

Introduction

This information collection request (ICR) is being submitted to extend the overall authorization for the collection after it was aligned with the regulations at 29 CFR part 38, implementing Section 188 of the Workforce Innovation and Opportunity Act (WIOA) by a final rule published December 2, 2016 (81 FR 87130). Section 188 of WIOA is unchanged from Section 188 of the preceding law, the Workforce Investment Act (WIA) of 1998. In 1999, the Department issued regulations at 29 CFR 37 to implement Section 188 of WIA (“1999 rule”). The Department published a rule creating 29 CFR part 38, which contained only technical amendments to 29 CFR part 37 (adding or changing references from “WIA” to “WIOA”), on July 23, 2015 (“2015 rule”). The more recent final rule amended the 2015 rule. To allow for an orderly phase out of existing requirements under the 1999 and 2015 rules, those obligations will be continued until no longer applicable. The data collection points for information collection instruments remain unchanged from prior approvals for this ICR.

Supporting Statement

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

This paperwork package is being submitted to support the collection of certain information for the effective enforcement of the nondiscrimination and equal opportunity provisions of section 188 of WIOA, Pub. Law 113-128, along with the law it replaced WIA, Pub. Law 105-220 until all information collection activities will cease because WIA-covered grants will have expired and all reporting complete.

Signed by President Obama on July 22, 2014, WIOA superseded WIA as the Department’s primary mechanism for providing financial assistance for a comprehensive system of job training and placement services for adults and eligible youth. Section 188 of WIOA prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with WIOA Title I programs and activities because of race, color, religion, sex, national origin, 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 program or activity. WIOA Section 185, and its predecessor WIA section 185, provides for reporting, recordkeeping, and investigation authority under these laws (see attachments 2 and 2a).

The final rule updated 29 CFR part 38 consistent with current law and addresses its application to current workforce development and workplace practices and issues. The final rule contains three categories of revisions to the 2015 rule. The first category improved readability by

changing the format, reorganizing certain sections, and more fully describing recipient obligations. The second category updated the nondiscrimination and equal opportunity provisions to align with current law and legal principles. The third category updated the enforcement program, including recipient record-keeping obligations, to more effectively support compliance with the law.

The Civil Rights Center (CRC), located within the Department of Labor's Office of the Assistant Secretary for Administration and Management, is responsible for the enforcement of WIOA Section 188 and WIA Section 188. In addition to WIOA, entities receiving any financial assistance from DOL are subject to four cross-cutting civil rights laws which CRC enforces:

- Section 504 of the Rehabilitation Act of 1973, as amended;
- The Age Discrimination Act of 1972, as amended;
- Title IX of the Education Amendments of 1972, as amended; and,
- Title VI of the Civil Rights Act of 1964, as amended.

The paperwork burdens imposed by proposed 29 CFR part 38 and the four cross-cutting civil rights laws and regulations are:

a. 29 CFR §§ 37.20 (38.20 (2015 rule)), 38.25 - Assurances

These sections require each applicant for financial assistance under Title I of WIA or WIOA to include in its application for financial assistance standard assurance language provided by the Department in this part that the recipient will comply fully with the requirements of Section 188 of WIA or WIOA and the corresponding implementing regulations.

Federal nondiscrimination regulations that currently apply to DOL financed programs and activities, also require assurances of nondiscrimination from those entities that seek to be awarded financial assistance:

- Department of Justice (DOJ) Title VI coordinating regulations at 28 CFR § 42.406(d) and 28 CFR § 42.407(b) (see attachment 3);
- DOJ's Section 504 coordinating regulation at 28 CFR § 41.5(a)(2) (see attachment 4);
- DOL's Title VI regulations at 29 CFR § 31.6 (see attachment 5); and
- DOL's Section 504 regulations at 29 CFR § 32.5 (see attachment 6).

b. 29 CFR §§ 37.37, 37.38, 37.39, (38.37, 38.38, 38.39 (2015 rule)), 38.41, 38.42 and 38.43 – Equal Opportunity Data and Information Collection and Maintenance

These sections require recipients to collect, maintain, and, under certain circumstances, report information to the Director of CRC as follows:

- Sections 37.37(b) (38.37(b) (2015 rule)) and 38.41(b) require that each recipient collect such data and maintain such records as the Director deems necessary to

determine whether the recipient has complied with or is complying with the nondiscrimination and equal opportunity provisions of WIA and part 37 or WIOA and part 38. The final rule adopts two additional categories of demographic data to be collected regarding limited English proficiency and preferred language, and gives recipients two years to begin collecting that data. Data regarding limited English proficiency are already being collected and maintained by recipients for the Employment and Training Administration.

- Sections 37.37(c) (38.37(c) (2015 rule)) and 38.41(c) require recipients to maintain and to submit upon request a log of complaints filed with it that allege discrimination in violation of Section 188 of WIA or WIOA or their implementing regulations.
- Sections 37.38(a) (38.38(a) (2015 rule)) and 38.42(a) require that each grant applicant and recipient promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it that allege discrimination on a ground prohibited by Section 188. The final rule adds parentheticals to this section, clarifying that sex includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity, and that national origin includes limited English proficiency.
- Sections 37.38(b) (38.38(b) (2015 rule)) and 38.42(b) require each grant applicant and recipient to provide the following information: (1) the name of any Federal agency (other than DOL) that conducted a civil rights compliance review or complaint investigation and that found recipient to be in noncompliance during the two years before the grant application was filed or CRC began its examination; and (2) information about any administrative enforcement actions or lawsuits that allege discrimination on any ground protected by Section 188 that were filed against it during the two years before the grant application was filed. The final rule amends 38.42(b) to remove the reference to grant applicants.
- Sections 37.39 (38.39 (2015 rule)) and 38.43 require that grant applicants and recipients maintain information required by parts 37 and 38 for three years. The final rule clarifies what documents need to be retained.

