

# **The Nondiscrimination Plan**

# **Nondiscrimination Plan**

§ 38.54 Governor's obligations to develop and implement a Nondiscrimination Plan.

# Nondiscrimination Plan

- (a)(1) Each Governor must establish and implement a Nondiscrimination Plan for State Programs as defined in § 38.4(kkk). In those States in which one agency contains both SWA or unemployment insurance and WIOA Title I-financially assisted programs, the Governor must develop a combined Nondiscrimination Plan.
- (2) Each Nondiscrimination Plan must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIOA and this part.

# State Programs

- (kkk) State Programs means programs financially assisted in whole or in part under Title I of WIOA in which either:
  - (1) The Governor and/or State receives and disburses the grant to or through LWDA grant recipients; or
  - (2) The Governor retains the grant funds and operates the programs, either directly or through a State agency.
  - (3) “State Programs” also includes State Workforce Agencies, State Employment Service agencies, and/or State unemployment compensation agencies.

# Nondiscrimination Plan

The Nondiscrimination Plan must be:

- (1) In writing, addressing each requirement of paragraph (c) of this section with narrative and documentation;
- (2) Reviewed and updated as required in § 38.55; and
- (3) Signed by the Governor.

# Nondiscrimination Plan

Each Nondiscrimination Plan must Describe how the State Programs and recipients have satisfied the requirements of the following regulations:

- Assurances
- Equal Opportunity Officers
- Notice and Communication
- Data and Information Collection and Maintenance
- Affirmative Outreach
- Governor's Oversight Responsibility Regarding Recipients' Recordkeeping
- Complaint Processing Procedures
- Governor's Oversight and Monitoring Responsibilities for State Programs

# Assurances

- § 38.25 A grant applicant's obligation to provide a written assurance.
- § 38.26 Duration and scope of the assurance.
- § 38.27 Covenants.

# Equal Opportunity Officers

- § 38.28 Designation of Equal Opportunity Officers.
- § 38.29 Recipients' obligations regarding Equal Opportunity Officers.
- § 38.30 Requisite skill and authority of Equal Opportunity Officer.
- § 38.31 Equal Opportunity Officer responsibilities.
- § 38.32 Small recipient Equal Opportunity Officer obligations.
- § 38.33 Service provider Equal Opportunity Officer obligations.

# Notice and Communication

- § 38.34 Recipients' obligations to disseminate equal opportunity notice.
- § 38.35 Equal opportunity notice/poster.
- § 38.36 Recipients' obligations to publish equal opportunity notice.
- § 38.37 Notice requirement for service providers.
- § 38.38 Publications, broadcasts, and other communications.
- § 38.39 Communication of notice in orientations.

# Data and Information Collection and Maintenance

- § 38.41 Collection and maintenance of equal opportunity data and other information.
- § 38.42 Information to be provided to the Civil Rights Center (CRC) by grant applicants and recipients.
- § 38.43 Required maintenance of records by recipients.
- § 38.44 CRC access to information and information sources.
- § 38.45 Confidentiality responsibilities of grant applicants, recipients, and the Department.

# Affirmative Outreach

§ 38.40 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
- Racial groups
- Ethnic/national origin groups
- Religions
- LEP individuals
- Individuals with disabilities
- Age groups

# **Governor's Oversight Responsibility Regarding Recipients' Recordkeeping**

§ 38.53 Governor's oversight responsibilities regarding recipients' recordkeeping.

The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of § 38.41 and any procedures prescribed by the Director under § 38.41(a). The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

# Complaint Processing Procedures

- § 38.72 Required elements of a recipient's complaint processing procedures.
- § 38.73 Responsibility for developing and publishing complaint processing procedures for service providers.

# **Governor's Oversight and Monitoring Responsibilities for State Programs**

- § 38.51 Governor's oversight and monitoring responsibilities for State Programs.
- § 38.52 Governor's liability for actions of recipients the Governor has financially assisted under Title I of WIOA.
- § 38.53 Governor's oversight responsibilities regarding recipients' recordkeeping.

# Additional Elements

**The Nondiscrimination Plan Must include the following additional elements:**

- A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of WIOA, is likely to conduct its WIOA Title I-financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in this part
- A review of recipient policy issuances to ensure they are nondiscriminatory
- A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity

# Additional Elements

Procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of § 38.5 regarding:

- race
- color
- religion,
- Sex
- national origin
- age
- political affiliation or belief
- citizenship
- participation in any WIOA Title I-financially assisted program or activity

# Additional Elements

Procedures for ensuring that recipients comply with the requirements of applicable Federal disability nondiscrimination law, including:

- Section 504 of the Rehabilitation Act
- Title II of the Americans with Disabilities Act of 1990, as amended, if applicable
- WIOA Section 188
- this part (29 CFR part 38) with regard to individuals with disabilities

# Additional Elements

- A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIOA or this part are aware of and can effectively carry out these responsibilities.
- Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.

# Additional Elements

Supporting documentation to show that the commitments made in the Nondiscrimination Plan have been and/or are being carried out. This supporting documentation includes, but is not limited to:

- (A) Policy and procedural issuances concerning required elements of the Nondiscrimination Plan
- (B) Copies of monitoring instruments and instructions
- (C) Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part

# Additional Elements

## Supporting Documents Continued:

(D) Information reflecting the extent to which equal opportunity training, including training called for by §§ 38.29(f) and 38.31(f), is planned and/or has been carried out;

(E) Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions

(F) Copies of any notices made under §§ 38.34 through 38.40.

## §38.55 Schedule of the Governor's obligations regarding the Nondiscrimination Plan.

(a) Within 180 days of either January 3, 2017, or the date on which the Governor is required to review and update their Methods of Administration as determined by the schedule in §37.55, whichever is later, a Governor must:

- (1) Develop and implement a Nondiscrimination Plan consistent with the requirements of this part; and
- (2) Submit a copy of the Nondiscrimination Plan to the Director.

(b) The Governor must promptly update the Nondiscrimination Plan whenever necessary, and submit the changes made to the Director in writing at the time that any such updates are made.

# §38.55 Schedule - continued

(c) Every two years from the date on which the initial Nondiscrimination Plan is submitted to the Director under paragraph (a)(2) of this section, the Governor must review the Nondiscrimination Plan and the manner in which it has been implemented, and determine whether any changes are necessary in order for the State to comply fully and effectively with the nondiscrimination and equal opportunity provisions of WIOA and this part.

- (1) If any such changes are necessary, the Governor must make the appropriate changes and submit them, in writing, to the Director.
- (2) If the Governor determines that no such changes are necessary, the Governor must certify, in writing, to the Director that the Nondiscrimination Plan previously submitted continues in effect.
- (3) Submit a copy of all reports of any monitoring reviews conducted by the Governor pursuant to §38.51(b) since the last Nondiscrimination Plan update.