

MASSACHUSETTS

# Workforce Investment Act

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**WIA Communication No. 05-52**

Policy  Information

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**To:** Chief Elected Officials  
Workforce Investment Board Chairs  
Workforce Investment Board Directors  
Title I Administrators  
Career Center Directors  
Title I Fiscal Officers  
DCS Regional Directors for Workforce Integration  
DCS Associate Directors  
DCS Field Managers

**cc:** WIA State Partners

**From:** Susan V. Lawler, Commissioner  
Division of Career Services

**Date:** July 19, 2005

**Subject:** New Rules Allowing Use of WIA Title I Financial Assistance for Religious Training and Employment

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**Purpose:** To notify Local Workforce Investment Boards, One-Stop Career Center Operators and workforce investment partners of new rules allowing use of WIA Title I financial assistance for Religious Training and Employment.

**Background:** The U.S. Department of Labor Employment and Training Administration (USDOL/ETA) has issued Training and Employment Guidance Letter (TEGL) No. 1-05 (July 6, 2005) (Attached) describing amendments to USDOL regulations permitting the use, in defined circumstances, of WIA Title I financial assistance for training and employment of WIA participants in religious activities. The amendments also clarify other religion-related requirements governing both the workforce investment system and other recipients of Federal support from USDOL.

Executive Order (E.O) 13279 required Federal agencies to review and revise policies to ensure that faith-based and community organizations are able to apply and compete on an equal footing with other eligible organizations for Federal financial assistance. In response, USDOL has implemented a number of religion-

related changes to its general regulations and to the regulations implementing the Workforce Investment Act.

The most significant change regards Section 188 of the Act (29U.S.C. §2938) that contains the statute's nondiscrimination and equal opportunity provisions. The Interim Final Rule (IFR), codified at 29 CFR part 37 carried over the nondiscrimination and equal opportunity-related policies and procedures in place under WIA's predecessor statute, the Job Training Partnership Act (JTPA). Among the provisions carried over to the enactment of WIA was a provision barring the use of all types of WIA Title I financial assistance to employ or train participants in religious activities [29 CFR 37.6(f)(1) and 20 CFR 667.266, 667.275].

USDOL has now determined, in light of recent Supreme Court decisions, that this broad prohibition is not required by current law. Use of Federal assistance is permitted when the assistance is "indirect" (within the meaning of the U.S. Constitution). Assistance is considered indirect, for example, when participants are given a genuine and independent private choice among training providers or program options and can freely elect, from among those options, to receive training in religious activities. ITAs and PRAs as well as other forms of support that provide a genuine choice generally meet these criteria. Other WIA activities that may also meet the criteria for "indirect" assistance include OJT, incumbent worker training, customized training, core services, intensive services and supportive services (to the extent that such programs are structured in such a manner as to offer genuine and independent choice among providers or program options).

Other significant changes include:

- the requirement that Job Corps centers permit residents to engage in voluntary religious activities, including holding religious services, on center premises
- the requirement that faith-based organizations must be eligible, on the same basis as any other organization to apply for and receive Federal assistance under and participate in and USDOL social service program for which the organizations are otherwise eligible as long as the faith-based organization (as must any other organization) does not use direct USDOL financial assistance to support any inherently religious activity.
- USDOL, State and local governments administering USDOL support, and non-Federal agencies (other than State or local governments) using direct DOL assistance must not discriminate for or against a program participant or prospective participant on the basis of religion or religious belief.
- USDOL, State and local governments administering USDOL support, and non-Federal agencies (other than State or local governments) using direct DOL assistance must ensure that no direct USDOL financial assistance is used for inherently religious activity
- If an organization conducts inherently religious activities and also offers social service programs with direct USDOL support, the organization must offer the inherently religious activities at a time and place that is separate from the programs receiving direct USDOL support. The organization must also ensure that participation in any inherently religious activities is voluntary, and not compulsory, for participants in the USDOL supported programs.

- Employment, training and other service programs that receive only indirect USDOL support (and no direct support) may include required religious elements that occur at the same time and place as the rest of the training. Participants may voluntarily choose to enroll in such programs.
- If a state or local government voluntarily contributes its own funds to supplement funds provided by USDOL to support programs, the State or local government has the option to segregate the Federal funds or commingle them. All commingled funds are subject to the same requirements as those applying the USDOL assistance.
- A faith-based organization's right to make religion-related employment decisions will generally remain in effect when the organization receives direct or indirect financial assistance from USDOL. That ability may be limited, however, where such decisions are specifically prohibited by the statute that establishes the program that is the basis for the financial support.

TEGL 1-05 also requires States and local recipients of USDOL assistance to develop policies and procedures to implement, monitor compliance and train staff on the provisions of 29 CFR subpart D Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries. Further information related to the development and implementation of said policies and procedures will be addressed in forthcoming WIA Communications.

**Action**

**Required:** Assure that all workforce investment organizations and partners and their staff review the content of TEGL No.1-05 and comply with all requirements in carrying out their official duties and responsibilities in conjunction with the Workforce Investment Act.

**Effective:** Immediately

**Inquiries:** Please email all questions to [PolicyQA@detma.org](mailto:PolicyQA@detma.org). Also, indicate Issuance number and description.

**Filing:** Please file this in your notebook of previously issued WIA Communication Series Issuances as #05-52.