

INACTIVE 4/8/16



DIRECTIVE
WORKFORCE SERVICES

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Date: July 21, 2010
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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

EXECUTIVE SUMMARY:

Purpose:

This directive updates the State's policy on the nondiscrimination and equal opportunity procedures for the Workforce Investment Act (WIA) Title I and Wagner-Peyser (W-P) funded programs or activities. It also includes a standard discrimination complaint form that is available for use by the workforce development community when processing discrimination complaints and a procedure guide for use when processing reasonable accommodation requests.

Scope:

This directive applies to entities that provide services through WIA Title I or W-P funded programs and activities.

Effective Date:

This directive is effective on date of issuance.

REFERENCES:

- WIA Sections 121(b), 188, and 183(c)
- Americans with Disabilities Act of 1990, Title II, Subpart A
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (CFR) Sections 667.275 and 658.400

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Special requests for services, aids, and/or special formats need to be made by calling (916) 654-8055 (Voice). TTY users, please call the California Relay Service at 711.

- Title 29 CFR Parts 31, 32, 34, 37, and 1690-1691
- Title 41 CFR Subpart 101-19.6
- Title 45 CFR Section 90.43(c)(3)
- Fair Employment and Housing Act (Government Code, Title 2, Division 3, Part 2.8), Chapters 1-6
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency
- WIA Directive WIAD04-20, Subject: Limited English Proficiency (May 12, 2005)

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS:

This directive supersedes Workforce Services Directive WSD07-6, dated January 16, 2008, replaces Workforce Services Draft Directive WSDD-17, dated August 26, 2008, and finalizes Workforce Services Draft Directive WSDD-42, issued for comment on June 3, 2010. There were three comments received during the draft comment period; the comments received did not result in any changes to this directive. A summary of the comments is provided as Attachment 5. Retain this directive until further notice.

BACKGROUND:

This directive reiterates the guidance contained in WSD10-1 which states that the WIA Section 188 nondiscrimination and equal opportunity provisions prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program or activity. Title 29 CFR Part 37 implements the nondiscrimination and equal opportunity provisions specified in Section 188 of WIA.

POLICY AND PROCEDURES:

Definitions:

Complaint, for this directive only, means an allegation of a violation of the nondiscrimination and equal opportunity provisions.

Recipient, taken from Title 29 CFR Part 37, means any entity to which financial assistance under WIA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. In addition, One-Stop partners, as defined in Section 121(b)

of the WIA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 37, to the extent that they participate in the One-Stop delivery system.

Small recipient means a recipient who (1) serves a total of fewer than 15 beneficiaries during the entire grant year and (2) employs fewer than 15 employees on any given day during the grant year.

General Provisions:

Title 29 CFR Section 37.54(a) requires that each Governor must establish and adhere to a Methods of Administration (MOA) for state programs. The MOA is a state-level document that reflects the Governor's commitment to nondiscrimination and equal opportunity provisions of WIA.

The MOA contains nine distinct elements. This directive outlines these elements and highlights compliance requirements that are significant to programs and activities that are part of the One-Stop delivery system that are operated by One-Stop partners.

1. Designation of an Equal Opportunity (EO) Officer

Each Local Workforce Investment Area (LWIA) must designate an EO Officer who is responsible for coordinating its obligation under these regulations. ***The State requires that the LWIAs notify the EEO Office whenever the designation of the local area EO Officer changes.***

The EO Officer's responsibilities include:

- Serving as liaison with the Civil Rights Center (CRC).
- Investigating and monitoring the organizations and its subrecipients' WIA Title I-funded activities and programs.
- Reviewing the organizations and its subrecipients' written policies.
- Developing, publishing, and enforcing the organization's discrimination complaint procedures.
- Reporting to the appropriate authority regarding discrimination matters.
- Participating in continuing training and education, and ensuring that assigned staff receives the necessary training and support to maintain competency.
- Informing participants, employees and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint process works.

The LWIAs must submit a copy of the local-level EO Officer's position description and organizational chart showing the relationship of each local-level EO Officer to their LWIA Executive Director. The LWIAs will assign sufficient

staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and Title 29 CFR Section 37.23.

