



NEMO WORKFORCE DEVELOPMENT BOARD

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NEMO WDB Issuance 06-2017

Issued: APRIL 18, 2018

Effective: APRIL 18, 2018

To: All Program Operators

Subject: Nondiscrimination and Equal Opportunity (EO) Corrective Actions/Sanction Policy and Guidelines.

1.Purpose: This Issuance is written to communicate the Northeast Missouri Workforce Development Board's (NEMO WDB) standard for corrective and remedial actions to be applied when violations of the Workforce Innovation & Opportunity Act's (WIOA) nondiscrimination and equal opportunity provisions, Section 188 or 29 CFR Part 37, are found. These standards apply to any entity to which financial assistance under WIOA Title I is extended, either directly or through another recipient.

2.Background: The nondiscrimination and equal opportunity provisions of the WIOA prohibit discrimination against applicants, beneficiaries, and employees 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, and for beneficiaries only, citizenship or participation in a WIOA Title I financially-assisted program or activity. The regulations that implement these provisions are published at 29 CFR Part 37 and require that each state and local workforce development board formulate a standard for corrective and remedial actions to be applied to recipients of WIOA, Title I funds when DWD is apprised of violations of WIOA Section 188 or 29 CFR Part 37, or of any of the implementing plans or policies described herein.

The responsibilities of WIOA Title I-financially assisted entities can be found at 29 CFR Part 37. In compliance with these regulations, Missouri has established and adheres to a Methods of Administration (MOA), available on the State's current EO website, which further details the responsibilities of Missouri WIOA recipients with respect to equal opportunity and nondiscrimination.

3.Substance: Whenever a compliance review report, complaint, or any other information indicates a possible failure to comply with 29 CFR Part 37, the State's MOA, or DWD and NEMO WDB Issuances relating to nondiscrimination or equal opportunity, an analysis and review will be conducted to determine whether a true violation exists. If the determination of non-compliance is made during an EO monitoring review, every effort will be made to provide on-site technical assistance to correct the

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violation, including posting EO notices or removing a comment from a participant's file.

Corrective actions that cannot be fully addressed during an onsite visit will be part of the EO monitoring report. The sub-recipient will then have thirty (30) days from the date of receiving the report to respond to the findings and correct any violations identified. EO Staff will follow-up within thirty (30) days of the recipient's response to ensure that corrective action has occurred. Extensions may be granted for good cause.

When EO violations are found during the course of a discrimination complaint investigation, those issues will become part of the EO Officer's findings of fact. Depending on the extent and severity of the violations, technical and programmatic corrective actions may be recommended. Corrective action may also include "make-whole" provisions such as retroactive relief (e.g., back wages or benefits) and prospective relief (e.g., change of policy). A response must include assurances and/or a plan to attain compliance within thirty (30) days of the issuance of an investigative report. EO staff will follow-up and monitor the corrective action within thirty (30) days. Extensions may be granted for good cause.

A lack of response to findings of noncompliance or a failure to implement corrective actions promised in a recipient's response will result in a Notice to Show Cause why enforcement proceedings or sanctions should not begin. The corrective action required and the ways to correct the noncompliance will be part of the Notice. The recipient will then have thirty (30) days to respond to the Notice.

A partial response or lack of response to the Notice to Show Cause will be elevated to the State EO Officer for determination of appropriate sanctions. Sanctions may include, but are not limited to, reparation for discriminatory practices, establishment of policy issuance, removal of participants from sites refusing to implement corrective actions, and legal action.

- 4.Action: This Issuance serves as notification of NEMO Workforce Development Board's Corrective Action and Sanctions Policy with respect to the EO and nondiscrimination provisions of WIOA. This Issuance should be distributed to all appropriate staff.
- 5.Contact: Please direct questions or comments regarding this Issuance to Sheila Jurgesmeyer, EO Officer, Northeast Missouri Workforce Development Board, 111 East Monroe Street, Paris MO 65275. Phone: (660) 327-5125; Email: sheila.j@nemowib.org.
- 6.Reference: The Workforce Innovation and Opportunity Act; 29 CFR Part 37.



Diane Simbro, Executive Director
Northeast Missouri Workforce Development Board

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NONDISCRIMINATION AND EQUAL OPPORTUNITY (EO)
NON-COMPLIANCE, CORRECTIVE ACTION, AND SANCTION
POLICY AND GUIDELINES

Scope of the Policy

This policy is established by the Department of Labor and Civil Rights Center (CRC) for effecting corrective actions and applying sanctions of any non-compliance of the Non-Discrimination and EO Provisions of the Workforce Innovation and Opportunity Act (WIOA) Section 188 and Code of Federal Regulations (CFR) 29 Part 37, and applies to any recipient or entity to whom financial assistance is extended, either directly from United States Department of Labor, Missouri Division of Workforce Development or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I funded programs or activities.