WIA and WIOA Section 185 requires that recipients collect and maintain records and other data for various purposes, including showing their compliance with Section 188 of WIA and WIOA. Federal civil rights regulations that currently apply to all DOL financial assistance programs and activities, and which currently require recipients to collect, maintain and provide to CRC information are:

- 28 CFR § 42.406(a) and 42.410 (DOJ Title VI coordinating regulations, see attachment 3);
- 45 CFR § 90.42(a) and 90.45 (HHS Age Discrimination Act coordinating regulations, see attachment 7);

- 29 CFR § 31.5(b) (DOL Title VI regulations enforced by CRC, see attachment 5);
- 29 CFR § 32.49 (DOL Section 504 regulations, see attachment 6).

Title 28 CFR § 42.408(d) of DOJ's Title VI coordinating regulations require that recipients who process complaints of discrimination filed against them, or one of their sub-recipients are to maintain a log of those complaints (see attachments 3). The DOL has developed a prototype log that recipients may use to track complaints (see attachment 11).

In order to assist recipients to have a viable vehicle to receive complaints, DOL has developed a prototype agency discrimination complaint form (see attachment 8). Use of the form is optional, and recipients are free to modify it to meet their specific needs.

Title 28 CFR § 42.406(d) of DOJ's Title VI coordinating regulations requires that applicants and recipients make prompt notification of any administrative complaints and further requires that each applicant include this information in its application (see attachment 3).

The three-year record retention requirement is consistent with standard Federal administrative requirements and established DOL audit regulations. (See 29 CFR part 95.53(b), attachment 9, and 29 CFR part 97.36(i)(11) and 97.42(b), see attachment 10.)

c. 29 CFR §§ 37.54, 37.55 (38.54, 38.55 (2015 rule)), 38.51, 38.54, and 38.55 – Governor's oversight and monitoring responsibilities including the Nondiscrimination Plan

State governors are responsible for the oversight and monitoring of all WIOA Title I-financially assisted State Programs including ensuring compliance with the nondiscrimination and equal opportunity provisions of WIA and WIOA and their implementing regulations at 29 CFR parts 37 and 38. The 1999 and 2015 rules require periodic monitoring. The final rule specifies that governors must annually monitor the compliance of recipients with WIOA Section 188 and part 38, rather than periodically.

Each governor has established a Methods of Administration (MOA) under 29 CFR parts 37 and 38 (2015 rule), for State Programs that describes how the Governor will ensure that its WIA and WIOA Title I-financially assisted programs, activities, and recipients are complying, and will continue to comply, with the nondiscrimination and equal opportunity requirements of WIA and WIOA and their implementing regulations. The final rule changes the name of the MOA to Nondiscrimination Plan to reflect the purpose of the document and to differentiate it from other similarly titled documents. The MOAs (now called Nondiscrimination Plans) were initially developed and submitted to CRC by every State beginning in 2000.

After the initial MOA or Nondiscrimination Plan submission as described in §§ 37.55 (38.55 (2015 rule) and 38.55, the Governors must review the MOA or Nondiscrimination Plan and the manner in which it has been implemented every two years to determine whether any changes are necessary in order to comply fully and effectively with the nondiscrimination and equal opportunity provisions of WIA and WIOA and 29 CFR parts 37 and 38. If changes are needed,

the changes must be submitted to the CRC Director pursuant to §§ 37.55 (38.55 (2015 rule)) and § 38.55. If no changes are required, the Governor must certify to CRC that the State's current MOA or Nondiscrimination Plan remains in effect.

In addition to the MOA or Nondiscrimination Plan, Sections 184(d)(2) of WIA and WIOA require recipients to monitor the programs of subgrantees or contractors to which they have provided WIA or WIOA funding (see attachment 2). Additionally, 28 CFR § 42.410 of DOJ's Title VI coordination regulations currently require that state agencies administering a continuing state program that receives federal financial assistance establish a Title VI compliance program for themselves and other recipients which obtain federal financial assistance through them (see attachment 3). DOL's Title VI regulations at 29 CFR § 31.6(b)(2) require that every application by a continuing state program "[p]rovide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part." (see attachment 5).

d. 29 CFR §§ 37.73, 37.74, (38.73, 38.74 (2015 rule)), 38.70, 38.73 - Complaint Information and Privacy Act Form

Sections 37.73 and 37.74 (38.73 and 38.74 (2015 rule)) and the final rule's § 38.70 require that each complaint filed with CRC or a recipient be in writing and contain the information specified in §§ 37.73(a) through 37.73(d) (38.73(a) through 38.73(d) (2015 rule)) and §§ 38.70(a) through 38.70(d). Section 37.74 (38.74 (2015 rule)) and § 38.70(e) allow complainants to file a complaint by completing and submitting CRC's *Complaint Information and Privacy Act Consent Form* (see attachment 8), however a complainant is not required to use this form. This collection of information is necessary to allow the Department to conduct investigations into complaints of discrimination filed by, or on behalf of, individuals who allege their rights under one or more Federal laws enforced by CRC have been violated. In addition, the final rule amends § 38.73 to require the Governor or the LWDA grant recipient to develop and publish, on behalf of its service providers, complaint processing procedures.

e. 29 CFR §§ 37.29, 37.30, 37.31, 37.34, (38.29, 38.30, 38.31, 38.34 (2015 rule)), 38.34, 38.35, 38.36, and 38.38 – Notices of Rights

Sections 37.29 through 37.31 (38.29 through 38.31 (2015 rule)) and the final rule's §§ 38.34 through 38.36 contain the requirement that recipients notify a wide variety of interested persons (e.g., applicants for and participants in their programs as well as employment applicants and employees of their programs) of their rights under Section 188, including their right to file a discrimination complaint. Sections 37.34 (38.34 (2015 rule)) and 38.38 require recipients to indicate that they are an "*equal opportunity employer/program*," and that "*auxiliary aids and services are available upon request to individuals with disabilities*," in recruitment brochures and other materials that are ordinarily distributed to staff, clients, or the public at large, to describe programs funded under Title I of WIA or WIOA or the requirements of participation by applicants and participants. This requirement is placed on recipients to ensure that all

individuals, including applicants for program participation or employment, employees and program participants, are aware of the recipient's obligation to ensure nondiscrimination in its programs and activities, and that they are aware of their right to be free from unlawful discrimination, and their right to file a complaint when they believe discrimination has occurred.