Please mail required documents to the following address:

***Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P.O. Box 826880
Sacramento, CA 94280-0001***

The EO Officer's contact information such as name, position title, business address, including e-mail address, and telephone number (voice and Telecommunications Device for the Deaf [TDD], which is also known as teletypewriter [TTY]), must be publicized at the local level through a variety of means including posters, handouts, and listings in local directories. Ensure that the EO Officer's identity and contact information appears on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs.

Attending periodic training is recommended for the EO Officer and assigned staff to keep abreast of equal opportunity issues. Training on nondiscrimination and equal opportunity is available through the State EO Officer and the Capacity Building Unit of the Workforce Services Division.

Small recipients and service providers, as defined in Title 29 CFR Section, Part 37.4, do not need to designate an EO Officer with the full responsibilities as described above, but must designate an individual who will be responsible for the developing and publishing of complaint procedures and the processing of complaints as required by Section 37.76 through 37.79.

Additionally, the WIA Title I Governor's 15 and 25 percent subgrantees (except LWIAs) are not required to designate an EO Officer, but must designate an individual who will be responsible for adopting and publishing the Employment Development Department (EDD) complaint procedures. Therefore, in lieu of a local complaint procedure, the WIA Title I Governor's 15 and 25 percent subgrantees must adopt the EDD's nondiscrimination and equal opportunity complaint procedures. The complaint procedures must include the option to file a charge of discrimination directly with the CRC. For more information, contact the State EO Officer at the address listed below:

***Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

2. Notice and Communication

Initial and continuing notice of nondiscriminatory practices (Attachment 1 and 2) and the right to file a complaint must be:

- Posted in prominent locations;
- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks and manuals, brochures, broadcasts, and other communications;
- Made available to each participant; and
- Included in each participant's case file. Where a hard copy case file is maintained, a copy of an acknowledgement of receipt shall be signed by the participant and included in each participant's case file. Where an electronic case file is maintained, staff must make a note indicating that this notification did occur, the date of the notification, and the name of the staff person who provided it.

The notice shall be provided in appropriate formats to individuals with visual impairments. When a notice has been given in an alternate format, a record of such notice shall be documented within the participant's case file.

For information and services accessed electronically, each recipient shall establish a procedure, which assures that the notice requirements of Title 29 CFR Part 37 are met.

Distributed publications, broadcasts, electronic media, and other communications including the homepage of the LWIAs website which promote WIA programs or activities, shall include the following taglines: "This WIA Title I financially assisted program or activity is an equal opportunity employer/program." "Auxiliary aids and services are available upon request to individuals with disabilities."

Where hard copy or electronic materials indicate that the recipients may be reached by telephone, the telephone number of any TDD/TTY or relay service used by the recipient must be indicated. If the recipient does not have a TDD/TTY, the California Relay Service (CRS) (1-800-735-2922) is an alternative. The CRS relays messages to deaf persons via the telephone. A caller can contact the relay service by voice or TDD, and an operator will contact the party to be called using voice or TDD/TTY. A TDD/TTY or relay service should be available where services provided by telephone are a major function of the program or activity.

This applies similarly to those recipients required by law or regulation to publish or broadcast program information in public media. Where appropriate, information and services should be additionally provided in languages other than English.

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "*Improving Access to Services for Persons with Limited English Proficiency*." This Executive Order mandates that individuals with limited English proficiency (LEP) have equal access to federally funded programs and activities. As required by Executive Order 13166, the DOL/CRC published revised policy guidance in the Federal Register (May 29, 2003) regarding the prohibition against national origin discrimination as it affects LEP individuals. This revised policy offers guidance from the DOL with respect to the responsibilities of recipients of federal financial assistance in serving LEP individuals, pursuant to the requirements of Title VI of the Civil Rights Act and Section 188 of WIA. Recipients of federal financial assistance must take reasonable steps to ensure that individuals having LEP receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by the recipients.

The Dymally-Alatorre Bilingual Services Act (DABSA) requires that, when State and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services in their clients' language. The DABSA establishes specific legal mandates for State agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

3. Assurances, Job Training Plans, Contracts, Policies and Procedures

A system must be implemented to ensure that all contracts, cooperative agreement, job training plans, and policies and procedures contain the nondiscrimination assurance as specified. The nondiscrimination assurance must state that the grant applicant will "comply fully with the nondiscrimination and equal opportunity provisions of WIA" and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance.

