

ACTION BULLETIN

TO: All Workforce Innovation and Opportunity Act (WIOA) Service Providers

DATE: 05/22/2018

SUBJ: **OVERSIGHT AND MONITORING OF NONDISCRIMINATION AND EQUAL OPPORTUNITY (EO) PROCEDURES**

Purpose of Bulletin:

The purpose of this bulletin is provide guidance and establish procedures regarding the oversight and monitoring of the nondiscrimination and equal opportunity (EO) procedures for Alameda County Workforce Development Board's (ACWDB) Local Workforce Development Area (Local Area)

Citations:

- Employment Development Department's (EDD) Workforce Services Directive (WSD) 17-05
- Civil Rights Act of 1964 (Public Law 88-352) Titles VI and VII
- Education Amendments of 1972 (Public Law 92-318) Title IX
- Rehabilitation Act of 1973 (Public Law 93-112) Title V, Section 504
- Age Discrimination Act of 1975 (Public Law 94-135)
- Americans with Disability Act of 1990 (Public Law 101-336)
- Workforce Innovation and Opportunity Act (WIOA) (Public Law 113-128) Sections 121(b), 183(c), and 188
- Title 29 Code of Federal Regulations (CFR) Part 38
- Title 20 CFR Section 658.400
- Title 28 CFR Part 35, Subpart A
- Title 29 CFR Parts 31, 32, 34, 38, and 1690-1691
- Title 41 CFR Parts 101-19, Subpart 101-19.6
- Title 45 CFR Part 90, Subpart D, Section 90.43(c)(3)
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP)
- Dymally-Alatorre Bilingual Services Act, California Government Code Sections 7290-7299.8
- Fair Employment and Housing Act, California Government Code Sections 12900 - 12996
- California Government Code Section 11135
- EDD's WSD17-01, Nondiscrimination and Equal Opportunity Procedures

Background:

The nondiscrimination and equal opportunity provisions outlined in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only on the basis of citizenship status or participation in a WIOA Title I financially assisted program or activity.

Section 188 of WIOA and 29 CFR Part 38 require that states conduct annual monitoring reviews to determine whether each recipient is operating its WIOA Title I financially assisted program or activity in a nondiscriminatory way.

In California, the Employment Development Department (EDD) is responsible for the oversight and monitoring of all WIOA Title I financially assisted state programs, which is one of the components of the Nondiscrimination Plan as outlined in WSD17-01. Consequently, the EDD's Equal Employment Opportunity (EEO) Office will conduct annual onsite compliance monitoring reviews of all Local Areas to ensure compliance with the nondiscrimination and equal opportunity provisions of Section 188 of WIOA and 29 CFR Part 38. In turn, ACWDB will conduct annual reviews to ensure that all WIOA sub-recipients and/or vendors are operating in compliance with this and all local and State issued bulletins regarding EEO requirements.

Definitions:

For purposes of this directive, the following definitions apply:

Compliance Monitoring Guide – A tool or instrument that Alameda County and/or ACWDB staff use to conduct compliance monitoring reviews of all WIOA sub-recipients and/or vendors. It contains all the different elements of the onsite compliance monitoring review and documents findings of noncompliance.

Corrective Action Plan – A list of specific steps that sub-recipients and/or vendors must take within a stated period of time in order to achieve compliance.

Sub-Recipient and/or Vendor – Any entity to which financial assistance under WIOA Title I is extended, either directly from Department of Labor or through the Governor or through contract with the Local Workforce Board (including any successor, assignee, or transferee of a sub-recipient and/or vendor), but excluding the ultimate beneficiaries of the WIOA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of WIOA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of 29 CFR Part 38, to the extent that they participate in the One-Stop delivery system (29 CFR Section 38.4[zz]).

Small recipient – A recipient who serves a total of fewer than 15 beneficiaries during the entire grant year and employs fewer than 15 employees on any given day during the grant year (29 CFR Section 38.4[hhh]).

State EO Officer – The EDD’s EO Officer.

