
**Workforce Investment Act
State Compliance Policies**

**Equal Opportunity Provisions of WIA
and Corrective Actions and Sanctions
for Non-Compliance**

Section: 4.1

March, 2000

I. DESIGNATION OF EQUAL OPPORTUNITY OFFICER (' 37.23):

- A.** All recipients of WIA funds (grantees), with the exception of small recipients or service providers (those who serve less than 15 beneficiaries and employ less than 15 staff for the entire grant year), shall have a designated Equal Opportunity (EO) Officer [29CFR Part ' 37.23] who is a senior level employee of the recipient who may or may not be assigned other duties. Other duties assigned must not create a conflict or the appearance of one with the responsibilities as EO Officer [' 37.24]
- B.** The grantee shall make public the name, title of position, address and telephone number of the EO Officer. A copy of this notice and a description of the EO Officer's duties, including average hours spent per week on EO activities shall be submitted to the State by July 1 each program year and anytime during the year when a change is made. [' 37.26(a)]
- C.** The grantee shall assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA. [' 37.26(c)] In addition EO Officer and staff must be afforded the opportunity to receive training necessary and appropriate to maintain competency. [' 37.26(d)]
- D.** The LWIB and its grantees that receive money directly from the State are responsible for assuring that their sub-grantees, service providers, contractors, etc. are in compliance with the equal opportunity and nondiscrimination provisions of WIA. [' 37.28]
- E.** Small recipients shall designate an individual responsible for the adoption and publication of complaint procedures and the processing of complaints pursuant to State Compliance Policy Sections 4.3 & 4.4 [' 37.27 and ' 37.76 through ' 37.79]
- F.** Service providers (the operator of any WIA-funded program or activity that receives funds from or through an LWIB or other grantee) are not required to designate an EO Officer. The responsibility for ensuring service provider compliance rests with the LWIB. [' 37.28]

II. ROLE AND RESPONSIBILITIES OF THE EO OFFICER:

Shall report equal opportunity matters directly to the grantees highest level WIA official (chair of the LWIB, the director of their department, or the CEO of their company as applicable). Under no circumstances shall the EO officer report equal opportunity matters to anyone who is not in a full administrative capacity. [' 37.25(e)]

The responsibilities of the EO officer shall include but are not limited to [' 37.25 (a-g)]:

- assuring compliance with State Compliance Policies;
- serving as liaison with the State EO officer and CRC;
- communicating EO matters to all employees and WIA beneficiaries;
- assuring that publications, contracts, agreements and assurances have the required language[' 37.29 and ' 37.30 through ' 37.36]
- receiving, logging, responding and reporting grievances;
- assuring equitable service reports are compiled;
- reviewing and evaluating equitable service reports;
- coordinating with MIS staff to respond to state or CRC data requests;
- preparing, reviewing, discussing EO matters with sub-grantees, contractors, staff, state office;
- preparing, modifying, maintaining an EO policy [' 37.29];
- training staff, contractors, sub-grantees on implementation of State EO policies and grantee EO policies;
- monitoring for EO compliance.
- ensuring discussion of rights under the nondiscrimination and equal opportunity provisions of WIA, including the right to file a complaint are conducted during each orientation to new participants, employees and/or the general public [' 37.36]
- review recipients written policies to ensure policies are nondiscriminatory
- develop and publish the recipient-s procedures for processing discrimination complaints under Sections ' 37.76 through ' 37.79.

III. COMMUNICATION OF EQUAL OPPORTUNITY POLICY

Grantees shall provide initial and continuing notice that they do not discriminate on any prohibited ground, to: registrants, applicants, eligible applicants, applicants for employment, participants, subrecipients, employees, and members of the public, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the grantee. [' 37.29]

- A. **Notice - "Equal Opportunity is the Law"**: Program and employment applicants shall be provided the notice for signature at the time of application. The original signature copy of the notice shall be included in an applicant file. A copy shall be given to the applicant. When the applicant becomes an employee or a WIA participant, the signed notice shall be placed in the personnel or participant file and the EO officer or designee shall review the notice as part of the participant and/or employee's orientation. [' 37.30 through ' 37.32]

The notice must contain the following specific wording:

Equal Opportunity is the Law: it is against the law for this recipient of Federal Financial assistance to discriminate on the following basis:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted or have access to any WIA Title I financially assisted program or activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration in the administration of or in connection with, such a program or activity.