Title 29 CFR Section 37.20 requires that each application for federal financial assistance under Title I of WIA must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or DOL prior to and as a condition of receiving federal financial assistance under Title I of WIA (including both new and continuing assistance).

4. Universal Access

As required in Title 29 CFR Section 37.42, recipients must take appropriate steps to ensure universal access to WIA Title I financially assisted programs and activities by:

- Implementing an outreach and recruitment plan to solicit participation of all potentially WIA Title I-eligible applicants in the entire locale;
- Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community services groups;

- Considering a pool of individuals for participation that includes members of both sexes, various racial and ethnic age groups, and individuals with disabilities;
- Establishing a hiring and eligibility process that is accessible to qualified applicants with disabilities; and
- Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations.

5. Obligation Not To Discriminate On The Basis Of Disability

Compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and Title 29 CFR Part 37:

The recipients must ensure the accessibility to their training programs, activities and support services for all individuals, and must administer their training programs, activities and services in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This includes employment tests or other selection criteria used by recipients that do not screen out individuals with disabilities, and training programs accessible to individuals with visual, hearing, or speech impairments. The recipients must provide means for individuals with disabilities to receive information about availability of facilities accessible to them. Additionally, recipients must provide auxiliary aids, services and reasonable accommodations to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs).

The recipients must also provide:

- Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled or uneven concrete walkways, loose gravel);
- Signage at a primary entrance to each of their inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities;
- The international symbol for accessibility at each primary entrance of an accessible facility;
- Building entrance doors that can be opened with one hand;
- Accessible information at public counter or reception areas;
- Facility elevators that are accessible from the primary entrance meeting the above criteria;
- Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- At least one accessible public telephone per floor;

- Accessible meeting rooms with Braille symbols at an accessible height;
- Facility restrooms that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet seat should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, seat cover dispensers, etc.); and
- Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

Title 29 CFR Section 37.8—With regard to aid, benefits, services, training, and employment, a recipient must:

- Provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause the recipient undue hardship on business operations; and
- Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIA Title I financially assisted service, program, or activity.

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration only after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual(s) who requested the accommodation.

If a requested accommodation would result in undue hardship or a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such burden or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

Title 29 CFR Section 37.4 defines "undue hardship" with regard to reasonable accommodation of individuals with disabilities, as significant difficulty or expense incurred by a recipient when considered in light of certain factors. These factors include, but are not limited to, the nature and net cost of the accommodations needed, overall financial resources of recipient, type of operation(s) of recipient, the number of persons aided, benefited, served, trained, or employed, the impact on the ability of

other participants to receive aids, benefits, services, or training, or of other employees to perform their duties and the impact on the facility's ability to carry out its business or mission.

The term "fundamental alteration" means (1) a change in the essential nature of a program or activity as defined in Title 29 CFR Part 37.4, including but not limited to an aid, service, benefit, or training or (2) a cost that a recipient can demonstrate would result in an undue burden. The definition of "fundamental alteration" incorporates the concept of "undue financial and administrative burdens" in Title 29 CFR Part 37.

In addition, recipients must take appropriate steps to ensure that communications with beneficiaries, eligible registrants and applicants, participants, and members of the public who are individuals with disabilities are as effective as communications with others.

A Reasonable Accommodation Policy and Procedure Guide is available for use when processing reasonable accommodation requests (Attachment 4). This document contains two sections. The first section (pages 1 through 8), provides general guidance and definitions for use when processing reasonable accommodation requests. The second section (pages 9 through 14), provides step-by-step instructions on how to process these requests.

6. Data and Information Collection and Maintenance

In compliance with 29 CFR Sections 37.37 through 37.41 and Section 188 of WIA, any entity to which financial assistance under WIA Title I is extended, either directly from the DOL or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity must:

- Collect data on race/ethnicity, sex, age, and, where known, disability status, of each applicant, registrant, eligible applicant/registant, participant, terminee, applicant for employment, and employee;
- Maintain records of data in a system designed to allow the State and CRC to conduct statistical or other quantifiable analyses to verify compliance;
- Safeguard the confidentiality of the required information; confidential information should only be used for recordkeeping and reporting purposes; determining eligibility, where appropriate, for WIA Title I financially assisted program or activity; determining if the recipient is operating its WIA program in a nondiscriminatory manner, or other use authorized by law;
- Maintain a log of complaints filed alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship (citizen or authorization to work in the U.S.) or participation in a WIA Title I financially assisted program and activity. The log must include: (1) name and address of the complainant; (2) grounds of the complaint; (3) description of the complaint; (4) date complaint

was filed; (5) disposition and date of disposition of complaint; and (6) any other pertinent information.

