

CHAPTER ONE: One-Stop Delivery System and Persons with Disabilities

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The Workforce Investment Act of 1998

In effect since August 7, 1998, the Workforce Investment Act represents the culmination of a generation of workforce development legislation. Through a succession of initiatives, from the Employment Act of 1946, the Manpower programs of the 1960s, CETA in the 1970s, and the JTPA programs of the 1980s and 90s, the federal government has taken a role in assisting employers in meeting their need for skilled workers and in meeting the needs of individuals for training, education, and employment. The Workforce Investment Act (WIA) represents a refinement of the process of workforce development, incorporating best practices and innovations that were piloted in every region of the country.

Among the organizing principles of the WIA is the principle of universal access.¹ Unlike JTPA, which narrowly prescribed services to economically disadvantaged adults and those who faced significant barriers to employment, a set of core services under WIA are intended to be available for any individual. A second principle of access of WIA is the One-Stop delivery of services. Previously dispersed programs of federal assistance are required to locate under a single roof for ease of access and enhanced customer service.

The One-Stop delivery system is a component of a larger, federal-state-local employment and training effort. Federal financial assistance flows from the Department of Labor to the states, which, apportion it to Local Workforce Investment Areas (LWIAs). Local Workforce Investment Boards (LWIBs) are responsible, among other things, for selecting One-Stop operators and providers (e.g., youth providers, eligible providers for intensive services). Each level – the State, the LWIA the One-Stop operator One-Stop partners, and other service providers -- has an obligation to ensure that the One-Stop delivery system's programs and activities operate consistent with the requirements of WIA.

29 USC 2811

The purpose of this subtitle is to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.

¹Use of the term, "universal access" in the context of the Workforce Investment Act is different from the usage of the same term within the disabilities community, where it is generally synonymous with "universal design."

Nondiscrimination and Equal Opportunity Provisions

During the same period that workforce development has been refined, there has been a refining process of the nation's nondiscrimination and disability legislation. A series of legislation has enacted prohibitions on discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation or belief. Workplace discrimination has been a key area of concern in many of the statutes. Landmarks in nondiscrimination and equal opportunity legislation include the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Education Amendments of 1972, and the Rehabilitation Act of 1973. In the area of disability, the legislation culminated in the Americans with Disabilities Act of 1990.

Core principles of equal opportunity and disability legislation are the right of access and the right to participate. The ADA requires reasonable accommodation on the part of public entities to ensure these rights to persons with disabilities.

Section 188

In the Workforce Investment Act of 1998, Section 188 contains the nondiscrimination and equal opportunity provisions.² Section 188 makes clear that enforcement is to be consistent with the four civil rights laws mentioned above and is explicit in naming grounds for discrimination that are prohibited (29 CFR § 37.5). For employment, these include:

- race
- color
- religion
- sex
- national origin
- age
- disability
- political affiliation
- belief

For program participation, discrimination is prohibited on the same grounds, along with the additional grounds of:

- citizenship
- participation in a WIA Title I-financially assisted program or activity.

29 CFR § 37.1 What is the purpose of this part?

The purpose of this part [29 CFR Part 37] is to implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), which are contained in section 188 of WIA. Section 188 prohibits discrimination on the grounds of race, color, religion, sex, national

29 CFR § 37.2 To whom does this part apply, and what is the scope of this part?

(a) This part applies to the I-financially assisted program as defined in Sec. 37.4.

(2) Programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in Sec.

section 121(b) of WIA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and

(3) The employment practices of a recipient and/or One-Stop partner, as provided in Sec. 37.10.

²The complete text of WIA Section 188 appears as Appendix A to this manual.

Section 188 is regulated at 29 CFR Part 37: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998; Final Rule. ***It is the purpose of this guide to assist One-Stop Centers with understanding and complying with Section 188 and the regulations of 29 CFR Part 37, as they pertain to persons with disabilities.***

Who Must Comply?

Compliance with the nondiscrimination regulations of Section 188 and 29CFR Part 37 is required of all recipients of WIA Title I financial assistance as well as any program or activity that is part of a One-Stop delivery system and operated by a One-Stop partner.

The term “recipient” applies broadly. Recipients include:

- The Governor and the administrative entity at the State level that administers (or is financed in whole or in part by), WIA Title I funds;
- The local-level entities that receive or administer WIA Title I funds;
- Entities below the local (or in some cases the State) level that provide aid, services, benefits or training under WIA Title I;
- The Employment Service and Unemployment Insurance programs; and
- One-Stop partners, including programs that receive financial assistance, not from the Department of Labor, but from other sources, such as another Federal department), to the extent that the partner participates in the One-Stop delivery system.