A Spanish version of the notice has been provided and shall be used when Spanish is the individual's primary language. Alternate formats for other languages and the visually impaired shall be provided by the grantee, when appropriate. [' 37.35] When an alternate format has been used for the visually impaired, a comment shall be included in the individual's file documenting how s/he was informed of the contents of the notice. [' 37.31(b)]

- B. Poster - "Equal Opportunity is the Law":** shall be prominently placed in various locations. A Spanish version has been provided and shall be posted. [' 37.35] Alternate formats should also be provided for the visually impaired and other non-English speaking populations, if appropriate. [' 37.29(b)]

Note: Whenever a grantee passes on Federal financial assistance under WIA to another recipient, the grantee passing on such assistance shall provide the recipient receiving the assistance with the notice and poster.

IV. PUBLICATIONS, MEDIA MESSAGES AND OTHER MATERIALS [' 37.34]:

- A.** Materials or program information that are distributed or broadcasted to the public to

describe WIA programs or participation requirements shall include the following: "equal opportunity employer/program; auxiliary aids and services are available upon request to individuals with disabilities". If there are phone numbers listed, a TDD or relay service number shall also be provided. The text and illustrations contained in any WIA publication, etc. shall be designed in a manner that does not suggest that the program discriminates against any protected group. [' 37.34(a)]

- B.** The EO officer shall review all materials prior to approval to make public. If a publication policy exists, an EO officer review shall be included in the policy. [' 37.29 through ' 37.36]

Note: The grantee shall take reasonable steps to provide information to individuals who do not speak English and shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.

V. NONDISCRIMINATION ASSURANCES (' 37.20):

- A.** Any recipient of WIA funds shall provide a statement that the WIA-funded program or activity is or will be conducted in compliance with the nondiscrimination and equal opportunity provisions of WIA and ' 37.20. LWIB are required to submit their statement of compliance to the State with their Local Plan.
- B.** Each application for Federal financial assistance under WIA shall include an assurance. This assurance shall contain information listed in ' 37.20(a)(1). The assurance may be incorporated by reference in grants, cooperative agreements, contracts or other arrangements.
- C.** If the WIA funds are used to provide/acquire personal or real property, structures, improvements or interests, the assurance is required and shall obligate the recipient for as long as the recipient or its transferee retains ownership or possession. If the property is transferred, the transfer documents shall contain the assurance. [' 37.21] If the property is obtained from the Federal Government, the assurance shall also include a condition that returns the property to the Department in the event of a breach of the assurance or other WIA condition. [' 37.22]

VI. EQUITABLE SERVICES (' 37.42):

Grantees shall take appropriate steps to ensure they are providing universal access to their WIA Title I financially assisted programs and activities.. Such efforts shall include but not be limited to outreach efforts to broaden the composition of the pool of those considered for participation to include members of both sexes, the various race/ethnicity and age groups, and individuals with disabilities.

VII. PROGRAM AND SITE ACCESS FOR INDIVIDUALS WITH DISABILITIES ' 37.7 through ' 37.9 CFR PART 32 SUBPARTS B AND C AND APPENDIX A AND

THE AMERICANS WITH DISABILITIES ACT OF 1990):

Grantees shall refer to State Compliance Policy, Section 4.2 - WIA Program Provisions Employment Opportunities/Accessibility for Individuals with Disabilities. In general, grantees shall ensure that programs and activities are physically as well as programmatically accessible to individuals with disabilities. Grantees shall administer WIA-funded programs in the most integrated setting appropriate to the qualified individual with a disability and ensure that communications with them are as effective as communications with others.

