



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: Final rule.

SUMMARY: The Department of Labor (Department) rescinds the regulatory affirmative outreach requirements on recipients of financial assistance under Title I of the Workforce Innovation and Opportunity Act (WIOA) and makes conforming edits.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 (voice) (this is not a toll-free number). 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. Background

Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. 3248 (Section 188), establishes nondiscrimination requirements for programs and activities receiving financial assistance under Title I of WIOA.

Subsection (a)(1) of Section 188 provides that, for the purpose of applying prohibitions against discrimination on the basis of age, disability, sex, or race, color, or national origin, WIOA-funded programs are to be treated as programs receiving Federal financial assistance under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) (Title IX), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) (Title VI). 29 U.S.C. 3248(a)(1). Subsection (a)(2) prohibits discrimination in WIOA Title I programs on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief. 29 U.S.C. 3248(a)(2). Finally, subsection (e) directs the Secretary of Labor to issue regulations that adopt standards for determining discrimination and procedures for enforcement that are consistent with the Acts referred to in subsection (a)(1).

Pursuant to subsection (e), in 2016, the Department promulgated 29 CFR 38.40, which requires recipients of WIOA Title I financial assistance to “take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities,” which should involve “reasonable efforts” to conduct affirmative outreach to different demographic groups, “including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups.” The rule provided examples of outreach efforts that recipients might undertake. “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).

On July 1, 2025, the Department proposed to rescind 29 CFR 38.40 on the grounds that it exceeded statutory authority. Rescission of Affirmative Outreach Requirements for Recipients of WIOA Title I Financial Assistance, 90 FR 28245 (proposed July 1, 2025). The Department was

further concerned that a government mandate to conduct affirmative outreach based on race and ethnicity creates tension with the Constitution's Equal Protection principles. *Id.* Voluntary outreach programs would still be permitted under the Department's proposal.

II. Discussion

The Department received 84 comments on the proposed rule. Eighty-three commenters opposed rescission, including national and local disability rights organizations, civil rights groups, a labor union, and advocacy organizations. Several commenters represent organizations that are engaged by WIOA recipients to assist with or perform affirmative outreach activities mandated by the current regulation. These commenters argued that affirmative outreach is necessary to ensure meaningful nondiscrimination, contending that without affirmative efforts many individuals will never learn of or benefit from WIOA-funded services. After reviewing and carefully considering all comments, as well as considering alternatives to rescission, the Department has decided to finalize the rescission as proposed because it concludes that it lacks statutory authority to enforce an affirmative outreach provision.

A. The Department's Statutory Authority

Several commenters contended that WIOA's statement of purpose, 29 U.S.C. 3101(1), reflects a congressional goal of increasing access to workforce-development services for individuals with barriers to employment, and that this goal supports interpreting Section 188 to authorize mandatory affirmative outreach requirements based on race, sex, religion, disability status, and other demographic characteristics.

The Department does not dispute that WIOA's purpose clause expresses broad and aspirational objectives, nor does it question that recipients remain free to undertake voluntary outreach efforts that further those objectives. However, a statutory statement of purpose does not

itself confer regulatory authority. Courts have repeatedly rejected efforts to derive legal authority from general purpose provisions.¹

Accordingly, WIOA's purpose clause cannot expand the scope of the Department's authority beyond the specific delegation contained in the Act's operative provisions. The Department's authority to promulgate regulations is limited to Section 188, which does not reference or mandate outreach. Other operative provisions within the statute do reference or mandate outreach, and comparing these provisions demonstrate that Congress knew how to require affirmative outreach when it intended to do so; its omission of such language in Section 188 is instructive.²

Here, the operative provision is Section 188, which prohibits unlawful discrimination and directs the Department to adopt standards for determining unlawful discrimination and procedures for enforcement that are consistent with four enumerated civil-rights statutes: the Age Discrimination Act of 1975 (age), Section 504 of the Rehabilitation Act of 1973 (disability), Title IX of the Education Amendments of 1972 (sex), and Title VI of the Civil Rights Act of 1964 (race, color, or national origin). Under the majority of those statutes, the standard for a determination of unlawful discrimination is intentional disparate treatment, and none of them mandate affirmative conduct such as proactive outreach to address perceived imbalances in access among protected groups.