It is important to note the distinction between **“recipients,”** which are the entities that administer or operate the One-Stop delivery system, and the ultimate **“beneficiaries,”** who are the individuals intended by Congress to receive aid, benefits, services, or training from the recipients. It is the recipients that must comply with the nondiscrimination requirements of 29 CFR Part 37; beneficiaries are not required to do so.

The requirement to comply with Section 188 extends to the programs and activities that are offered to the public as well as to the employment practices of recipients and One-Stop

29 CFR § 37.2

Recipient means any entity to which financial assistance under WIA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate recipient of the WIA Title I-funded program or activity, in part and in whole, either directly or through the Department, or through the Governor, or through another recipient, if the program or activity is not a program or activity that is financially assisted by the Department exclusively under the Title I of WIA, and that are not limited to: (1) contracts of the Governor to administer, system (including programs or activities implemented under, authorized by (2) State Employment Security agencies by the Department under, JTPA); (3) contracts of insurance guaranty; (4) The ultimate beneficiary to this program or Federal funds; (5) State operators; (6) Federal programs, or contracts, with the exception of contracts to operate or provide services to Job Corps Centers; and (7) Federally operated Job Corps Centers. The operating Department is responsible for enforcing the nondiscrimination and equal opportunity laws and regulations which are subject to, and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system.

partners. The message is comprehensive: if it is a One-Stop partner, or if it is conducted as part of a One-Stop service, program, or activity, it must comply with the nondiscrimination and equal opportunity requirements of Section 188.

Limitations of Application

There are a few special cases where compliance may not be required or application of Section 188 provisions may be limited. These include 1) programs or activities that are assisted by the Department of Labor exclusively under laws other than WIA and that are not part of One-Stop delivery of services; 2) contracts of insurance or guaranty; 3) the One-Stop customers; 4) federal procurement contracts except those pertaining to Job Corps Centers; and 5) Job Corps Centers. In each of these special cases, compliance with nondiscrimination provisions is governed by other legislation or codes [29 CFR § 37.2].

Programs and Activities

The Section 188 regulations define a WIA Title I-funded program or activity as 1) any aid, benefits, services, or training to individuals that is operated by a recipient and funded, in whole or in part, under Title I of WIA. WIA Title I-funded programs and activities also include 2) the facilities where the aid, benefits, services, or training are furnished, 3) any other aid, benefits, services, or training conducted in facilities that were constructed with the aid of WIA Title I financial assistance; as well as 4) any aid, benefits, services, or training that are funded by a source other than WIA Title I, but required to meet matching requirements under WIA Title I [29 CFR §37.4].

It is important to note that this definition includes two specifications of facilities. First are any facilities where WIA Title I-funded aid, benefits, services, or training are conducted. Second are all of the activities that are conducted at facilities that are themselves constructed with the aid of WIA Title I financial assistance. The common theme is WIA Title I financial assistance. Whether the program is operated, or the facility constructed with the assistance of WIA Title I funds, it is considered subject to the provisions covering WIA Title I-funded programs and activities. Ensuring program and facility

28 CFR §37.4

WIA Title I-funded program or activity means:

(1) A program or activity, operated by a recipient and funded, in whole or in part, under Title I of WIA, that provides either:

(i) Any aid, benefits, services, or training to individuals; or

(ii) Facilities for furnishing any aid, benefits, services, or training to individuals;

(2) Aid, benefits, services, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or

(3) Aid, benefits, services, or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIA Title I financial assistance.

See the definition of "aid, benefits, services, or training" in this section.

accessibility is the focus of the self-assessment activities presented in Chapter Six of this guide.

Aid, Benefits, Services, and Training

As mentioned above, it is all of the programs and activities conducted by recipients that must be fully accessible to the public, including persons with disabilities. In the Section 188 regulations, these programs and activities are generally referred to as the aid, benefits, services, or training that a recipient provides to beneficiaries.³ The phrase, “aid, benefits, services, or training” is intended to be broadly inclusive. Though not limiting it to them, the definition of aid, benefits, services, or training specifies that it includes:

- Core and intensive services;
- Education or training;
- Health, welfare, housing, social service, rehabilitation, or other supportive services;
- Work opportunities; and
- Cash, loans, or other financial assistance to individuals.

Under federal regulations, the term "program or activity" embraces all of the aid, benefits, services, or training offered by a recipient in fulfillment of its mission. It spans all offerings open to any of the audiences served by a recipient. The following, though not exhaustive, are examples of programs or activities that, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities: education and training; programs; food services; library and resource room services; health services; counseling; recreation; transportation; vocational programs; apprenticeship programs; and employer recruitment opportunities.