VIII. EQUAL OPPORTUNITY DATA COLLECTION AND ANALYSIS [' 37.37]

- A.** Grantees shall collect and maintain records on applicants, eligible applicants, participants, terminees, applicants for employment, and employees. These records shall include race/ethnicity, sex, age and disability status. [' 37.37(b)(2)] Grantees shall use the five approved race/ethnic designations to identify the race/ethnicity:
- White (not Hispanic)
 - Black (not Hispanic)
 - Hispanic
 - American Indian or Alaskan Native (not Hispanic)
 - Asian or Pacific Islander (not Hispanic)
- B.** Records shall be stored for a period of not less than three years or not less than three years from the date of resolution of the complaint in a manner to ensure confidentiality. They shall be used only for the purposes of record keeping and reporting; determining eligibility; equitable services analysis; or other use authorized by the nondiscrimination and equal opportunity provisions. [' 37.37 through ' 37.41]
- C.** To determine compliance with nondiscrimination and equal opportunity provisions, the grantee shall assess equitable service and opportunity at each decision point in their programs -- eligible population to applicant; applicant to eligible applicant; eligible applicant to participant; participant to services; and terminations to types of terminations. The grantee shall be capable of making valid comparisons by race/ethnicity, sex, age, and disability status. [' 37.37(b)(1)]
- D.** The grantee shall also be able to make valid comparisons between applicants for employment and employees.
- E.** Grantees shall permit the *State* or the Civil Rights Center (CRC) access to records and individuals during business hours for compliance reviews/investigations and monitoring activities. Consideration of privacy or confidentiality are not a basis for withholding information from the CRC or the *State*. [' 37.40]

IX. EQUAL OPPORTUNITY MONITORING:

- A. Grantees shall monitor subrecipients for compliance with the nondiscrimination provisions of WIA along with other program and financial monitoring. Grantees shall submit a current copy of its monitoring guide to *State* with its Local Plan, including the Equal Opportunity component, and whenever changes or revisions are made. [' 37.60 and ' 37.62 through ' 37.65]
- B. *State* monitoring includes an EO component that includes all elements of the Methods of Administration, its related policies and regulations. *State* and the CRC may conduct special EO compliance reviews per ' 34.42.

X. DISCRIMINATION COMPLAINTS:

- A. Grantees shall adopt and publish procedures providing the prompt and equitable resolution of complaints alleging violations of WIA nondiscrimination/equal opportunity provisions that are consistent with this policy. [' 37.25(d)]
- B. To direct a complaint properly, the grantee must first determine whether the complaint is a program or a discrimination complaint. When a participant or employee alleges unfair treatment and does not initially allege that the treatment was due to one of the prohibited factors, it is appropriate to ask the question directly.
 1. If the complainant cannot state a reason or does not cite a reason that is a prohibited factor, process the complaint as a program complaint in accordance with State Compliance Policy, Section 4.3.
 2. If the complainant alleges that the unfair treatment was due to a prohibited factor, then the complaint must be processed in accordance with this policy which incorporates CRC regulations.

Note: A complaint cannot be processed as both a program complaint and as a discrimination complaint.

XI. COMPLAINT LOG [' 37.37(c)]:

- A. The grantee shall maintain a log of complaints filed with it and its subrecipients which:
 1. contains the name and address of the complainant;
 2. identifies the nature and basis for each complaint;
 3. lists the dates the complaint was filed and the investigation was completed; and
 4. includes the date and nature of the final disposition.

XII. GENERAL - CORRECTIVE ACTIONS AND SANCTIONS:

State will seek corrective action from a grantee when a deficiency is noted as a result of a Local

Plan review, monitoring review, an EO complaint processed under State Compliance Policy, Section 4.3 Discrimination Grievances/Complaints Procedure, or other indication of noncompliance.