“Recipient” includes, but is not limited to:

- A. State-level agencies that administer, or are financed in whole or in part with WIOA Title 1 Funds;
- B. State Employment Security agencies (Unemployment Insurance (UI));
- C. State and Local Workforce Development Boards;
- D. Local Workforce Development grant recipients;
- E. One-Stop operators;
- F. Providers of services and benefits, or training funded or authorized under WIOA, including Eligible Training Providers;
- G. On-the-Job Training (OJT) employers;
- H. Job Corps contractors and center operators, excluding the operators of federally operated Job Corps centers;
- I. Job Corps national training contractors;
- J. Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- K. Placement agencies, including Job Corps contractors that perform these functions;
- L. One-Stop partners to the extent they participate in the One-Stop Delivery System.

Definitions

- A. The United States Department of Labor’s Civil Rights Center (CRC) - Enforcement Agency for nondiscrimination and equal rights provisions. The CRC, in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.
- B. Violation - A violation is a failure to comply with WIOA regulations. A violation may range in seriousness from an infraction, or a technical violation, to a more significant discrimination violation. Taking corrective action requires identifying the violation that must be corrected:
 - 1. Technical violations. For example, a failure to include the required language in an assurance or failure to include the tag lines in a communication.
 - 2. Discrimination violations. Include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.

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- C. Sanction - Sanctions are the judicial enforcement actions taken, including suspending, terminating, or denying funding, when appropriate corrective actions are not taken to comply with WIOA regulations.
- D. Make-Whole Relief - Make-whole relief is “making the person whole” or bringing the person to the condition they would be in if, the discrimination had not occurred. Such relief might involve back pay, front pay, retroactive benefits, training, or any service discriminatorily denied. NOTE - Monetary relief, such as back pay, may not be paid from federal funds.
- E. Prospective Relief - Curative and preventive steps *voluntarily* taken to ensure that a violation does not reoccur in the future.

GENERAL OVERVIEW OF CORRECTIVE ACTIONS/SANCTIONS

Any recipient who fails to comply with regulations and provisions as described in WIOA section 188 and/or 29 CFR 37 is subject to corrective and remedial actions designed to completely correct each violation. This action is necessary when a violation is identified because of a discrimination complaint, a monitoring review, or both a monitoring review and a discrimination complaint.

IDENTIFY THE VIOLATION

Taking corrective action requires identifying the violation(s) that must be corrected:

- Technical violations: For example, a failure to include the required language in an assurance or failure to include the tag lines in a communication
- Discrimination violations: Include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.

DETERMINE THE APPROPRIATE CORRECTIVE ACTION

Appropriate Corrective Action - The action taken to correct a violation should be appropriate and reasonable given the violation that has occurred. If the *technical violation* involved failing to include tag lines in a communication, the appropriate corrective action would be to re-issue the communication with the tag lines included. To correct a *discrimination violation*, the appropriate corrective action may be to provide make-whole relief.

1. Make-whole relief for back pay - The victim(s) is entitled to be made whole for any loss of earnings suffered because of a discriminatory practice. The amount of money received should be equal to what they would have earned (plus compound interest) had the discrimination not occurred.
2. Make-whole relief for discrimination involving a failure to place an individual in a training program -The victim is entitled to an immediate and unconditional offer of placement into the training program that he or she would have been placed in had it not been for the discrimination

DOCUMENT ALL CORRECTIVE ACTIONS AND PROSPECTIVE RELIEF PLANS ARE BEING MAINTAINED

Where a technical violation has been (or can be) corrected immediately, a written agreement or assurance will be provided to document the corrective action taken and the prospective relief that is planned. The following shall be included:

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1. Corrective action(s) must be designed and documented to completely correct each violation.
2. For each corrective action, a timeframe will be established by the EO Officer to determine the minimum time necessary to completely correct the violation.
3. For each corrective action, a timeframe will be established by the EO Officer for a follow-up monitoring to ensure that commitments to take corrective and remedial action are being fulfilled.

An example of a corrective action plan for failing to include tag lines in a communication would be documentation that included:

1. An explanation that the communication was reissued with the tag lines added.
2. The timeframe for reissuing the communication if it has not yet been reissued.
3. An example of prospective relief planned to ensure that all future notices will also include the required language are as follows: a) Changing the policy, practice, or procedure that allowed for the violation. b) Developing a new policy communicating the change in policy, and,
4. Educating those responsible for implementing the revised procedures.

