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To: Michigan Works! Agency (MWA) Directors
Designated MWA Equal Opportunity Officers

From: Stephanie Beckhorn, Director **SIGNED**
Workforce Development Agency

Subject: Nondiscrimination and Equal Opportunity Requirements

Programs Affected: All programs and activities that are conducted as part of the Workforce Innovation and Opportunity Act (WIOA) Title I or part of the One-Stop delivery system.

Rescissions: PI 13-23, Transmittal of the Equal Opportunity Policy Guide, dated March 5, 2014

References: 29 Code of Federal Regulations (CFR) Part 38, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act

Background: The purpose of this policy is to highlight federal requirements for implementing the nondiscrimination and equal opportunity provisions of the WIOA, as well as establish additional Michigan Talent Investment Agency (TIA) requirements. This policy is not intended to unduly supplant or replace federal regulations and requirements contained in applicable statutes. If in any instance the use of this policy appears to be in conflict with the rights and authorities given to the TIA under the regulations, such conflicts must be resolved in favor of the applicable federal regulation.

Policy: **Applicability**

This policy applies to all entities ("recipients") receiving financial assistance under Title I of the WIOA, One-Stop partners, programs, and activities that are part of the One-Stop delivery system, and the employment practices of recipients and/or One-Stop partners in connection with programs and activities that are being conducted as part of the WIOA Title I or the One-Stop

delivery system. The term “recipients” includes, but is not limited to: *[29 CFR Part 38.2]*

- State-level agencies which administer or are financed with the WIOA Title I funds.
- State Workforce Agencies.
- State and Local Workforce Development Boards.
- Local Workforce Development Area (LWDA) grant recipients.
- One-Stop operators.
- Service providers, including eligible training providers.
- On-the-Job Training employers.
- Job Corps contractors and center operators.
- Job Corps national training contractors.
- Outreach and admissions agencies, including Job Corps contractors that perform these functions.
- Placement agencies, including Job Corps contractors that perform these functions, and
- Other National Program recipients.

Covered Bases

No individual in the United States may, on the basis of race, color, religion, sex (including but not limited to, pregnancy, childbirth and related medical conditions, transgender status and gender identity), national origin (including limited English proficiency [LEP]), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in any WIOA Title I-financially assisted program or activity, 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 WIOA Title I-financially assisted program or activity. *[29 CFR Part 38.5]*

If any administrative enforcement action or lawsuit is filed against the MWA, or their service providers, alleging discrimination on any of the covered bases, the MWA must immediately notify the TIA and provide the following information: *(29 CFR Part 38.42)*

- The names of the parties to the action or lawsuit.
- The forum in which each case was filed, and
- The relevant case number(s).

Serving LEP Individuals

A recipient must take reasonable steps to ensure meaningful access to each LEP individual to ensure they are able to participate in the program or activity. These steps may include, but are not limited to, an assessment of LEP individuals to determine assistance needs, providing oral interpretations or written translation of materials and outreach to LEP communities to improve service delivery.

Any language assistance services, whether oral interpretation or written translation, must be accurate, provided in a timely manner and free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training at issue.

For languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically. Written training materials offered or used within employment-related training programs are excluded from these translation requirements; however, recipients must take reasonable steps to assure meaningful access. Recipients must also include a “Babel notice,” indicating that language assistance is available, in all communications of vital information.
[29 CFR Part 38.9]

Serving Individuals with Disabilities

Discrimination Prohibited Based on Disability

A “qualified individual with a disability” is defined, with respect to employment, as an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

A “qualified individual with a disability” is defined, with respect to aid, benefits, service or training, as an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of such aid, benefits, services or training.

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, on the basis of disability:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service or training, including meaningful opportunities to seek employment.
- Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services or training that is not equal to that afforded to others.

- Provide a qualified individual with a disability with any aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to obtain the same benefit, or to reach the same level of achievement as that provided to others.
- Provide different, segregated, or separate aid, benefit, service or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities equally effective assistance as provided to others.
- Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
- Otherwise limit a qualified individual with a disability in employment any right, privilege, advantage, or opportunity enjoyed by others receiving aid, benefit, service or training.

Recipients are not required to provide any of the following to individuals:

- Personal services, such as wheelchairs.
- Individually prescribed devices, such as prescription eyeglasses or hearing aids.
- Readers for personal use or study, or
- Services of a personal nature, including assistance in eating, toileting, or dressing.

Nothing in 29 CFR Part 38 supports the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability. *[29 CFR Part 38.12]*

Accessibility Requirements

No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities.

All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity. *[29 CFR Part 38.13]*

For specific information and requirements in regards to reasonable accommodations, reasonable modifications, auxiliary aids, and services for individuals with disabilities, please refer to 29 CFR Part 38.14-17.