Local EO Officer – The Local Area’s EO Officer.

Compliance Monitoring Review Process:

The compliance monitoring review process includes the following steps:

1. Notification

Approximately two to four weeks prior to conducting an onsite compliance monitoring review, the ACWDB representative will notify the Site-Manager of each sub-recipient and/or vendor and about the upcoming review.

2. Request for Preliminary Information

The notification of the onsite compliance monitoring review will include a request for preliminary information such as applicants/clients demographic data, random sample applications, compliance monitoring reports, discrimination complaint logs, etc. The request for preliminary information will also include a copy of the Compliance Monitoring Guide that the ACWDB representative will use to conduct the compliance monitoring review. Having a copy of the Compliance Monitoring Guide will assist sub-recipients and/or vendors to prepare for the compliance monitoring review. Preliminary information must be submitted to the ACWDB representative within 10 days of the request.

3. Desk Review

Upon receipt of the preliminary information and prior to the onsite compliance monitoring review, the ACWDB representative will conduct a desk review that will include an analysis of applicants/clients demographic data, random sample applications, monitoring reports, discrimination complaint logs, etc. The desk review will help identify potential items to be addressed during the onsite compliance monitoring review.

4. Onsite Compliance Monitoring Review

The focus of the onsite compliance monitoring review is to determine compliance with the WIOA nondiscrimination and equal opportunity requirements and to review significant differences or disparities identified during the desk review.

5. Entrance Conference

The ACWDB representative will meet with the appropriate sub-recipient and/or vendor staff to discuss the scope of the review, make arrangements for client and staff interviews or file reviews, and to discuss preliminary findings of the data analysis.

6. Exit Conference

Immediately following the completion of the onsite compliance monitoring review, the ACWDB representative will conduct an exit conference with the appropriate sub-recipient and/or vendor staff to discuss the findings and clarify areas in question. A preliminary compliance status may be given at this time and corrective action(s) suggested.

Corrective Action Process:

The corrective action process includes the following steps:

1. The ACWDB representative will issue an initial written report within 30 days of completion of the onsite compliance monitoring review. The initial written report will be issued to the appropriate sub-recipient and/or vendor staff. The initial written report will address areas of non-compliance and outline those areas that are found to be in compliance.
2. When areas of non-compliance are found, the ACWDB representative will make recommendation(s) for corrective action(s) in the initial written report
3. If the sub-recipient and/or vendor staff agree with the recommendation(s) of the ACWDB representative, a Corrective Action Plan (CAP) must be forwarded to the ACWDB representative within 30 days of the date the sub-recipient and/or vendor received the recommendation(s).
4. If the sub-recipient and/or vendor staff disagree with the ACWDB representative's recommendation(s), sub-recipient and/or vendor staff may contact ACWDB representative to attempt an informal resolution of the issue(s).
5. When an informal resolution is reached, a CAP must be forwarded to ACWDB representative within 30 days of the date the Local Area accepts the recommendation(s).
6. If an informal resolution is not reached, the ACWDB representative will meet with the sub-recipient and/or vendor staff and the appropriate management official for the Local Area to develop recommendations to bring the sub-recipient and/or vendor into full compliance.
7. Six months after the recommendations are implemented, a follow-up review may be scheduled to assess the progress made by the sub-recipient and/or vendor resolving the identified areas of noncompliance.

It is important to note that monetary corrective actions may not be paid from federal funds.

Local Area Monitoring Responsibilities:

Local Areas are required to annually monitor the compliance of all local grant recipients and sub-recipients of WIOA funds, including America's Job Center of California (AJCC) locations. Additionally, Local Areas must annually monitor all service providers, including eligible training providers, for compliance with Section 188 of the WIOA and 29 CFR Part 38. Local Areas must keep copies of their compliance monitoring efforts and reports on file. The Local Area's compliance monitoring reports should be used as an assessment reference when

developing CAPs, and for scheduled onsite monitoring reviews that may be required by authorized federal and state reviewers.

For information and inquiries please contact:

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