These notification requirements are common among many of the regulations to which recipients are subject. For example, DOJ's Title VI coordination regulation requires that each recipient post in reasonable numbers and places notices that describe the recipient's obligation not to discriminate. See 28 CFR § 42.405(c). Recipients are further required by this section to incorporate into their manuals and other publications made available to the public notice of their equal opportunity obligations. Finally, this section requires recipients to include reference, in public broadcasts, to their equal opportunity obligation (see attachment 3). 29 CFR part 31, DOL's regulation implementing title VI, requires that each recipient make available information regarding the regulations applicable to the program under which the recipient receives federal financial assistance (see 29 CFR § 31.5(d) – attachment 5). 29 CFR part 32 also contains the same notice requirement (see 29 CFR § 32.8 – attachment 6).

1. Identify how, by whom, and for what purpose the information is to be used.

The collected information is used for the following purposes:

a. Assurances

Assurances are submitted as part of each application for federal financial assistance and are reviewed by the officials of the grant-making agency and CRC as part of the pre-award review and approval of the application. The assurance notifies the grant applicant that it is aware, and agrees as a condition of receipt of federal financial assistance, to conform to the requirements of the assurance. Additionally, the assurances serve as a legal basis for federal administrative or judicial enforcement action, if necessary.

b. Data and Information Collection and Maintenance

1. Equal Opportunity Characteristics Data: Both DOL and the recipient have an obligation to ensure that federally financed programs and activities do not discriminate. The data collected by recipients is vital to this end. For recipients, the data can be important statistical evidence in responding to allegations of discrimination as well as conducting self-assessments. CRC analyzes this data as part of compliance reviews and complaint investigations.

A complaint investigation differs from a compliance review in that a complaint investigation responds to specific, individual allegation(s) of discrimination while a compliance review looks at broader issues involving the potential for systemic discrimination. A compliance review may also assess a recipient's compliance with its administrative obligations. Given this difference, the use of data and statistical analysis

play a different, but similarly important, role. With a compliance review, which generally focuses on systemic patterns and practices that affect a group or class of individuals, equal opportunity data is the starting point of the investigation. These data are analyzed to identify any significant statistical deviations from averages in rates of services or participation based upon a prohibited ground(s). Significant statistical deviations from the mean can be the basis for an inference of discrimination. The next steps of the review involve analysis of records, interviews of staff and/or participants, observation of the environment, and facility inspections. These processes assist the reviewer in determining if inferences of discrimination are in fact real instances of discrimination, or explainable identified disparities.

A complaint investigation, on the other hand, uses equal opportunity statistical data differently. Complaint investigations begin with a specific allegation(s) of individual discrimination filed with CRC or the recipient by a complainant. The investigation of such a complaint begins with an analysis of the facts surrounding the complainant's allegation. After this analysis has been completed, it is frequently necessary to obtain and analyze equal opportunity data of groups who are in situations similar to that of the complainant. By conducting analysis of this data, meaningful insight into the complainant's allegation may be obtained.

2. **Complaint log:** Typically, the recipient's Equal Opportunity (EO) Officer maintains the complaint log. An entry is made for each complaint filed with the recipient at the time the complaint is filed. Upon request, the complaint log is electronically submitted to CRC for evaluation. The log is reviewed by CRC to determine the number and type of complaints, as well as the specific program or activity against which the complaint is filed. This evaluation has two purposes: (a) to identify any patterns of discrimination that may exist within a particular program, and (b) to ensure that individuals who file complaints with the recipient are afforded due process in that the complaint is processed in accordance with the federal requirements for complaint processing procedures.
3. **Complaint form:** To assist the Equal Opportunity Officer in obtaining information needed for the complaint log from a person alleging discrimination, the CRC developed a sample discrimination complaint form. Individuals use the form, or a similar one developed by the recipient, to allege discriminatory action. The CRC makes its complaint form available to recipients for their use.
4. **Information regarding administrative complaints, etc.** This information will be used by DOL to assess the compliance status of a grant applicant or a recipient.
5. **A record retention requirement** is a standard regulatory obligation of a federal grant recipient. This requirement is necessary to ensure that the records, papers, film, or electronic documents, are available to respond to allegations of discrimination.

c. Nondiscrimination Plan (or Methods of Administration under the 1999 and 2015 rules)

The Nondiscrimination Plan and Methods of Administration described in this package, just as those first approved by OMB in 1984 as part of State programs under the Job Training Partnership Act and outlined in 29 CFR § 34.33, are designed to give the Secretary of Labor reasonable assurance that each continuing State program financially assisted under Title I of WIOA operates in a nondiscriminatory manner, and that the State and its programs, subgrantees and contractors are able to comply with their equal opportunity and nondiscrimination obligations.

d. Complaint Information and Privacy Act Form

The Complaint Information and Privacy Act form (CIF) is used to determine timeliness, jurisdiction, and whether the complaint has apparent merit. In addition, the information may be needed to determine if the complaint should be forwarded to another investigative agency. The CIF is the starting point for the investigation; and the information helps in determining the appropriate remedy.

e. Notices of Rights

The notice requirements are designed to ensure that applicants for and participants in WIA and WIOA Title I programs, as well as employment applicants and employees of those programs are aware of their rights under Section 188. These rights include the right to participate and work free of unlawful discrimination, as well as the ability to file a complaint if an applicant, participant or employee believes their rights have been violated. Interested members of the public are also notified, because they represent, provide counsel to, and refer individuals to WIA and WIOA programs and activities. These persons can supplement the participants' understanding of their rights and assist them in securing those rights. Notice of rights under Section 188 is particularly important because the bases of prohibited discrimination go beyond those found in the four, cross-cutting civil rights laws that flow from any federal financial assistance. These protected bases under WIA and WIOA are: race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, political affiliation or belief, or, for beneficiaries only, citizenship or participation in WIOA Title I programs.