MWA Equal Opportunity Officer Responsibilities

Each MWA must designate an Equal Opportunity Officer to serve as a technical resource and to oversee the LWDA's Equal Opportunity system. The Equal Opportunity Officer must be a senior level employee who reports directly to the individual in the highest-level position of authority of the MWA and must have sufficient staff and resources to carry out the equal opportunity requirements. The MWA Equal Opportunity Officer responsibilities include, but are not limited to the following: [29 CFR Part 38.31]

- Serving as a liaison with the State-level Equal Opportunity Officer and the Civil Rights Center (CRC).
- Monitoring and investigating the LWDA's activities, and the activities of their subrecipients (as it pertains to the WIOA Title I-financially assisted activities).
- Reviewing the MWA's written policies to ensure those policies are nondiscriminatory.
- Developing and publishing the MWA's procedures for processing discrimination complaints.
- Conducting outreach and education about equal opportunity and nondiscrimination requirements.
- Completing training (at the MWA's expense) to maintain competency for all equal opportunity matters.

Additionally, the MWA Equal Opportunity Officer is responsible for assisting the TIA in annual monitoring and compliance reviews conducted by the State-level Equal Opportunity Officer.

Notice and Communication Requirements

Obligations to Disseminate and Publish Equal Opportunity Notice

All recipients must provide initial and continuous notice of equal opportunity to the following parties: [29 CFR Part 38.34]

- Registrants, applicants, and eligible applicants/registrant.
- Participants.
- Applicants for employment and employees.
- Unions or professional organizations that hold collective bargaining or professional agreements with the recipient.
- Subrecipients that receive the WIOA Title I financial assistance from the recipient.
- Members of the public, including those with impaired vision or hearing and those with limited English proficiency.

The Equal Opportunity Notice required by 29 CFR Part 38.34 and .35 must be:

- Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's website pages.
- Disseminated in internal memoranda and other written or electronic communications with staff.
- Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available.
- Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files if both are maintained.

The Notice must be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments. The Notice must also be provided to participants in appropriate languages other than English. When notice has been given in an alternate format, a record that such notice has been given must be made a part of the employee's or participant's file. *[29 CFR Part 38.36]*

The TIA will provide the MWA Equal Opportunity Officers with the Equal Opportunity Notice poster in English and translated into several predominant languages. If an individual requires the Notice to be translated in any language not provided by the TIA, the MWA shall seek the assistance of a local vendor to provide language assistance or translation services. If no assistance can be obtained, the MWA Equal Opportunity Officer shall contact the State-level Equal Opportunity Officer for further assistance.

Publications, Broadcasts and Other Communications

Recipients must indicate that the WIOA Title I-financially assisted program or activity in question is an "equal opportunity employer/program..." and that "auxiliary aids and services are available upon request" in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients or to the public at large, to describe programs financially assisted under Title I of the WIOA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone or equally effective telecommunications system, such as a relay service, videophone, or captioned telephone used by the recipient. *[29 CFR Part 38.38]*

During each orientation to new participants, new employees, and/or the general public to its WIOA Title I-financially assisted program or activity, a recipient must include discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of the WIOA, including the right to file a complaint of discrimination with the recipient or the Director.

This information must be communicated in appropriate languages and in formats accessible for individuals with disabilities. *[29 CFR Part 38.39]*

Data and Information Requirements

Data and records must be collected and maintained to ensure the recipient has complied/is complying with all nondiscrimination and equal opportunity provisions of the WIOA. The system and format in which information is kept must be designed to allow the TIA and the CRC to conduct statistical or other quantifiable analysis to verify the recipients compliance with Section 188 of the WIOA and 29 CFR Part 38. Such information must be stored in a manner that ensures confidentiality and must be used only for purposes outlined in 29 CFR Part 38.41(b)(2).

Records for every applicant, registrant, participant, terminatee, applicant for employment, and employee must include, but are not limited to:

- Race/ethnicity
- Sex
- Age
- Limited English proficiency (and preferred language)
- Where known, disability status

Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured. *[29 CFR Part 38.41]*

All records, whether electronic or hard copy, must be maintained for a period of no less than three years from the close of the applicable program year or three years from the date of final action related to the resolution of any complaint of compliance review. *[29 CFR Part 38.43]*

Complaint Processing Procedures and Determinations

Complaint Filing

Any person or their representative may file a written complaint if they are being discriminated against on any covered basis or if they have been or are being retaliated against. Complaints can be filed with either the MWA Equal Opportunity Officer or the CRC Director. Complaints must be filed within 180 days of the alleged discrimination or retaliation and must include the following information:

- The complainant's name, mailing address, and, if available, email address (or other means of contacting the complainant).
- The identity of the respondent (the individual or the entity that the complainant alleges is responsible for the discrimination).