¹ *Yazoo & M.V.R. Co. v. Thomas*, 132 U.S. 174, 188 (1889); *Ass'n of Am. R.R.s v. Costle*, 562 F.2d 1310, 1316 (D.C. Cir. 1977); Antonin Scalia & Brian Garner, *Reading Law: The Interpretation of Legal Texts*, 217 (2012) (“[A] congressional expression of purpose has as much real-world effect as a congressional expression of apology.”).

² As some commenters, such as CommunicationFIRST, have noted, the word “outreach” is referenced in other parts of WIOA. For example, 29 U.S.C. 3111(d)(3)(C) requires States to develop “strategies for providing effective outreach to and improved access for individuals and employers who could benefit from services provided through the workforce development system.” But this merely demonstrates that Congress knows how to enact an outreach requirement—and when it did, Congress framed mandatory outreach in term of “access for individuals,” and not demographic groups as § 38.40 does. In any event, Congress did not include any outreach requirement in WIOA's nondiscrimination provisions and instead directed the Department to issue regulations consistent with civil rights statutes that define unlawful discrimination in terms of intentional or deliberate conduct, not the absence of affirmative conduct. *See Southeastern Community College v. Davis* 442 U.S. 397, 405, 410–11 (1979) (comparing provisions of the Rehabilitation Act of 1973 and finding distinctions purposeful).

Because section 188(e) requires the Department’s regulatory standards for determining discrimination to be consistent with those statutes, the Department lacks authority to treat the absence of affirmative outreach efforts as a new form of unlawful discrimination. Under the best reading of section 188(e), the Department’s authority is confined to the same definitions of discrimination that apply under Title VI, Title IX, Section 504, and the Age Discrimination Act. Nothing in WIOA’s text authorizes the Department to redefine unlawful discrimination to include failure to undertake affirmative outreach efforts toward “persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups,” as former § 38.40 requires.

Commenters also argued that affirmative outreach is necessary to give practical effect to Section 188’s nondiscrimination protections because individuals with barriers to employment may not otherwise learn of WIOA services. The Department disagrees. Nondiscrimination and outreach are distinct concepts. Recipients may fully comply with Section 188 by refraining from differential treatment on prohibited grounds, without undertaking the outreach activities described in former § 38.40. Although outreach may advance broader workforce-development goals and may be beneficial in practice, the Department cannot redefine nondiscrimination to require proactive measures absent statutory authorization.

Nothing in this final rule prevents recipients of WIOA Title I financial assistance from voluntarily engaging in outreach to broaden awareness of their programs, and the Department anticipates that many recipients will continue to do so. Such voluntary efforts may be useful tools to promote inclusivity and to raise awareness regarding the availability of WIOA services, as some commenters have suggested. Indeed, the Department itself conducts outreach, particularly with respect to American workers with disabilities, and permits and encourages recipients to use WIOA funds to recruit program participants, such as individuals with low-income status or limited English proficiency. The sole question addressed here is whether

Section 188 authorizes the Department to enforce such practices as a matter of law. For the reasons stated above, it does not. The decision whether and how to conduct affirmative outreach rests with recipients, not with the Department. The Department considered revising § 38.40 instead of rescinding it but determined that any revision would still give the appearance of requiring affirmative outreach to particular demographic groups and would not cure the lack of support in the operative provision of the authorizing statute. By rescinding § 38.40, the Department ensures that recipients remain free to adopt outreach strategies best suited to their circumstances, without being subject to coercive regulation that lacks statutory foundation and risks constitutional conflict.

B. Equal Protection Principles

The NPRM expressed concern that mandating affirmative outreach may create tension with equal-protection principles. For instance, § 38.40 requires recipients to consider race and ethnicity when designing outreach efforts and thus may trigger strict scrutiny. The canon of constitutional avoidance therefore reinforces the Department's conclusion to interpret section 188 not to mandate recipients to engage in race-conscious affirmative outreach.