Recipients are required to incorporate equal opportunity notices (sometimes called "taglines") anytime they publish information regarding programs, services, and employment opportunities. Taglines must be included in publications, broadcasts, and other communications that indicate that the recipient is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities." These taglines are designed to ensure that the general public is aware that such offerings are provided equally and that they will not be subjected to unlawful discrimination.

The final rule specifies that recipients must include a "Babel notice" indicating in appropriate languages that language assistance is available, in all communications of vital information, such

as hard copy letters or decisions or those communications posted on websites. CRC will provide a sample notice translated into the top ten most common languages (other than English) spoken in the U.S. for recipients use.

2. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The obligation to collect Equal Opportunity data from applicants, program participants and employees is a burden imposed by parts 37 and 38 that lends itself to the use of automated, electronic, mechanical or other technological collection techniques. CRC has made a concerted effort to use improved information technology to minimize the burden. For example:

- a. CRC's Complaint Information Form (Form DL-2014A) is available in an electronic form in English and 10 of the most common non-English languages in the US including Spanish, Arabic, French, Tagalog, Russian, Chinese, and Vietnamese. These forms are compliant with Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d and downloadable. In addition to submitting the traditional written complaint, CRC has minimized the burden and capitalized on technology by allowing individuals to file complaints alleging discrimination using fillable forms that can be electronically submitted to CRC via email. Links to the Forms are available on CRC's homepage at www.dol.gov/crc.
- b. CRC has made available a Discrimination Complaint Log template in an electronic form that is compliant with Section 508 of the Rehabilitation Act, 29 U.S.C. 794d and downloadable. This effort by CRC reduces the burden on recipients to maintain and transmit complaint log data. The URL for the Complaint Log and instructions is <http://www.dol.gov/oasam/programs/crc/rnr.htm>.
- c. With respect to the Nondiscrimination Plan (or Methods of Administration under the 1999 and 2015 rules). CRC allows States to submit the Nondiscrimination Plan or MOA and/or updates electronically.

4. Describe efforts to identify duplication.

- a. Assurance

The assurance required by §§ 37.20 (38.20 (2015 rule)) and 38.25 is unique to the nondiscrimination provisions of WIA and WIOA. There is no other agency that enforces these provisions.

b. Data and Information Collection and Maintenance

The data and information requirements of parts 37 and 38 are the same as those of other long-standing civil rights regulations. Over the years, CRC has worked closely with the DOL grant agencies and others to eliminate duplication. For example, in the early 1980's CRC worked with the Job Corps in the design of their Mainstream Report to ensure that it had a reporting mechanism suitable for Equal Opportunity purposes. The final rule adopts a new category for data collection of limited English proficiency and preferred language. Pursuant to existing reporting requirements for DOL's Employment and Training Administration (ETA), programs receiving funding from WIA/WIOA formula grant programs are already collecting information from participants in core, intensive, and training services regarding limited English proficiency. Currently, collection of this information is mandated for anyone receiving intensive or training services, and optional for those who receive core services.¹ Thus, this the collection of limited English proficiency data is only a new requirement for WIOA Title I-financially assisted programs that are not WIA formula grant programs, such as unemployment insurance programs. (While the terminology of "core," "intensive," and "training" change with the introduction of WIOA, the collection requirements remain the same.) Moreover, the final rule allows recipients two years to begin collecting data on limited English proficiency and preferred language.

With respect to data and information collection of Unemployment Insurance (UI) registrants and claimants, the reports required by DOL's Employment and Training Administration (ETA), which administers the UI program, generally meet CRC's needs, except data collected regarding limited English proficiency and preferred language. In 2014, CRC worked with ETA to re-issue an Equal Opportunity recordkeeping and reporting directive, thus ensuring that CRC could effectively monitor the Equal Opportunity compliance of State UI programs.

Complaint log and information regarding administrative complaints: The information required by these obligations is unique to Section 188 and part 38. Information provided by complainants cannot be obtained from any other source.

c. Nondiscrimination Plan (or Methods of Administration under the 1999 and 2015 rules)

Nondiscrimination Plans and Methods of Administration are the plans submitted by Governors to ensure WIA and WIOA funds are not used to discriminate in State programs. While other agencies use Methods of Administration, the Nondiscrimination Plans required by the 2015 rule and the final rule are the only plans that cover the workforce development system. No other agency's MOA would allow CRC to monitor compliance of the Governor's oversight responsibilities to ensure nondiscrimination. The Employment and Training Administration of DOL, through their regulation implementing WIOA, maintains the requirement in WIA regulation 20 C.F.R. § 663.105(c) and § 680.110(c) that Equal Opportunity data be collected on every individual being considered for WIOA Title I-financially assisted aid, benefits, services or

¹ TEGL, Workforce Investment Act (WIA) Performance Reporting System, August 23, 2013 available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4470 .

training, and who has signified their interest by submitting personal information in response to a request from the service provider.

d. Complaint Information and Privacy Act Form

The form described in parts 37 and 38 has been developed to extract information from a complainant given the unique programs financially assisted by DOL. While other agencies (e.g., EEOC and OFCCP) have complaint forms, neither of these (nor any other form) would elicit the information necessary to determine CRC's jurisdiction to conduct investigations.