The EEO Office requires a copy of the LWIA complaint log annually (each calendar year). Please mail it to the following address or return by e-mail:

***Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

- Promptly notify the CRC of any administrative enforcement actions or lawsuits filed against a LWIA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program and activity. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by the CRC;
- Retain records, including records of complaints, for a period of not less than three years from the close of the applicable program year or date of resolution of complaint; and
- Adopt procedures for responding to complaints of discrimination.

7. Monitor for Compliance

In accordance with Title 29 CFR Sections 37.54(d)(2)(ii) and 37.54(d)(2)(iii), the EEO Office of the EDD monitors LWIAs for nondiscrimination and equal opportunity compliance as required by WIA provisions and related regulations.

The EEO Office requires that each LWIA complete and submit the Electronic Compliance Monitoring Checklist (ECMC) biennial self-assessment checklists. The EEO Office will review the self-assessments, along with additional equal opportunity-related data, to coordinate and determine if an LWIA on-site review is necessary during a given program year. Through self-evaluations, LWIAs can validate their efforts in meeting regulatory requirements and identify the compliance status of their programs, activities, and areas in which they need technical assistance.

8. Complaint Processing Procedures

In compliance with nondiscrimination and equal opportunity provisions of the WIA and Title 29 CFR Section 37.76, the EO Officer must:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the LWIA for noncompliance with applicable nondiscrimination and equal opportunity provisions;

- Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures (NOTE: Although the LWIA does not have the same contractual jurisdiction with vendors as with service providers, ***the LWIA shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the LWIA should continue to utilize the services of the vendor.***); and
- Establish a system to record discrimination complaints.

The LWIA's complaint processing procedures must specify the following:

- a. Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIA may file a written complaint by using the Discrimination Complaint Form – Workforce Development Community (Attachment 3), or a representative may file the complaint on his or her behalf.
- b. The complaint may be filed either with the recipient's EO Officer (or the person designated for this purpose), or directly with the CRC, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.
- c. A complaint filed pursuant to Title 29 CFR 37 must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.
- d. Complaints must be filed in writing by completing the *Discrimination Complaint Form – Workforce Development Community* or your personalized LWIA locally developed form. Regardless of the form used, all complaints must capture the following information and shall:
 - Contain the complainant's name, address, or other means of contacting him or her;
 - Identify the respondent;
 - Describe the complainant's allegation(s) in sufficient detail to allow the CRC or LWIA EO Officer, as applicable, to determine whether (1) the CRC or the LWIA has jurisdiction over the complaint; (2) the complaint was filed timely; and (3) the complaint has apparent merit, i.e., whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA; and
 - Be signed by the complainant or his or her authorized representative.

- e. Both complainant and respondent have the right to be represented by an attorney or other individual of his or her choice.
- f. Alternative Dispute Resolution (ADR):
 - (1) The complainant must be offered ADR immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant; the preferred form of ADR is mediation.

What is Mediation?

Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicates their concerns, and comes to an agreement about how to resolve a dispute.

The mediator does not make decisions, rule as to who is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in Title 29 CFR Sections 37.71 through 37.74.

- (2) A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached. In such circumstances, the following rules will apply:
 - The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach;
 - The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint.

Complaints filed with the LWIA:

- a. The EO Officer shall issue a written acknowledgement of receipt by the LWIA of a complaint alleging discrimination by a WIA Title I recipient and shall

include a notice of the complainant's right to representation in the complaint process.

The EEO Office requires the EO Officer to forward one copy of the alleged complaint and one copy of the issued Notice of Final Action to the following address:

***Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

- b. If the complainant elects not to participate in the ADR process, the EO Officer shall investigate the circumstances underlying the alleged complaint.
- c. At any point in the investigation of the complaint, the complainant, respondent, or the EO Officer may request that the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.

What is Conciliation?

Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.

If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legal binding contract and falls under contract law.