Several commenters, including the NAACP and AFL–CIO, asserted that § 38.40 is race-neutral because it applies uniformly to all protected groups listed in the regulation and does not require recipients to give a preference to any particular demographic group. These commenters argued that the provision merely requires broad dissemination of information and does not impose differential treatment based on race, sex, national origin, or any other protected characteristic.

The Department disagrees that the regulation, which explicitly states that recipients “must take appropriate steps” that “should involve reasonable efforts to include members of . . . various racial and ethnic/national origin groups,” is race-neutral. That formulation inherently directs recipients to identify racial and ethnic categories and to structure their outreach efforts with reference to race and ethnicity. A regulatory requirement that turns on racial classifications is not

rendered neutral simply because it does not single out one group for disparate treatment. If, in an effort to comply with § 38.40, a WIOA recipient targets outreach to a particular racial group that would otherwise not have been targeted, that is a race-conscious decision resulting from a government mandate. A regulation requiring affirmative outreach to “various racial ... groups” is therefore race-conscious.³

Nor does the fact that the regulation concerns outreach rather than, for example, admission or hiring, render it race neutral, as some courts have suggested. *See Peightal v. Metro Dade Cnty.*, 26 F.3d 1545, 1557-58 (11th Cir. 1994) (characterizing in dicta as “race neutral” the city’s policy to “provide information to and solicit applications from young minorities”). Indeed, NAACP’s comment quotes approvingly to language in Justice Kennedy’s concurrence in *Parents Involved in Community Schools v. Seattle School District No. 1* recognizing that an outreach policy to attract students and faculty of different races “in a targeted fashion” would be “race conscious.” 551 U.S. 701, 789 (2007) (Kennedy, J., concurring).

To be sure, NAACP correctly notes that Justice Kennedy’s concurrence continued to state that such race-conscious outreach “is unlikely [to] demand strict scrutiny,” *id.*, and certain lower court decisions have agreed.⁴ Those cases, however, did not involve a federal mandate requiring regulated entities to tailor outreach based on demographic categories that include race and ethnicity. The D.C. Circuit applied strict scrutiny to one such mandate and held it unconstitutional in *MD/DC/DE Broadcasters Association v. FCC*.⁵ Although the rule at issue in that case explicitly incentivized recruitment for women and minorities and involved additional requirements beyond outreach alone—including reporting and enforcement—the Department need not resolve whether those distinctions would ultimately be constitutionally

³ The same logic applies with respect to other protected characteristics: sex, religion, disability status, etc. The degree of constitutional scrutiny for sex and disability status is different for race and religion. But a requirement to conduct outreach to different sexes is still obviously sex-conscious.

⁴ *See Allen v. Alabama State Bd. of Educ.*, 164 F.3d 1347 (11th Cir. 1999), *vacated*, 216 F.3d 1263 (11th Cir. 2000); *Shuford v. Ala. State Bd. of Educ.*, 897 F. Supp. 1535, 1551-52 (M.D. Ala. 1995).

⁵ *MD/DC/DE Broadcasters Ass’n v. FCC*, 236 F.3d 13 (D.C. Cir. 2001), *cert. denied*, 534 U.S. 1113 (2002).

significant here. Rather, the canon of constitutional avoidance counsels against interpreting Section 188 to authorize a race-conscious regulatory mandate that raises constitutional concerns in the first instance. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (“[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” (citing *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 499–501, 504 (1979))).

Several commenters, including ASAN, the NAACP, and NPWF, argued that the Department’s reliance in the NPRM on *Students for Fair Admissions v. Harvard* is misplaced because that decision arose in the context of higher-education admissions.⁶ The Department agrees that *SFFA* involved a different factual context. Nonetheless, the decision reaffirmed the broader constitutional principle that race-conscious governmental requirements are subject to strict scrutiny. The Court declared without qualification that “[r]acial classifications are simply too pernicious to permit any but the most exact connection between justification and classification.”⁷ Section 38.40 requires recipients to consider race and ethnicity when developing outreach policy and therefore constitutes a race-conscious governmental requirement.