e. Notices

The notice requirements of parts 37 and 38 apply to Section 188 of WIA and WIOA, respectively. Other than CRC, no other agency has the authority or responsibility to enforce Section 188. Therefore, there is no duplication.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

None of the collection requirements significantly affects small businesses or other small entities. Recipients that are small businesses or other small entities need only keep EO data and records regarding their own WIA and WIOA Title I applicants, registrants, etc. The final rule allows recipients two years to come into compliance with the obligation to update their data collection practices as to limited English proficiency and preferred language. Moreover, both the assurance language and the EO notice language are provided by CRC, including translations of the EO notice. The information collection and reporting burden lies mostly with States which have the obligation to monitor compliance State Program-wide, as well as with counties, cities, and national recipients of financial assistance under Title I of WIA and WIOA and with individual complainants. However, in order to minimize burden on governmental entities, the Department makes available on its website a MOA Analysis Checklist, a template for the complaint log and a sample discrimination complaint form (see Item 3 in this supporting statement).

6. *Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

a. Assurance

The assurance serves a number of purposes. First, the assurance provides grant applicants and recipients with full and complete information concerning their compliance obligations. Second, the assurance ensures DOL's ability to enforce Section 188 of WIOA and proposed 29 CFR parts 37 and 38. Lastly, the assurance is a pre-award protection for the government that it is not awarding financial assistance to an entity that discriminates or does not have the appropriate

mechanisms in place to ensure nondiscrimination and equal opportunity. The assurance is required once for each application. The information cannot be collected less frequently.

b. Data and Information Collection and Maintenance

Demographic Data: This collection of information cannot be collected less frequently. The applicant, participants or employee provides data once. A recipient is requested to submit data only when CRC has scheduled a compliance review of that recipient. Failure to collect this information would render CRC unable to assess the programs and activities it funds to determine the extent to which the programs were operating in compliance with their obligation not to discriminate.

Complaint log: This obligation requires that the recipient record certain information about complaints filed against it. An entry for each item of information is made a single time. It cannot be done less frequently. CRC's evaluation of the information contained on the complaint log assists in determining if the recipient has complied with its obligation to process complaints filed against it and, more importantly, to identify potential areas of discrimination. Similarly, the filing of complaint information with an agency cannot be done less frequently than once.

Information regarding administrative complaints, etc.: This information is gathered and analyzed as an aid in determining whether a grant applicant can conform, or a recipient is conforming, to the requirements of Section 188 and parts 37 and 38.

c. Nondiscrimination Plan

Parts 37 and 38 require that each State adopt a Nondiscrimination Plan (or a Methods of Administration under the 1999 and 2015 rules), update it as needed, and every two years re-certify its accuracy. CRC believes that by establishing a two year review cycle, States will make the Nondiscrimination Plan or MOA a living document that serves as a guide for those at the State and local level who have direct equal opportunity responsibilities. Less frequent updates would negatively affect the State's ability to prevent, discover, and remedy discrimination in State Programs.

d. Complaint Information and Privacy Act Form

The CIF is completed a single time for each complaint. It cannot be done fewer times. The CIF contains information vital to CRC's determination of jurisdiction, as well as provides the information that allows CRC to conduct its investigation into the complaint.

e. Notices

Failure to provide notice would have a profoundly negative effect upon the knowledge that applicants, participants, and employees need to ensure that their rights are protected. The notice describes the fact that they are protected from discrimination, the bases of discrimination (which,

as previously stated, are more expansive than those found in the four cross-cutting civil rights laws), and it provides information about what to do if they believe they have been discriminated against. Further, the election not to inform the general public that programs, services, and employment opportunities are provided in a nondiscriminatory manner would have a chilling effect in many communities across the country.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the requirements of 5 CFR § 1320.5(d)(2)(i) through (viii).

The collection requirements are consistent with the requirements of 5 CFR § 1320.5(d)(2)(i) through (viii) and entail no special circumstances.

1. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the Agencies notice required by 5 CFR § 1320.8(d). Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments.

On August 30, 2017, the Department published a FRN, 82 FR 41289, to solicit comments on this ICR. The agency received one comment. The commenter suggested changes to two documents, the Sample Discrimination Complaint Form for recipients (PRA Attachment 12) (“DCF”) and the Discrimination Complaint Log Instructions (Unnumbered Attachment) (“Instructions”). The agency responds to the commenter’s specific suggestions as follows.

DCF: Comment: The commenter stated that “the second full paragraph (the sentence starting ‘It is against the law’) on page 1 of the DCF does not contain any parentheticals or other text clarifying that sex includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity; and that national origin includes limited English proficiency.”

CRC Response: We decline to edit this sentence as requested by the commenter. However, to help complainants and the general public, CRC will add a reference in the sentence to the current statute, the Workforce Innovation and Opportunity Act (WIOA), and add a reference in the same paragraph to the current regulations cited by the commenter. Otherwise, as written, the cited sentence is a correct statement of the law, because the categories to which the commenter refers (pregnancy, limited English proficiency, etc.) are components of the broader categories that appear in this sentence (sex and national origin).

Comment: The commenter stated that “the check boxes on page 2 of the DCF do not provide separate options clarifying that sex includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity; and that national origin includes limited English proficiency. To the contrary, the text boxes for sex and national origin do not seem to contemplate such complaints (and thus dissuade people from filing such complaints), by asking people to specify their national origin (without suggesting that one could complain about language access issues on this line) and sex (as either male or female).”

CRC Response: We agree with the commenter’s suggestion to include updated citations to the WIOA nondiscrimination regulation at 29 C.F.R. part 38. CRC generally declines to edit the check boxes as they are legally correct for the reasons stated in the response to the previous comment. We will, however, change the check box for sex to include a blank line.

Instructions: *Comment:* The commenter stated that “In row G on page 3, the Instructions ask the recipient to enter the grounds that were the basis of the complaint, but does not contain any parentheticals or other text clarifying that sex includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity; and that national origin includes limited English proficiency. Further, the examples given for sex and national origin reinforce the implicit suggestion that these terms do not extend, for example, to pregnancy or language access discrimination. (Finally, row G cites only to the 1999 regulations and should be updated.)”