Other Rules, Codes, and their Priority

29 CFR Part 37 lists at least a dozen other federal laws with which recipients, One-Stop partners, and service providers may be required to comply. The array can at first seem dizzying. Part 37 attempts to clarify the compliance process. In general, following 29 CFR Part 37 will bring a recipient or One-Stop

29 CFR § 37.4

Aid, benefits, services, or training means WIA Title I--financially assisted services, financial or other aid, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient.

“Aid, benefits, services, or training” includes, but is not limited to:

- (1) Core and intensive services;
- (2) Education or training;
- (3) Health, welfare, housing, social service, rehabilitation, or other supportive services;
- (4) Work opportunities; and
- (5) Cash, loans, or other financial assistance to individuals.

As used in this part, the term includes any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIA.

³Aid, benefits, services, or training is also applied to a recipient’s employees. An assessment of employment practices to ensure that employees or employment applicants with disabilities receive a recipient’s full aid, benefits, services, or training is the topic of Chapter Five.

service provider into equal opportunity and nondiscrimination compliance.

The three primary codes that regulate nondiscrimination for LWIA recipients, One-Stop partners and service providers are Section 188 of WIA, Title II of the ADA of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. Yet these are not largely different nor conflicting codes. The regulations of 29 CFR Part 37 include definitions of such key terms as disability, reasonable accommodation, and qualified individual that are taken verbatim from the ADA. They are talking about the same thing using the same terms.⁴ In addition, 29 CFR Part 37 sets forth that compliance with its terms will satisfy the implementing regulations of Title VI of the Civil Rights Act of 1964 and Subparts A, D, and E of the implementing regulations of Section 504 of the Rehabilitation Act of 1973. (29 CFR § 37.3 (a)).

Recipients should know that there are significant areas of overlap among the statutes and regulations, yet their overall intent is consistent. Moreover, most of what a recipient, partner, or service provider will need to know or do to comply with equal opportunity and nondiscrimination codes is included in 29 CFR Part 37.⁵ Many of the federal agencies, themselves aware of the overlapping areas of jurisdiction, are in the process of developing Memoranda of Understanding (MOUs) among themselves to assign primary responsibility in key areas and create a simpler compliance process for the public.

A good rule of thumb, however, when approaching multiple codes and regulations is to adhere to the most stringent. 29 CFR Part 37 conveys this rule a number of times. It specifies that compliance with this part does not in any way affect any additional obligation under other federal statutes, nor does it preempt consistent State and local requirements. (29 CFR § 37.3 (c), (d), (e), and f)). Moreover, State or local laws can not excuse compliance with nondiscrimination requirements. (29 CFR § 37.16 (a)).

29 CFR § 37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?

(a) Effect of State or local law or other requirements. The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA or this part are not excused or reduced by any State or local law or other requirement that, on a prohibited ground, prohibits or limits an individual's eligibility to receive aid, benefits, services, or training; to participate in any WIA Title I--financially assisted program or activity; to be employed by any recipient; or to practice any occupation or profession.

⁴Appendix 2 contains a side-by-side listing of the topics that are common between 29 CFR Part 37 and the regulations governing the Americans with Disabilities Act of 1990, which are codified at 28 CFR Part 36.

⁵Recipients that are also public entities or public accommodations, as defined by Titles II and III of the Americans with Disabilities Act of 1990 should be aware of obligations imposed by those titles. Similarly, recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that title.

Section 167 of The Job Training Partnership Act

Section 188 of WIA is patterned after §167 of JTPA. Similarly, regulations implementing §188 are patterned after 29 CFR part 34, which implements JTPA §167. Therefore, for those entities which have been working with JTPA programs and activities, the design, administrative requirements and nondiscrimination obligations of part 37 will be familiar.

Appendix A

[note to reviewers: the following pages of appendices will be relocated to the end of the finished document.]

SEC. 188. NONDISCRIMINATION.

(a) IN GENERAL.--

(1) FEDERAL FINANCIAL ASSISTANCE.--For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving Federal financial assistance.

(2) PROHIBITION OF DISCRIMINATION REGARDING PARTICIPATION, BENEFITS, AND EMPLOYMENT.--No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

(3) PROHIBITION ON ASSISTANCE FOR FACILITIES FOR SECTARIAN INSTRUCTION OR RELIGIOUS WORSHIP.--Participants shall not be employed under this title to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).

