Increased monitoring is not supported by WIOA

The proposed regulations specify in section 38.51 that WIOA grant recipients must be monitored annually. This is a significant change from the prior regulations in section 37.54 which required “periodic monitoring.” Many states currently conduct WIOA grant recipient monitoring once every two years. The proposed regulations are doubling the workload and travel expenses for many states, and there is no additional funding.

States are in the best position to determine when monitoring is appropriate, and WIOA does not require annual monitoring. In fact, section 121 of WIOA requires monitoring at least every three years in the area of accessibility of one-stop centers. Requiring monitoring of grant recipients every year will force states to reduce the quality of these reviews.

- NGA and NASWA recommend that the phrase “annual” be replaced with “periodic” in section 38.51(b).