

(2) The review may include consultations with labor organizations and others in the affected local area(s). (WIA sec. 181(d).)

**§ 667.269 What procedures and sanctions apply to violations of §§ 667.260 through 667.268?**

(a) We will promptly review and take appropriate action on alleged violations of the provisions relating to:

- (1) Employment generating activities (§ 667.262);
- (2) Other prohibited activities (§ 667.264);
- (3) The limitation related to sectarian activities (§ 667.266);

(4) The use of WIA title I funds to encourage business relocation (§ 667.268).

(b) Procedures for the investigation and resolution of the violations are provided for under the Grant Officer's resolution process at § 667.510. Sanctions and remedies are provided for under WIA section 184(c) for violations of the provisions relating to:

- (1) Construction (§ 667.260);
- (2) Employment generating activities (§ 667.262);
- (3) Other prohibited activities (§ 667.264); and
- (4) The limitation related to sectarian activities (§ 667.266(b)(1)).

(c) Sanctions and remedies are provided for in WIA section 181(d)(3) for violations of § 667.268, which addresses business relocation.

(d) Violations of § 667.266(b)(2) will be handled in accordance with the DOL nondiscrimination regulations implementing WIA section 188, codified at 29 CFR part 37.

**§ 667.270 What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities do not displace other employees?**

(a) A participant in a program or activity authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a

program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:

- (1) Any other individual is on layoff from the same or any substantially equivalent job;
- (2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA participant; or
- (3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 667.600. (WIA sec. 181.)

**§ 667.272 What wage and labor standards apply to participants in activities under title I of WIA?**

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(b) Individuals in on-the-job training or individuals employed in programs and activities under Title I of WIA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(c) Allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not

considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301 *et seq.*). (WIA sec. 181(a)(2).)

**§ 667.274 What health and safety standards apply to the working conditions of participants in activities under title I of WIA?**

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under Title I of WIA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under Title I of WIA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

**§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?**

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations, codified at 29 CFR part 37. Under that definition, the term "recipients" includes State and Local Workforce Investment Boards, One-Stop operators, service providers, vendors, and subrecipients, as well as other types of individuals and entities.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing

and compliance reviews, are governed by the regulations implementing WIA section 188, codified at 29 CFR part 37, and are administered and enforced by the DOL Civil Rights Center.

(3) As described in § 667.260(a), financial assistance provided under WIA title I may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, section 188 of WIA, and the regulations implementing these statutory provisions.

(b) 29 CFR part 2, subpart D governs the circumstances under which recipients may use DOL support, including WIA Title I financial assistance, to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. *See also* 20 CFR 667.266 and 29 CFR 37.6(f)(1). 29 CFR part 2, subpart D also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries. Limitations on the employment of participants under WIA Title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship are described at 29 CFR 37.6(f)(2). *See* section 188(a)(3) of the Workforce Investment Act of 1998, 29 U.S.C. 2938(a)(3).

[65 FR 49421, Aug. 11, 2000, as amended at 69 FR 41891, July 12, 2004]