- A. Grantees shall establish written procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found. This policy outlines the compliance and enforcement procedures to be used by State. All *State* compliance efforts begin by allowing the grantee to bring about compliance through informal means.
- B. The procedure described in this policy will be used for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found. Grantees shall develop a similar procedure for themselves, sub-recipients, and service providers. Taking prompt and appropriate action to effect compliance is one of the ways in which the grantee may reduce liability for noncompliance and avoid the imposition of sanctions.

XIII. GRANTEE OR GRANTEE=S RECIPIENT VIOLATION:

- A. If *State* determines that a violation has occurred at the grantee level, the *State* will notify the grantee through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination and allow the grantee to correct the violation through voluntary means written assurance [' 37.96] and/or Conciliation Agreement [' 37.94 (a&b), ' 37.95 (b)(3) and ' 37.97]
- B. If the violation is below the grantee level, the *State* will notify the grantee and the violating recipient(s). The grantee will be directed to initiate the negotiations immediately with the violating recipient(s) to secure compliance by voluntary means. Negotiations must be completed within 30 days of a Notice to Show Cause or within 45 days of a Letter of Findings or Initial Determination. [' 37.95(b)(1)(ii)]

XIV. LETTER OF FINDINGS [' 37.62(b)(2):

- A. The EO Officer will notify the grantee of the results of an EO Plan, program monitoring, other grant application review or as a result of a special review. If there is a deficiency, a Letter of Findings will be issued and will include: a description of each deficiency identified; proposed corrective or remedial actions necessary to bring the grantee into compliance; and a determination as to whether compliance can be achieved by:
 - 1. immediate correction of the deficiency and a written assurance that the deficiency has been corrected, [' 37.96]
 - 2. entering in into a conciliation agreement [' 37.95 & ' 37.97], or
 - 3. a combination of both. [' 37.95 (b)(2)(C)]

Where appropriate, a copy of the conciliation agreement or request for a written assurance will be included with the Letter of Findings.

XV. WRITTEN ASSURANCES AND CONCILIATION AGREEMENTS:

- A. **Written Assurances:** immediate corrective action and written assurances are appropriate when: the EO Officer determines that the corrective action can be completed within 45 days of the grantee's official written notification of the deficiency; and when the deficiency involves technical issues (posting required notices, revising assurance language in contracts, revising complaint procedures, instituting a discrimination complaint log), not discrimination.

A written assurance is an informal document prepared by the grantee or subrecipient. It must: list the deficiency and corrective actions as specified in the State EO Officer's written notification; describe the corrective actions taken to correct the deficiency and the dates those corrective actions were taken; state that the grantee is taking and will continue to take steps to assure that the deficiency does not recur; and be signed by the highest level official of the grantee or other recipient. [' 37.96]

- B. Conciliation Agreements [' 37.97] will be used when: the EO Officer determines that the corrective action cannot be completed with 45 days or the deficiency involves discrimination.

A conciliation agreement is a formal document prepared by the *State* EO Officer that commits the grantee to undertake corrective actions and is signed by the highest official of the *State* and the grantee.

The conciliation agreement must be in writing and include:

- An introduction describing who the agreement is between the event(s) that brought about the conciliation agreement, and the legal authority by which the EO Officer conducted the investigation and calls for corrective action;
- A section that describes each deficiency and the action(s) required to correct it [' 37.97(b&c)]
- An enforcement section that identifies the individual responsible to ensure that the actions specified are carried out in the time allotted [' 37.97(c)]; requires that reports be prepared and forwarded to the EO Officer on a periodic or incident basis [' 37.97(d)], and describes the consequences of a breach of the agreement. [' 37.97(f)]

- C. Breach of Conciliation Agreement [' 37.102, ' 37.103 and ' 37.104]

1. If a Conciliation Agreement has been breached the Director may issue a Notification of Breach of Conciliation Agreement. The Governor, the grant making agency and/or other party(s) to the agreement will be notified by the Director.
2. A notification of Breach of Conciliation Agreement must:

- a. Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;
- b. Identify the specific provisions of the Conciliation Agreement violated;
- c. Determine liability for the violation and the extent of the liability;

- d. Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement, may result, after opportunity for a hearing, in the termination or denial of the grant or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request from the Department to file suit;
- e. Advise the violating party of the right to request a hearing, and reference the applicable procedures in Section 37.111; and
- f. Include a determination as to the Governor's liability, if any, in accordance with the provisions of Section ' 37.52.