CRC Response: We generally decline to edit this document as suggested by the commenter. This document is not intended for use by the public and the categories listed are legally correct. Additionally, if CRC requires more information about any logged complaint, it may request that information from recipients pursuant to 29 C.F.R. 38.41 and 38.42. We have, however, added citations to the WIOA nondiscrimination regulations, as suggested by the commenter.

By way of further background, on January 26, 2016, the Department issued a Notice of Proposed Rulemaking, 81 FR 4494, that provided a 60-day period for the public to comment on, *inter alia*, CRC’s proposed collection of information. See 5 C.F.R. § 1320.8. On December 2, 2016, the Department published a final rule, 81 FR 87130, amending 29 CFR part 38. The final rule summarized the significant public comments received in response to that notice and described the actions taken by DOL in response to public comments. For background purposes for this ICR, the comment summary and agency response is included as Attachment 14.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts were or will be provided to respondents, other than remuneration of contractors or grantees.

10. Describe any assurances of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Complaint Information Form provides respondents a notice indicating their rights provided by the Privacy Act. Additionally, the information submitted in the Form is managed in accordance with the Department’s Systems of Records titled DOL/OASAM-22 (67 FR 16816). Parts 37 and 38 also require that certain complainant information be kept confidential, in part to prevent retaliation. See 29 C.F.R. §§ 37.37, 37.41 (1999 rule); 29 C.F.R. §§ 38.37, 38.41 (2015 rule); and §§ 38.41 and 38.45 (final rule). Moreover, final rule § 38.41 requires recipients to take specific steps to ensure that medical and disability-related information remains confidential.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Requirements applicable to States and recipients do not entail the collection of sensitive information. Depending on the level of detail a complainant wishes to provide, some information on the complaint forms could be considered sensitive (e.g., information regarding any actual or perceived disability or religious affiliation); however, such information is needed in order to evaluate a complaint.

12. Provide estimates of the hour burden of the collection of information.

a. Assurances

ETA has incorporated the required assurance into all of its grants and agreements. The requirement to include assurances in grant agreements has been approved by OMB under number 1205-0398. Therefore, the hours associated with the assurance relating to ETA’s grant agreements, and subsequent agreements by the primary recipient and other sub-recipients do not result in any additional burden hours. No public time burden is associated with this requirement.

b. Data and Information Collection and Maintenance

Equal Opportunity (EO) data collection and maintenance: Each of the 34,459 recipients is required to collect and maintain Equal Opportunity demographic and disability data for specified applicants for benefits and services, as well as for certain applicants for employment and employees. The number of responses is estimated based on the number of applicants for and/or participants in WIA and WIOA Title I programs and the number of applicants for employment and employees in the administration of, or in connection with, WIA and WIOA Title I programs. The burden hour estimate below is based upon a sample of WIA State recipients. CRC estimates that each applicant requires 20 seconds to record race/ethnicity, sex, age, limited English proficiency, preferred language and/or disability status.

Table 1: Equal Opportunity Data Collection Burden Hours			
Total Estimated Annual Responses	Estimated Average Response Time	Total Seconds	Total Hours

	(seconds)		
56,355,850	20	1,127,117,000	313,088

Collection of employment data: Recipients already collect and maintain race/ethnicity, sex, age, and disability data for employees and applicants for employment as a result of Title VII of the Civil Rights Act of 1964, as amended and State fair employment practice laws. Therefore there is no additional burden associated with this requirement to collect employment data other than as already captured in Table 1 above.

Data Maintenance: CRC recognizes that the three-year record retention requirement imposed by parts 37 and 38 is a paperwork burden. However, DOL's ETA program regulations applicable to program and financial records impose the same three-year retention requirement on recipients. Data is substantially stored and maintained electronically. Any additional storage required by parts 37 and 38 is a minimal time and dollar cost and no burden hour estimate is provided.

Complaint log: Table 2 presents CRC's estimate for maintaining a complaint log. This estimate is based upon information provided by State Workforce Agencies and USDOL-operated Job Corps Centers on the number of complaints received annually.

Estimated Number of Annual Complaints Filed	Average Time to Log A Single Complaint	Total Burden Hours
34,459	3 minutes	1723
Grand Total Burden Hours		1723

Complaint form for Agency: The Department estimates that persons who file a complaint with an agency spend an hour per response, the same as filing a complaint with the CRC.

Number of complaints per year	34,459
Time to complete one complaint	1 hour
Total hours	34,459

Notification of administrative enforcement actions and lawsuits: The burden to notify CRC of any administrative action or lawsuit would be negligible and not resulting in any measurable burden hours. The notification is accomplished with a simple short letter or email to CRC.

c. Nondiscrimination Plan

Table 4 summarizes the hour burden associated with the Nondiscrimination Plan requirement contained in part 38 (or the MOA under the 1999 and 2015 rules). This requirement involves two separate obligations:

- The final rule's 29 CFR § 38.55(b)(2) requires that the State notify CRC whenever it updates its Nondiscrimination Plan as changes occur. This requirement appears in § 37.55(b) of the 1999 rule (38.55(b) (2015 rule)). CRC estimates that, on average in a single year, one third of the States will have changes to the Nondiscrimination Plan that will require updating, and that each update will take 6 hours. Therefore, each State, over the three-year approval of this paperwork package, will average submitting one revision to its Nondiscrimination Plan.
- The regulations implementing the nondiscrimination and equal opportunity provisions of the WIA and WIOA require that the governor or the governor's designee review, and if necessary revise, the State's Nondiscrimination Plan (or MOA), and the manner in which it has been implemented, every two years from the date on which the State's initial Nondiscrimination Plan (or MOA) was submitted to CRC. 29 C.F.R. § 37.55(c) (1999 rule); 38.55(c) (2015 rule and final rule). If changes to the Nondiscrimination Plan or MOA are needed, the governor is required to make the appropriate changes and submit them in writing to the CRC Director. If changes are not needed, the Governor is required to certify to the CRC Director in writing that the previously submitted Nondiscrimination Plan or MOA continues in effect. About half of the States and territories conduct the biannual review each year requiring about 16 hours to complete.