- A description of the complainant's allegations which includes enough detail to determine if:
 - The responsive agency has jurisdiction over the complaint,
 - The complaint was filed in time, and
 - The complaint has apparent merit.
- The written or electronic signature of the complainant or the complainant's representative.

If a complaint is filed directly with the CRC Director, the Director may extend the 180 day filing time for good cause shown. [29 CFR Part 38.69-.70]

Complaint Processing Procedures

Each recipient shall adopt and publish procedures for processing complaints under 29 CFR Part 38 and the WIOA Section 188. At a minimum, the procedures must include the following elements:

- An initial written notice to the complainant that includes the following:
 - An acknowledgement that the recipient has received the complaint.
 - Notice that the complainant has the right to be represented in the complaint process.
 - Notice of the rights contained in 29 CFR Part 38.35.
 - Notice that the complainant has the right to request and receive, at no cost, auxiliary aids, and services, language assistance services, and that this notice will be translated into the non-English languages.
- A written statement of the issue(s), provided to the complainant that includes the following information:
 - A list of the issues raised in the complaint.
 - For each issue, a statement whether the recipient will accept the issue for investigation or reject the issues, and the reasons for rejection.
- A period for fact-finding or investigation of the circumstances underlying the complaint.
- A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR). The ADR procedures must include that:
 - The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.
 - The choice whether to use ADR or the customary process rests with the complainant.

- A party to any agreement reached under the ADR may notify the CRC in the event the agreement is breached.
- If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC.
- The recipient will issue a written Notice of Final Action on complaints within 90 days of the date on which the complaint is filed. The Notice must include the following:
 - For each issue raised in the complaint, a statement of either the recipient's decision on the issue and an explanation supporting the decision or a description of how the parties resolved the issue.
 - Notice that the complainant has a right to file a complaint with the CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action. *[29 CFR Part 38.72]*

The MWA Equal Opportunity Officer must develop and publish, on behalf of their service providers, the complaint processing procedures and ensure their service providers are following such procedures. *[29 CFR Part 38.73]*

If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, within five business days of making such a determination. This Notice of Lack of Jurisdiction must include a statement of the reasons for the determination and a Notice that the complainant has a right to file a complaint with the CRC within 30 days of the date which the complainant receives the Notice. *[29 CFR Part 38.74]*

Monitoring and On-site Reviews

The TIA is responsible for ensuring compliance with the nondiscrimination and equal opportunity provisions of the WIOA and 29 CFR Part 38 for all the WIOA Title I-financially assisted programs. This includes annual monitoring of recipients, including a determination as to whether each recipient is conducting the WIOA Title I-financially assisted programs or activities in a nondiscriminatory way. At a minimum, each annual monitoring review must include: *[29 CFR Part 38.51]*

- A statistical or other quantifiable analysis of records and data kept by the recipient, including analysis of race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status.
- An investigation of any significant differences identified as a result of the data analysis in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination.
- An assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of the WIOA or 29 CFR Part 38 and any additional duties assigned.

The TIA will utilize a number of monitoring and assessment tools in order to fulfill the oversight requirements set forth by 29 CFR Part 38. At the

conclusion of each program year, the MWA Equal Opportunity Officer will be responsible for completing and submitting to the TIA:

- Statistical analysis worksheets analyzing race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status for all covered individuals within their region; and
- A discrimination complaint log for all written equal opportunity complaints received during the program year.

The MWA Equal Opportunity Officer shall submit to the TIA the Americans with Disabilities Act (ADA)/One-Stop accessibility checklist for each location where programs and activities are conducted as part of the WIOA Title I or part of the One-Stop delivery system.

In addition to the ADA checklist and the data analysis worksheets, the TIA will conduct an annual on-site monitoring review at each MWA. This review will cover all requirements set forth in 29 CFR Part 38 and this policy, including a review of the MWA's equal opportunity monitoring of their service providers. Any issues/discrepancies which arise from the analysis provided by the MWA Equal Opportunity Officers will be addressed during the annual on-site review. Within 45 days of the completion of the on-site review, the TIA will issue a letter detailing any deficiencies noted and the corrective action required.

Action: The MWA officials shall take the appropriate action to comply with this policy.

Inquiries: Questions regarding this policy and/or requests for assistance in implementing the compliance requirements outlined here within are to be directed to Matthew Shilling, State of Michigan Equal Opportunity Officer, at ShillingM@michigan.gov. The information contained in this policy will be made available in an alternative format (large type, audio tape, etc.) upon request to this office.

Expiration Date: Continuing

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