SPECIAL NOTES:

- 1. A grantee that prefers to complete all corrective actions within the 45-day time limit rather than sign a conciliation agreement may do so provided that the deficiency does not involve discrimination and that the grantee submits a written assurance that the deficiency has been corrected.
- 2. Corrective actions involving discrimination are designed to correct discriminatory situations and are situation specific. They will address: corrective, curative or preventive requirements designed to prevent recurrence of the discrimination; placement of individuals who were victims of discrimination into programs or positions immediately; back pay due an individual who was discriminated against.
- 3. Corrective actions will always be tailored specifically to the deficiency, designed to correct the problem completely and include a timetable, not to exceed 45-days, for completing the action.

XVI. INITIAL DETERMINATION:

- A. Upon completion of the investigation of a discrimination complaint through either the formal or informal process, the hearing officer will issue a report to the grantee's EO officer. The grantee's EO officer will prepare a Proposed Initial Determination for the *State* EO officer to review.
- B. The Proposed Initial Determination will include specific findings of the investigation, the proposed corrective or remedial action and the time by which the corrective or remedial action must be completed; and whether it will be necessary to engage in voluntary compliance negotiations. The *State* EO Officer will review the Proposed Initial Determination and issue the Initial Determination to the respondent and the complainant.
- C. Where a no cause determination is made, the complainant and the respondent will be notified in writing. No further action is required of the *State* or the grantee unless the complainant files with the CRC within the 30-day time frame and the CRC requests additional information or finds in favor of the complainant.

XVII. NOTICE TO SHOW CAUSE:

- A. A Notice to Show Cause will be issued when a grantee does not submit requested information within the required time frame; does not provide documentation during a compliance review; or does not provide access to records, documentation or premises during a compliance review. [' 37.66]
- B. The Notice to Show Cause will contain [' 37.67]: a description of the violation and a citation to the pertinent provisions of WIA; the corrective action necessary to achieve compliance; and a request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.
- C. The grantee will be given 30-days to: correct the violation and enter into a written assurance and/or Conciliation Agreement; demonstrate that the violation did not occur; or demonstrate that the *State* does not have jurisdiction. [' 37.68]

If the grantee does not respond within 30-days or fails to show cause why the enforcement proceedings should not be initiated, the *State* will follow the procedures outlined in the Final Determination section of this policy. [' 37.67(b)]

XVIII. FINAL DETERMINATION AND SANCTIONS:

- A. If the grantee fails or refuses to correct the violation(s) within the applicable time period established by the Letter of Findings, Notice to Show Cause or Initial Determination, or the *State* has not approved an extension and has not received notification of compliance, or *State* has disapproved a written assurance or Conciliation Agreement, or *State* has received notice from the grantee that voluntary compliance cannot be achieved; the *State* will conclude that compliance cannot be secured through informal means and sanctions will be considered and a final determination will be made.
- B. Sanctions that may be imposed include: partial funding, offsets, disallowed costs, or litigation. The most drastic sanction that could be imposed is for the Governor to issue a notice of intent to revoke approval of all or part of the Local Plan. If this sanction were imposed, the grantee would have the right to appeal to the Secretary of Labor. Revocation could not be effected until either the time for appeal had expired without an appeal or the Secretary had issued a decision on the appeal. (Refer to WIA State Compliance Policy Section 5.6 Sanctions and Resolution Process)
- C. When all efforts at conciliation have failed, the *State* EO Officer will notify CRC. This notification will include: the specific act(s) that constitute the violation; a copy of the proposed conciliation agreement; a chronology of the EO Officer's conciliation efforts; and a description of the proposed sanction.