To be clear, the Department does not opine on the ultimate constitutionality of such a mandate. Rather, the Department interprets Section 188 in a manner that avoids that constitutional question, particularly where that interpretation is supported by the best reading of the statutory text. Any potential conflict between § 38.40 and equal-protection principles is not an independent basis for rescission but instead reinforces the Department’s conclusion that Section 188 does not authorize mandatory affirmative outreach. Of course, voluntary outreach efforts to the groups listed at section 38.40 remain permissible and often encouraged.

C. Effects of Rescission

⁶ *See* 600 U.S. 181 (2023).

⁷ *Id.* at 217 (quoting *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003)).

Some commenters expressed concern that rescinding § 38.40 will reduce awareness of WIOA Title I services among individuals with disabilities, individuals with limited English proficiency, displaced homemakers, returning citizens, and other individuals facing barriers to employment. These commenters provided data showing disparities between groups in employment and WIOA participation. However, they did not offer analysis demonstrating that these disparities are caused by, or would be exacerbated by, the absence of mandatory outreach requirements.

As a general matter, the Department believes commenters' predictions of practical effects are overstated because recipients remain free to engage in voluntary outreach efforts to the aforementioned groups. Moreover, since the adoption of § 38.40 in 2016, the Department has not initiated a single enforcement action predicated on a recipient's failure to conduct affirmative outreach. Given that the mandate has not been enforced in practice, the Department does not expect that rescission will disrupt recipients' operations or materially alter the delivery of WIOA services.

Several disability-rights organizations—including The Arc, ASAN, PACER Center, CommunicationFIRST, and Detroit Disability Power—argued that individuals with disabilities often face unique and significant barriers to learning about available workforce services. The Department acknowledges that outreach can serve important programmatic purposes and that individuals with disabilities and other groups may face substantial challenges in accessing information about available services. The Department agrees that recipients may communicate proactively with these communities to promote awareness of WIOA opportunities. Nothing in this final rule prevents such outreach. Recipients retain full discretion to continue, expand, or redesign their current outreach efforts, including outreach specifically intended to engage individuals with disabilities, individuals with limited English proficiency, and others. Recipients may also continue to partner with disability organizations, schools, VR agencies, and other community-based entities should they choose to do so.

As noted previously, the Department itself through its Office of Disability Employment Policy (ODEP) regularly conducts outreach to job seekers with disabilities, promoting services available through the public workforce system. ODEP funds two WIOA technical assistance centers, the National Center on Leadership for the Employment and Economic Advancement of People with Disabilities (LEAD Center) and the Center for Advancing Policy on Employment for Youth (CAPE-Youth). These centers provide training to workforce system staff to build their knowledge in successfully serving jobseekers with disabilities in a variety of career pathways and conduct outreach directly to individuals with disabilities. ODEP also administers initiatives that require contractors and grantees to connect individuals to the workforce system. For example, the Retaining Employment and Talent after Injury/Illness Network (RETAIN) demonstration grants recruits and helps thousands of ill or injured workers remain in the workforce by providing coordinated health and employment services delivered through the workforce system. The National Expansion of Employment Opportunities Network (NEON) initiative conducts outreach to and connects individuals with intellectual and developmental disabilities (I/DD) and those with mental health conditions to workforce, education, developmental disabilities, and Medicaid systems. However, the question under section 188(e) is whether the Department is authorized to mandate such outreach as a legal requirement of nondiscrimination. As explained elsewhere in this preamble, the Department has concluded that section 188(e) incorporates the definitions of discrimination contained in Title VI, Title IX, Section 504, and the Age Discrimination Act. None of these statutes has been interpreted to define unlawful discrimination to include a failure to perform proactive outreach to particular demographic groups. Accordingly, even though outreach may be permissible and beneficial in some instances when performed on a voluntary basis, Section 188 does not provide the Department with the legal authority to enforce such outreach.