Table 4: Nondiscrimination Plan Burden Hours			
OBLIGATION	NUMBER	HOURS PER OBLIGATION	ANNUALIZED HOURS
Update of WIOA Nondiscrimination Plan	18	6	108

Biennial Nondiscrimination Plan Review	27	16	432
		TOTAL HOURS	540

d. Complaint Information and Privacy Act Form

Table 5 reflects the burden hours associated with the complainant's completion of the CIF. Each year, CRC receives approximately 640 CIFs. CRC estimates that complainants take 1 hour to complete the CIF.

Table 5: Complaint Information and Privacy Act Form	
Number of CIFs per year	640
Time to complete one CIF	1 hour
Total hours	640

e. Notices

The Federal government provides the disclosure information in the notice, which generates no burden for this activity. See 5 CFR § 1320.3(c)(2) (“The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition”).

Respondents come from various levels in the business and professional services industry (recipients) or from the general population (complainants). For purposes of this information collection, the DOL has estimated the value of respondent time by using median hourly wage rate from the Bureau of Labor Statistics' Occupational Employment Statistics (OES) program for private, State and local employees in management occupations². This analysis uses the wages of managers. This is based on the assumption that many respondents will be managers. The Department is aware that some respondents may be administrative support workers, but by using the higher wage rate of managers³, we account for both. The Department adjusted the wage rates using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. For these State and local sectors, we used a loaded wage factor of 1.34, which represents the ratio of average total compensation to average wages⁴. The Department then

² Department of Labor, Bureau of Labor Statistics, May 2016 National Occupational Employment and Wage Estimates (updated March 2017), http://www.bls.gov/oes/current/oes_nat.htm

³ Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics (May 2016), 11-1021 General and Operations Managers, <http://www.bls.gov/oes/current/oes111021.htm>.

⁴ Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Department used the State and local-sector loaded wage factor (1.371) instead of the private-sector wage factor (1.304) for all the employees to avoid underestimating the costs. For the State and local multiplier see Department of Labor, Bureau of Labor Statistics, Employer Cost and Employee Compensation (June 2017),

multiplied the loaded wage factor by the manager wage rate to calculate an hourly compensation rate. $\$47.74 \times 1.371 = \65.45

$348,787 \text{ hours} \times \$65.45 = \$22,828,109.$

Table 6 summarizes the time burdens for the information collection.

Table 6: Burden Summary				
Activity	No. of Respondents	Estimated Total Number of Annual Responses	Estimated Average Response Time (hr)	Estimated Total Annual Burden Hours
Grantee				

<http://www.bls.gov/news.release/ecec.nr0.htm>.

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Recordkeeping and Reporting Requirements				
Assurances	34,459	N/A	N/A	0
Data/Information Collection and Maintenance	34,459	56,355,850	0.00555556 (20 seconds)	313,088
Complaint Log	34,459	34,459	0.05	1,723
<i>Sub-total for grantee recordkeeping</i>	34,459	56,390,309	//////////////////// /	314,811
Nondiscrimination Plan				
Update of WIOA Nondiscrimination Plan	18	18	6.00	108
Biennial Update	27	27	16.00	432
<i>Sub-total for Nondiscrimination Plan:</i>	45	45	//////////////////// /	540
Discrimination Complaints				
Complaints to agencies	34,459	34,459	1	34,459
Complaint Information Form (DL-1-2014a)	640	640	1	640
Sub-total for Complaints	35,099	35,099	//////////////////// /	35,099
Grand Totals (Unduplicated):	69,603	56,425,453	//////////////////// /	350,450

1. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information.

(a) Total capital and start-up cost: \$3,103,338. The final rule at § 38.41(a)(2) adds “limited English proficiency” and “preferred language” to the list of categories of information that each recipient must collect about each applicant, registrant, participant, and terminnee. The rule does not apply these data collection obligations to applicants for employment and employees of recipients because the obligation regarding limited English proficient (LEP)

individuals does not apply to those categories of individuals. This change is intended to ensure that recipients collect information related to serving LEP individuals. Moreover, the final rule allows recipients two years to begin collecting data on limited English proficiency and preferred language.

The Department estimates the cost of adding this category to the list of categories of information that each recipient must collect about each applicant and participant as de minimis for the recipient because they are already collecting demographic data from beneficiaries in several other categories and these additions will be added to this existing process. The Department estimates that there will be a one-time cost in the third year to each recipient of 1.5 hours of a computer programmer's time to incorporate these new categories into an online form for data collection. For purposes of this estimate, the Department assumes all recipients use computer-based data collection methods, and the one-time burden is \$3,103,378 (34,459 recipients x 1 programmer x 1.5 hours x \$60.04/hour). This equates to an annual \$1,034,459 when amortized over the life of the ICR.

(b) Total operation and maintenance and purchase of service components: This information collection does not entail an additional annual cost burden other than time reported in item 12.