(4) PROHIBITION ON DISCRIMINATION ON BASIS OF PARTICIPANT STATUS.--No person may discriminate against an individual who is a participant in a program or activity that receives funds under this title, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

(5) PROHIBITION ON DISCRIMINATION AGAINST CERTAIN NONCITIZENS.--Participation in programs and activities or receiving funds under this title shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

(b) ACTION BY THE SECRETARY.--Whenever the Secretary finds that a State or other recipient of funds under this title has failed to comply with a provision of law referred to in subsection (a)(1), or with paragraph (2), (3), (4), or (5) of subsection (a), including an applicable regulation prescribed to carry out such provision or paragraph, the Secretary shall notify such State or recipient and shall request that the State or recipient comply. If within a reasonable period of time, not to exceed 60 days, the State or recipient fails or refuses to comply, the Secretary may --

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(2) take such other action as may be provided by law.

(c) ACTION OF ATTORNEY GENERAL.—When a matter is referred to the Attorney General pursuant to subsection (b)(1), or whenever the Attorney General has reason to believe that a State or other recipient of funds under this title is engaged in a pattern or practice of discrimination in violation of a provision of law referred to in subsection (a)(1) or in violation of paragraph (2), (3), (4), or (5) of subsection (a), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(d) JOB CORPS.—For the purposes of this section, Job Corps members shall be considered as the ultimate beneficiaries of Federal financial assistance.

(e) REGULATIONS.—The Secretary shall issue regulations necessary to implement this section not later than one year after the date of the enactment of the Workforce Investment Act of 1998. Such regulations shall adopt standards for determining discrimination and procedures for enforcement that are consistent with the Acts referred to in subsection (a)(1), as well as procedures to ensure that complaints filed under this section and such Acts are processed in a manner to avoid duplication of effort.

Appendix B

COMPARISON BETWEEN WIA §188 AND TITLE II REGULATIONS

The regulations implementing WIA §188 (29 CFR part 37) and Subtitle A of Title II of the ADA (28 CFR part 35) are very similar. The following chart is a section by section comparison of subject matter:

REGULATORY CROSS REFERENCE GUIDE

Subject	Workforce Investment Act of 1998	Americans with Disabilities
	Section 188 29 CFR part 37 29 CFR part 32, Subparts B and C	Act of 1990 Title II 28 CFR part 36
Purpose	§37.1-What is the purpose of this part?	§35.101-Purpose
Applicability, Scope	§37.2-To whom does part apply, and what is the scope of this part?	§35.102-Application
Affect on other obligations	§37.3-How does this part affect a recipient's other obligations?	§35.103-Relationship to other laws
Definitions	§37.4-What definitions apply to this part?	§35.104-Definitions
General prohibition of discrimination	§37.5-What forms of discrimination are prohibited by this part?	§35.130-General prohibitions against discrimination (paragraph (a))
Specific discriminatory actions (non-disability)	§37.6-What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?	Not Applicable
Specific discriminatory actions (disability)	§37.7-What specific discriminatory actions, based on disability are prohibited by this part?	§35.130(b)-General prohibitions against discrimination (paragraph (b))

Reasonable accommodation and reasonable modification	§37.8-What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities	
Effective communication	§37.9-What are a recipient's responsibilities to communicate with individuals with disabilities?	Subpart E-Communication
Employment	§37.10-To what extent are employment practices covered by this part?	Subpart C-Employment
Intimidation and retaliation	§37.11-To what extent are intimidation and retaliation prohibited by this part?	§35.134-Retaliation or coercion
Agency authority and coordination	§§37.12, 37.13, 37.14, 37.15	Subpart G
Rule's effect on other obligations	§37.16-What is this part's effect on a recipient's obligation under other laws and what limitations apply?	§35.103-Relationship to other laws
Assurances	§§37.20 through 37.22	Not addressed
Equal Opportunity Officer	§§37.23 through 37.28	§35.107-Designation of responsible employee and adoption of grievance procedures (paragraph(a))
Notice and Communication	§§37.29 through 37.36	35.106-Notice
Data and Information Collection and Maintenance	§§37.37 through 37.41	Not addressed
Universal Access	§37.42	Not addressed
Governor's responsibility to Implement	Subpart C	Not addressed

Complaint procedures	§§37.76 through 37.78	§35.107-Designation of responsible employee and adoption of grievance procedure (paragraph(b))
Enforcement	Subpart E	Subpart F
Employment and Employment Related Training	Subpart B, 29 CFR part 32	Not addressed
Access to programs and Activities	Subpart C, 29 CFR part 32	Subpart D-Program accessibility
Physical accessibility; architectural standards	Subpart C, 29 CFR part 32	Subpart D-program accessibility

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