Commenters expressed concern that eliminating § 38.40 may undermine coordination between WIOA programs and other programs such as state VR agencies, youth transition

programs, TANF programs, or adult-education providers. Commenters pointed to WIOA provisions that encourage or require coordination across programs and argued that outreach obligations help support these statutory expectations.

The Department appreciates the importance of coordination across workforce and education systems and encourages recipients to continue collaborating with VR and other partner programs. This rescission does not diminish or alter recipients' statutory duties under other provisions of WIOA. Recipients must still comply with Titles I–IV, the implementing regulations, and joint guidance concerning referrals, coordination, and integrated service delivery. Recipients remain free to use outreach as a tool to fulfill these other statutory duties. The rescission simply clarifies that the Department cannot impose an additional nondiscrimination requirement that mandates outreach obligations under Section 188. Indeed, many of the Department's grant programs, include unemployment, poverty, or low-income status as eligibility criteria for participants and awardees. Furthermore, State Workforce Agencies, State Workforce Boards, American Job Centers (AJCs), and WIOA funding recipients regularly engage in outreach activities to reach different categories of people which often include high-unemployment or low-income participants. And 2 CFR 200.421 specifically allows grantees to use funds to recruit program participants and to engage businesses by communicating with them. The AJC brand itself was created to increase program awareness of the services the public workforce system offers and to facilitate outreach. This WIOA program is delivered through AJCs nationwide and there are approximately 2400 AJCs, all of which provide the public a one-stop-shop for employment services.

Some commenters—including Chicago Jobs Council, PACER, and NCLD—asserted that § 38.40 provides helpful “clarity” and “a framework” for recipients, and that removing it could create uncertainty regarding how recipients should ensure equal access. Commenters argued that rescission may increase recipients' compliance burden by eliminating explicit examples of outreach practices.

The Department acknowledges that § 38.40 supplied a non-exhaustive list of outreach activities that recipients “might undertake.” However, § 38.40 imposed a federal mandate to conduct outreach with reference to protected demographic categories, and for the reasons described elsewhere, the Department lacks statutory authority to impose such a requirement. Recipients retain broad flexibility to design outreach strategies that fit their operational needs and may continue to use any practices previously informed by § 38.40. Because the rescission removes a federal mandate rather than prohibiting outreach, the Department concludes that the rescission does not impose new burdens on recipients.

D. Other Concerns

Several commenters asserted that the Department did not adequately justify its departure from the 2016 rule. They argued that the 2016 interpretation reflected a permissible reading of Section 188 and that the NPRM did not provide a sufficient reason to adopt a different view. The Department disagrees. The NPRM acknowledged the change from the 2016 rule and explained that, upon further review of section 188(e) and the four statutes it incorporates, the Department now concludes that those statutes do not authorize the Department to mandate proactive outreach. After *Loper Bright*, agencies must adopt the “best reading” of statutory text rather than rely on judicial deference or custom. The Department has determined that the best reading of Section 188 confines its authority to standards consistent with the four referenced statutes, none of which defines discrimination to include failure to undertake affirmative outreach. The Department therefore has a reasoned basis for its change in position.

Several commenters, including PACER and Chicago Jobs Council, argued that the Department failed to consider reliance interests allegedly created by the 2016 rule, including reliance by recipients, state workforce agencies, disability-rights organizations, and outreach partners.

The Department disagrees. Recipients remain free to continue affirmative outreach activities on a voluntary basis, including collaborations with community organizations and

targeted dissemination of information. The only effect of this rule is that recipients are no longer compelled to structure outreach around protected classifications. Because recipients retain full discretion to continue the very practices on which commenters claim to rely, the rescission does not impair any legitimate reliance interest. Moreover, reliance interests cannot expand an agency's statutory authority. Even if some entities preferred the 2016 approach, the Department may not preserve a regulatory requirement that exceeds the limits Congress established in section 188(e).