2. Provide estimates of annualized cost to the Federal government.

Federal costs for the ICR are based on a GS12-step 4 in the Washington, DC area earning \$40.84 per hour (fully loaded \$65.97 after 1.57 factor adjustment for benefits and overhead) performing the work. See [Salary Table 2017-DCB](#) Office of Personnel Management. $\$42.02 \times 1.371 = \57.61 .

a. Assurance

CRC estimates de minimis cost to the federal government to review assurances, as each applicant for financial assistance under Title I of WIOA includes in its application for financial assistance standard assurance language that it will comply fully with the requirements of Section 188 of WIA or WIOA and its implementing regulation.

b. Equal Opportunity Data and Information Collection and Maintenance

Equal Opportunity Data: CRC estimates that the total cost to the federal government of this requirement is \$20,518.40 per year. This estimate is based upon the number of compliance reviews to be conducted each year (16) multiplied by the amount of time required to review the data (20 hours), and further multiplied by the average hourly wage of the individual reviewing the Equal Opportunity data. $16 \text{ reviews} \times 20 \text{ hours} \times \$57.61 = \$18,435$.

Complaint log: CRC estimates that the total cost to the federal government of this requirement is \$5,647 per year. This estimate is based upon the number of complaint logs to be reviewed each year (181) multiplied by the amount of time required to review each complaint log (30 minutes), and further multiplied by the average wage of the individual reviewing the complaint log. $181 \text{ reviews} \times 0.5 \text{ hours} \times \$57.61 = \$5,214$.

Review of notification of administrative complaints: CRC estimates that the total cost to the federal government of this requirement is \$64.12 per year. This estimate is based upon the number of notifications estimated to be reviewed each year (2) multiplied by the amount of time required to review each notification (30 minutes), and further multiplied by the average wage of the individual reviewing the notification. $2 \text{ reviews} \times 0.5 \text{ hours} \times \$57.61 = \$58$.

Table 7: Equal Opportunity Data and Information Collection and Maintenance Federal Cost Summary

Review Activity	Annual Instances	Time per Activity (Hours)	Total Time (Hours)	Hourly Rate	Total Federal Time Value
Equal Opportunity Data	16	20	320	\$57.61	\$18,435
Complaint log	181	0.5	90.5	\$57.61	\$5,214
Notification of administrative complaints	2	0.5	1	\$57.61	\$58
<i>Unduplicated Totals</i>	<i>199</i>	<i>Various</i>	<i>411.5</i>	<i>\$57.61</i>	<i>\$23,707</i>

c. Nondiscrimination Plan (or Methods of Administration under the 1999 and 2015 rules)

The Department estimates that the total cost to the federal government of this requirement is \$31,109 per year. This estimate is based upon the number of Nondiscrimination Plans or MOAs to be reviewed per annum (27) multiplied by the amount of time required to review each Nondiscrimination Plan or MOA (20 hours), and further multiplied by the average hourly wage of the individual reviewing the Nondiscrimination Plan or MOA. $27 \text{ Nondiscrimination Plan Reviews} \times 20 \text{ hours} \times \$57.61 = \$31,109$.

d. Complaint Information and Privacy Act Form

The Department estimates that the total cost to the federal government of this requirement is \$82,073.60 per year. This estimate is based upon the number of forms to be reviewed each year (640) multiplied by the amount of time required to review each form (2 hours), and further

multiplied by the average wage of the individual reviewing the form. 640 reviews x 2 hours x \$64.12 = \$82,073.60

e. Notices

There is no cost to the federal government for this requirement.

Table 8: Federal Cost Summary

Review Activity	Annual Frequency	Time per Activity (Hours)	Total Time (Hours)	Hourly Rate	Total Federal Time Value
Assurance	De Minimis	De Minimis	De Minimis	\$62.40	De Minimis
Equal Opportunity Data and Information Collection and Maintenance	199	Various	411.5	\$64.12	\$26,385.38
Nondiscrimination Plan	27	20	540	\$64.12	\$34,624.80
Complaint Information and Privacy Act Form	640	2	1,280	\$64.12	\$82,073.60
Notices	0	0	0	\$64.12	\$0.00
<i>Total</i>	<i>866</i>	<i>Various</i>	<i>2,231.5</i>	<i>\$64.12</i>	<i>\$140,083.78</i>

Total Estimated Annualized Cost to the Federal government: **\$140,083.78**.

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

This ICR updates burden estimates for the 2016 final rule to reflect the most recent data and requirements of the rule. The agency expects an increase in the number of complaints because the rulemaking may draw attention to the protections the regulations provide, even the previously existing protections. This is estimated to equal 169,992 hours of new annual burden hours. In addition, one-time costs associated with the rule that will take effect during this clearance period account for an annual capital/start-up cost increase \$1,034,459.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used.

CRC does not publish information collected as a result of items contained in this request.

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17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

CRC will display the expiration date.

18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

There are no exceptions requested.

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.

LIST OF ATTACHMENTS

1. Title 29 CFR Parts 37 and 38 (2015 rule)
2. Workforce Investment Act and Workforce Innovation Opportunity Act of 2014
- 2.a Workforce Investment Act of 1998
3. Relevant Sections of 28 CFR Part 42, DOJ Title VI coordinating regulations (Parts include 42.405, 42.406, 42.407, 42.408 and 42.410)
4. Relevant Section of 28 CFR Part 41, DOJ Section 504 coordinating regulations (§ 41.5)
5. Relevant Sections of 29 CFR Part 31, DOL regulations implementing Title VI of the Civil Rights Act of 1964, as amended (§§ 31.5 and 31.6)
6. Relevant Sections of 29 CFR Part 32, DOL regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (§§ 32.5, 32.8, and 32.49)
7. Relevant Sections of 45 CFR Part 90, HHS coordinating regulations for the Age Discrimination Act of 1975, as amended (§§ 90.42 and 90.45)
8. Complaint Information and Privacy Act Form (Prototype Agency Discrimination Complaint Form)
9. Relevant Section of 29 CFR Part 95, Grants and Agreements with Institutions of Higher Education, Hospitals, and other non-profit organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations (Part 95.53)
10. Relevant Sections of 29 CFR Part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (§§ 97.36 and 97.42)
11. Discrimination Complaint Log Form
12. Sample Discrimination Complaint Form
13. CRC Complaint Web page
14. Rule comments
15. CRC Frequently Asked Questions