- d. The LWIA shall be allowed 90 days to issue a Notice of Final Action from the date on which the complaint was filed. If, during the 90-day period, the LWIA issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.
- e. If the 90 days expire and the complainant does not receive a Notice of Final Action from the LWIA, or the LWIA failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the CRC within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the CRC within 120 days of the date on which the complaint was filed with the LWIA.
- f. The CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 37.81, or for other good cause shown.

- g. The LWIA shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.
- h. During the resolution process, the EO Officer shall assure that all parties involved are given due process. These due process elements include:
 - A notice to all parties of the specific charges;
 - A notice to all parties of the responses to the allegations;
 - The right of both parties to representation;
 - The right of each party to present evidence, and to question others who present evidence; and
 - A decision made strictly on the evidence on the record.

Actions by the CRC:

- a. The CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 34.82. When the CRC accepts a complaint for investigation, it shall:
 - Notify the LWIA and the complainant of the acceptance of the complaint for investigation; and
 - Advise the LWIA and complainant on the issues over which the CRC has accepted jurisdiction.
- b. The LWIA, the complainant, or a representative may contact the CRC for information regarding the complaint filed.
- c. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address.
- d. The CRC, per WIA Section 183(c), may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the United States, at any designated time and place.
- e. Where the CRC lacks jurisdiction over a complaint, the CRC shall:

- Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIA or Title 29 CFR Part 37; and
 - Refer the complainant to the appropriate federal, State, or local authority, when possible.
- f. The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.
- g. The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).
- h. If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in Title 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the LWIA of the referral.
- i. Under the One-Stop delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in a One-Stop delivery system, the following procedures apply:
- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the federal grant making agency, the CRC and the grant making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.
 - If the complainant alleges discrimination on the basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the federal grant making agency, the CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to Title 29 CFR Part 37. The CRC will advise the complainant and the LWIA of the referral.
- j. The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:
- The mediation is voluntary; the parties must consent before the mediation process will proceed.
 - The mediation will be conducted under the guidance issued by the CRC.
 - If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under Title 29 CFR Sections 37.82 through 37.88.

- k. After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the LWIA, in writing, of:
- The specific findings of the investigation;
 - The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
 - Whether it will be necessary for the LWIA to enter into a written agreement; and
 - The opportunity to participate in voluntary compliance negotiations.
- l. Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the LWIA. The Final Determination represents the DOL's final agency action on the complaint.

9. Corrective Actions/Sanctions

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively, must include the steps and the specific time period it will take the LWIA to achieve voluntary compliance. See Section 37.94 for corrective action steps.

Monetary corrective action may **not** be paid from federal funds.

If the LWIA receives a finding of noncompliance, the following sections of Title 29 CFR Part 37 may be referred to for detailed information:

- Final Determinations, Sections 37.90 through 37.101
- Breaches of Conciliation Agreements, Sections 37.102 through 37.105
- Subpart E-Federal Procedures for Effecting Compliance, Sections 37.110 through 37.115

Intimidation and Retaliation Prohibited:

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging a violation of WIA; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIA; furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity of WIA or Title 29 CFR Part 37. The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

Discrimination Complaint Form – Workforce Development Community

It is important for the EDD to receive documentation with sufficient information for the EDD EEO Office to analyze, compile, and report in a manner that is consistent with the DOL requirements. It is helpful when information gathering efforts include adequate questions that will elicit responses from the complainant, making the need to request additional information less likely.

The “*Discrimination Complaint Form – Workforce Development Community*” (Attachment 3), was developed to assist clients and service providers. This form is available for use by the workforce development community in an effort to provide more consistent information when processing discrimination complaints from clients of WIA and W-P funded programs and activities. The workforce development community is encouraged, but not required, to use this standard form.

ACTION:

Bring this directive to the attention of affected staff.

INQUIRIES:

If you have any questions, please contact your [Regional Advisor](#) at (916) 654-7799.

/S/ MICHAEL EVASHENK, Chief
Workforce Services Division

Attachments are available on the Internet:

1. [Equal Opportunity is the Law](#) (PDF)
2. [What to do if you Believe you Have Experienced Discrimination](#) (PDF)
3. [Discrimination Complaint Form](#) (DOC)
4. [Reasonable Accommodation Policy and Procedure Guide](#) (PDF)
5. [Summary of Comments](#) (PDF)