E. Summary of Revisions

For the foregoing reasons, the Department is rescinding 29 CFR 38.40 in its entirety. The Department is also making the following conforming edits to remove references to § 38.40: Removing the phrase “consistent with § 38.40” from § 38.31(e); Removing § 38.54(c)(1)(v), which requires a State's nondiscrimination plan to describe how it complies with the affirmative outreach requirements at § 38.40; and Revising § 38.54(c)(2)(viii)(F) to say “§§ 38.34 through 38.39” instead of “§§ 38.34 through 38.40.”

III. Procedural Issues and Regulatory Review

A. Executive Orders 12866, 13563, and 14192

Among other requirements, Executive Order 12866 requires agencies to submit “significant regulatory actions” to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for review. *See* 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a “significant regulatory action” as a regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy

issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has determined that this rule does not constitute a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly, this rule was not submitted to OIRA for review under E.O. 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. *See* 76 FR 3821 (Jan. 21, 2011). E.O. 13563 recognizes that some costs and benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. *Id.*

The Department has considered the requirements of E.O. 13563 and has determined that the benefits of this proposed rescission justify any associated costs. The principal benefit of this action is the removal of a regulatory requirement that is not authorized by statute. Although these benefits are not readily quantifiable in economic terms, ensuring that agency action remains within statutory limits promotes limited constitutional government and individual liberty.

The Department further concludes that this rescission would impose no compliance costs because it removes, rather than imposes, a regulatory obligation and does not prohibit voluntary outreach efforts. Any regulatory familiarization costs are expected to be negligible because recipients would not need to take action, nor even be aware of this rulemaking, to comply with the rescission. Accordingly, the Department has determined that the benefits of the proposed action outweigh its costs, and that the proposal is consistent with E.O. 13563.

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. This final rule is expected to be an E.O. 14192 deregulatory action because it reduces regulatory burden for recipients of WIOA Title I financial assistance.

B. Final Regulatory Flexibility Act (RFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their rules on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603. If the regulatory action would have such an impact, then the agency must prepare a regulatory flexibility analysis as described in the RFA. *See id.* However, if the agency determines that the regulatory action would not be expected to have a significant economic impact on a substantial number of small entities, then the head of the agency may so certify and the RFA does not require a regulatory flexibility analysis. *See* 5 U.S.C. 605. DOL reviewed this rescission under the provisions of the RFA and certifies that the impacts of the rescission will not have a significant economic impact on a substantial number of small entities because it will not impose any new costs or compel any entities to change their current practices.

C. 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. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

F. Executive Order 12250

Pursuant to Executive Order 12250, the Department of Justice has the responsibility to “review . . . proposed rules . . . of the Executive agencies” implementing nondiscrimination statutes such as Title VI, Title IX, and Section 504 in order to identify those which are inadequate, unclear or unnecessarily inconsistent.” The Department of Justice has reviewed and approved this rule.

List of Subjects in 29 CFR Part 38

Administrative practice and procedure, Civil rights, Equal employment opportunity, Labor management relations, Manpower training programs.

For the reasons set forth in the preamble, the Department of Labor amends 29 CFR part 38 as follows:

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.*

2. Amend § 38.31 by revising paragraph (e) to read as follows:

§ 38.31 Equal Opportunity Officer responsibilities.

* * * * *

(e) Conducting outreach and education about equal opportunity and nondiscrimination requirements and how an individual may file a complaint consistent with § 38.69;

* * * * *

§ 38.40 [Removed and Reserved]

3. Remove and reserve § 38.40.

4. Amend § 38.54 by revising paragraph (c) to read as follows:

§ 38.54 Governor’s obligations to develop and implement a Nondiscrimination Plan.

* * * * *

(c) * * *

(1) * * *

(v) [Reserved]

* * *

(2) * * *

(viii) * * *

(F) Copies of any notices made under §§ 38.34 through 38.39.

Dean Heyl,
Assistant Secretary of the Office of Administration and Management.

[FR Doc. 2026-12645 Filed: 6/22/2026 8:45 am; Publication Date: 6/23/2026]