

## OVERSIGHT AND MONITORING OF NONDISCRIMINATION AND EO PROCEDURES

### EXECUTIVE SUMMARY

This policy provides the guidance and establishes the procedures regarding the oversight and monitoring of the nondiscrimination and equal opportunity (EO) procedures for Local Workforce Development Areas (Local Area). This policy applies to all Local Areas, and is effective immediately.

This policy contains some state-imposed requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

This Directive finalizes Workforce Services Draft Directive *Oversight and Monitoring of Nondiscrimination and EO Procedures* WSD17-05, issued for comment on July 26, 2017. The Workforce Development Community submitted 10 comments during the draft comment period. A summary of comments, including all changes, is provided as an attachment to this Directive.

This policy supersedes Workforce Services Directive *Biennial and Local Area Self-Assessment* WSD15-21, dated March 25, 2016. Retain this Directive until further notice.

### REFERENCES

- *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

*The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.*

- 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
- [Workforce Services Directive WSD17-01](#), Subject: *Nondiscrimination and Equal Opportunity Procedures* (August 1, 2017)

## BACKGROUND

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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.

## POLICY AND PROCEDURES

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### Definitions

For purposes of this directive, the following definitions apply:

*Compliance Monitoring Guide* – A tool or instrument that the EDD EEO Office staff use to conduct compliance monitoring reviews of Local Areas. 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 recipients must take within a stated period of time in order to achieve compliance.

*Recipient* – Any entity to which financial assistance under WIOA Title I is extended, either directly from Department of Labor 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 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 a Local Area onsite compliance monitoring review, the EDD's EEO Office will notify each Local Area Director/Administrator and Local EO Officer 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, Local Area compliance monitoring reports, discrimination complaint logs, etc. The request for preliminary information will also include a copy of the Compliance Monitoring Guide that the EDD EEO Office staff will use to conduct the compliance monitoring review. Having a copy of the Compliance Monitoring Guide will assist Local Areas to prepare for the compliance monitoring review. ***Preliminary information must be submitted to the EDD EEO Office within 10 days of the request.***

3. Desk Review

Upon receipt of the preliminary information and prior to the onsite compliance monitoring review, the EDD EEO Office staff will conduct a desk review that will include an analysis of applicants/clients demographic data, random sample applications, Local Area 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 EDD EEO Office staff will meet with the appropriate Local Area Director/Administrator and/or Local Area EO Officer 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 EDD EEO Office staff will conduct an exit conference with the appropriate Local Area Director/Administrator and/or Local Area EO Officer 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 EDD EEO Office 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 Local Area Director/Administrator and to the Local EO Officer. 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 EDD EEO Office will make recommendation(s) for corrective action(s) in the initial written report.
3. If the Local Area Director/Administrator or Local EO Officer agree with the recommendation(s) of the EDD EEO Office, ***a Corrective Action Plan (CAP) must be forwarded to the EDD EEO Office within 30 days of the date the Local Area received the recommendation(s).***
4. If the Local Area Director/Administrator or Local EO Officer disagree with the EDD EEO Office recommendation(s), Local Area Director/Administrator or Local EO Officer may contact the EDD EEO Office to attempt an informal resolution of the issue(s).

5. When an informal resolution is reached, ***a CAP must be forwarded to the EDD EEO Office within 30 days of the date the Local Area accepts the recommendation(s).***
6. If an informal resolution is not reached, the State EO Officer will meet with the Local EO Officer and the appropriate management official for the Local Area to develop recommendations to bring the Local Area 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 Local Area 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 or Wagner-Peyser funds, including America's Job Center of California<sup>SM</sup> 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.

## **ACTION**

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Bring this directive to the attention of all relevant parties.

## **INQUIRIES**

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If you have any questions, contact your [Regional Advisor](#) at 916-654-7799.

/S/ JAIME L. GUTIERREZ, Chief  
Central Office Workforce Services Division

Attachments are available on the internet:

[Summary of Comments](#)