In the case of a more serious violation, or of a deficiency that cannot be corrected immediately, a detailed written assurance, or Conciliation Agreement shall be negotiated. The agreement must:

- Be in writing
- Contain a description of each violation
- Specify the corrective action or remedial action needed to come in to compliance
- Be sufficient in scope to ensure that the violation(s) will not recur
- Institute periodic reporting by the recipient on the status of the corrective or remedial action
- Institute enforcement procedures to be applied if the agreement is breached.

IMPOSE SANCTIONS

When all attempts to provide assistance to effect voluntary correction of a violation have failed, or it is apparent that the recipient fails or refuses to correct the violation within the timeframe established. The chart below will be followed to impose sanctions for non-compliance.

Sanctions are the judicial enforcement actions taken, including suspending, terminating, or denying funding, when appropriate corrective actions are not taken to comply with WIOA regulations. Sanction procedures for the NEMO WDB will include the following:

1. List the measures taken to achieve voluntary compliance up through the point when sanctions are imposed.
2. Explain that the severity of the noncompliance will determine the sanctions imposed.
3. Provide a table or listing of the potential sanctions that may be imposed.
4. Detail the notification process including rights of the respondent, time frames involved, and provisions for a hearing.
5. Identify the individuals who have responsibility for carrying out the various steps in the sanctions process and the role of the State EO Officer, the local EO Officer and NEMO WDB Executive Director in this process.

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NON-COMPLIANCE, CORRECTIVE ACTION, AND SANCTION GUIDELINES

AREA OF NON-COMPLIANCE	CORRECTIVE ACTION	PRE-SANCTION AND SANCTION
I. PRACTICES AND POLICIES		
A. Policies or procedures which discriminate, or have the effect of excluding identifiable groups of individuals or denying the administration of benefits, participation in, employment, or other activities in connection with WIOA.	<ol style="list-style-type: none"> 1. Technical Assistance. 2. Elimination or modification of policies, practices and procedures, which have been found to be discriminatory. 	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Recommendation of reduction of funding 3. Reduction of funding.
B. Programs, activities, or services that are inaccessible to disabled or limited English-speaking individuals	<ol style="list-style-type: none"> 1. Technical Assistance. 2. Identification of inaccessible features and modification of inaccessible features within a time frame specified by the WDB/EO Officer. 	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Reduction of funding 3. Disallowance of costs in inaccessible programs, activities, or services 4. Elimination of funding.
C. Non-existent, incomplete or inadequate accessibility assessment tool on file as required by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.	<ol style="list-style-type: none"> 1. Acquisition of technical assistance materials. 2. Production of such a document within a time period specified by the WDB/EO Officer. 	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Reduction of funding
D. Policies, practices, or procedures which are not in compliance with Section 188, 29 CFR 38 or other civil rights legislation	<ol style="list-style-type: none"> 1. Acquisition of technical assistance materials. 2. Prompt or elimination of non-compliant policies, practices, and procedures within a time period specified by the WDB/EO Officer. 	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Reduction of funding 3. Elimination of funding

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E. Non-existence of a staff analysis by race, sex, age and other categories specified by the NEMO WDB.	1. Completion of staff analysis within 1 month of receipt of non-compliance notice.	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Recommendation of reduction of funding
II. ADMINISTRATIVE DUTIES		
A. Lack of implementation of procedure for resolving complaints alleging a violation of the WIOA, or relating to terms and conditions of employment.	Obtain technical assistance and take necessary steps to achieve compliance per timeframe set by WDB/EO Officer	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Termination of federal financial assistance
B. Service provider procedures which are not in compliance with 29 CFR 38	Obtain technical assistance and take necessary steps to achieve compliance per timeframe set by WDB/EO Officer	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Suspension of federal financial assistance 3. Discontinue federal financial assistance
C. Failure to comply with equal opportunity directives issued by Governor's liaison, the state EO Officer or the Local NEMO WDB EO Officer or Executive Director as designees, in regard to applicable laws and regulations.	Take prompt action to comply within a time frame specified in the state and local procedures.	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Discontinue federal financial assistance
D. Failure to carryout oversight responsibilities by monitoring equitable service performance of its subcontractors.	Require immediate implementation of oversight and written report of the results to the state EO office within 3 months of the receipt of report of noncompliance.	
E. Failure to collect and maintain records as required in 29 CFR 38	Take prompt action to comply within a time frame specified by the state and local procedures	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Suspension of federal financial assistance 3. Termination of federal financial assistance

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