



DEPARTMENT OF LABOR

Office of the Secretary of Labor

29 CFR Part 38

RIN:1291-AA47

Rescission of Affirmative Outreach Requirements for Recipients of WIOA Title I Financial Assistance

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule; request for comment.

SUMMARY: The Department of Labor (Department), Office of the Assistant Secretary for Administration and Management, Civil Rights Center (CRC), proposes to remove the regulations implementing the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) that contain affirmative outreach requirements for recipients of financial assistance under Title I of WIOA. WIOA does not authorize the Department to require affirmative outreach, therefore the Department is proposing to remove this requirement.

DATES: Comments **must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1291-AA47, by either of the following methods:

- *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Naomi Barry-Perez, Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

Instructions: All submissions received must include “RIN 1291-AA47.” Please submit only one copy of your comments by only one method. Commenters submitting file attachments on

<https://www.regulations.gov> are advised that uploading text-recognized documents — i.e., documents in a native file format or documents which have undergone optical character recognition (OCR) — enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration.

Please be advised that comments received will become a matter of public record and will be posted to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at <https://www.regulations.gov> (search using RIN 1291-AA47).

FOR FURTHER INFORMATION CONTACT: Naomi Barry-Perez, Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210. Telephone: (202) 693-6500. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Discussion

This action proposes to rescind CRC’s regulation at 29 CFR § 38.40, which was promulgated in 2016 and states that WIOA recipients “must take” affirmative outreach efforts to groups based on race, sex, national origin, and other characteristic and provides non-exhaustive examples of actions that may constitute “reasonable efforts.” Recipients are defined in 29 CFR § 38.4(zz) as entities to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term “recipient” excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity.

The Department is proposing to rescind 29 CFR § 38.40 because the statute it implements—Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3248—does not require affirmative outreach, and the Department has tentatively determined that imposing such a requirement by regulation exceeds its statutory authority.

Section 188 of WIOA (29 U.S.C. § 3248) prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, and political affiliation or belief in programs and activities funded under Title I of WIOA. However, nothing in the text of Section 188 mandates that recipients of WIOA Title I financial assistance conduct proactive or affirmative outreach to particular demographic groups. The affirmative outreach provision at § 38.40 was added by regulation, not by Congress. The provision created a substantive compliance obligation not expressly authorized in statute. In doing so, it required recipients to undertake specific forms of outreach based solely on the demographic characteristics of individuals or groups, regardless of whether any actual discrimination had occurred. The Department now tentatively finds that such a requirement lacks a statutory foundation based on the best reading of the WIOA. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024).

The Department is also concerned that affirmative outreach may conflict with the Supreme Court’s decision in *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023), which reaffirmed that the government’s use race and similar protected traits are subject to strict scrutiny and must be narrowly tailored to a compelling interest. While § 38.40 was framed as an outreach provision, it forces recipients to make “reasonable efforts” to take action based on characteristics like race, sex, and national origin. This may require recipients to consider protected traits in designing recruitment or programming. In doing so, § 38.40 risks encouraging demographic classifications that are suspect under *SFFA*.

To avoid potential constitutional conflict and ensure the Department’s regulations stay within statutory and constitutional limits, the Department is rescinding § 38.40. Recipients remain subject to WIOA’s nondiscrimination requirements.

Consistent with E.O. 14219, CRC is rescinding this regulation at § 38.40. E.O. 14219 directed agencies to review “all regulations subject to their sole or joint jurisdiction for consistency with law and Administration Policy.”¹ The Trump Administration provided

¹ *See* E.O. 14219, 90 FR 10583 (Feb. 19, 2025).

additional guidance to agencies via Presidential Memorandum, “Directing the Repeal of Unlawful Regulations” (April 9, 2025). This memorandum directed agencies to take immediate steps “to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency’s statutory authority or is otherwise unlawful.”² Accordingly, CRC has determined that it is appropriate to rescind § 38.40 of 29 CFR Part 38 as it lacks authorization in the WIOA statute.

Rescinding § 38.40 from the 29 CFR Part 38 regulations will decrease the burden on recipients, as they will no longer be required to undertake the affirmative outreach requirements described in detail above. In addition to ensuring compliance with E.O. 14219, rescinding this regulation also supports the objectives of Executive Order 14192, Unleashing Prosperity Through Deregulation, by alleviating unnecessary regulatory burdens.³

II. Authority

E.O. 14219.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Executive Order (E.O.) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives

² <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>

³ See E.O. 14192, 90 FR 9065 (Jan. 31, 2025).

to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this proposed rule does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this proposed rule was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

DOL reviewed this proposed rescission under the provisions of the Regulatory Flexibility Act. This rule eliminates burdensome regulations. Therefore, DOL has concluded that the impacts of the rescission would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an FRFA is not warranted. DOL will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rescission imposes no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law

or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.

DOL has examined this rescission and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOL has completed the required review and

determined that, to the extent permitted by law, this rescission meets the relevant standards of E.O. 12988.

F. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them.

DOL examined this rescission according to UMRA and its statement of policy and determined that the rescission does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rescission would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOL has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), DOL has determined that this rescission would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002). DOL has reviewed this rescission under the OMB and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13175

DOL has examined this proposed rule and determined that it does not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. It does not “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”

K. Congressional Notification

As required by 5 U.S.C. 801, if finalized, DOL will report to Congress on the promulgation of this rule its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Review Under Additional Executive Orders and Presidential Memoranda

DOL has examined this rescission and has determined that it is consistent with the policies and directives outlined in E.O. 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” and

Presidential Memorandum, “Directing the Repeal of Unlawful Regulations.” This rescission is expected to be an Executive Order 14192 deregulatory action.

List of Subjects in 29 CFR Part 38

Civil rights, Employment, Equal employment opportunity, Discrimination, Affirmative action, Affirmative outreach, Equal access, Government contracts, Recordkeeping requirements, Labor.

For the reasons set forth in the preamble, DOL proposes to amend part 38 of subtitle A of title 29 of the Code of Federal Regulations, as set forth below:

PART 38 – IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

1. The authority citation for part 38 continues to read as follows:

Authority: 29 U.S.C. 3101 *et seq.*; 42 U.S.C. 2000d *et seq.*; 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.*; and 20 U.S.C. 1681 *et seq.*

§ 38.40 [Reserved]

2. Remove and reserve § 38.40.

Dean Heyl,

Assistant Secretary for Administration and Management, Labor.