

NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

EXECUTIVE SUMMARY

This policy provides the guidance and establishes the procedures regarding nondiscrimination and equal opportunity procedures. This policy applies to all Local Workforce Development Areas (Local Area), and is effective immediately.

This policy contains some state-imposed requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

This directive finalizes Workforce Services Draft Directive *Nondiscrimination and Equal Opportunity Procedures* (WSDD-166), issued for comment on May 30, 2017. The Workforce Development Community submitted five comments during the draft comment period. A summary of comments is provided as Attachment 4.

This policy supersedes Workforce Services Directive *Nondiscrimination and Equal Opportunity Procedures* (WSD15-24), dated April 8, 2016. Retain this directive until further notice.

REFERENCES

- *Civil Rights Act of 1964* (Public Law 88-352) Titles VI and VII
- *Education Amendments of 1972* (Public Law 92-318) Title IX
- *Rehabilitation Act of 1973* (Rehab Act) (Public Law 93-112) Title V, Section 504
- *Age Discrimination Act of 1975* (Public Law 94-135)
- *Americans with Disability Act of 1990* (ADA) (Public Law 101-336)
- *Workforce Innovation and Opportunity Act* (WIOA) (Public Law 113-128) Sections 121(b), 183(c), and 188
- Title 20 *Code of Federal Regulations* (CFR) Section 658.400
- Title 28 CFR Part 35, Subpart A
- Title 29 CFR Parts 31, 32, 34, 38, and 1690-1691
- Title 41 CFR Part 101-19, Subpart 101-19.6

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

- Title 45 CFR Part 90, Subpart D, Section 90.43(c)(3)
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (LEP)
- *Fair Employment and Housing Act*, Government Code, Section 12900 - 12996
- *Dymally-Alatorre Bilingual Services Act* (DABSA), Government Code, Section 7290-7299.8

BACKGROUND

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination on the basis of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including LEP); age; disability; political affiliation or belief; or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity.

POLICY AND PROCEDURES

Definitions

For purposes of this directive, the following definitions apply:

Complaint – An allegation of a violation of the nondiscrimination and equal opportunity provisions.

Nondiscrimination Plan – A state-level document that reflects the Governor’s commitment to nondiscrimination and equal opportunity provisions of WIOA. The Nondiscrimination Plan replaces the Methods of Administration (MOA) under the Workforce Investment Act (WIA) of 1998.

Recipient – Any entity to which financial assistance under the WIOA 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 WIOA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of WIOA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of 29 CFR Part 38, to the extent that they participate in the One-Stop delivery system (29 CFR Section 38.4[zz]).

Small recipient – A recipient who serves a total of fewer than 15 beneficiaries during the entire grant year and employs fewer than 15 employees on any given day during the grant year (29 CFR Section 38.4[hhh]).

State Equal Opportunity (EO) Officer – The Employment Development Department’s (EDD) EO Officer.

Provisions of the Nondiscrimination Plan

In order to provide a reasonable guarantee of compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR Part 38, the Governor must establish and implement a Nondiscrimination Plan for state programs as outlined in 29 CFR Section 38.54(a)(1). Previously known as the MOA under the WIA, the WIOA Nondiscrimination Plan must, at a minimum, describe how the requirements outlined below have been satisfied.

Assurances

Contracts, cooperative agreements, job training plans, and policies and procedures must contain the nondiscrimination assurance specified in 29 CFR Section 38.25 and 38.26. The nondiscrimination assurance must state that the grant applicant will “comply fully with the nondiscrimination and equal opportunity provisions of the WIOA” (29 CFR Part 38 Preamble) and acknowledge the government’s right to seek judicial enforcement of the nondiscrimination assurance.

Also in accordance with 29 CFR Section 38.25, each application for federal financial assistance under WIOA Title I must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or the DOL prior to, and as a condition of, receiving federal financial assistance under WIOA Title I (including both new and continuing assistance).

EO Officers

Each Local Area must designate an EO Officer who is responsible for coordinating its obligation under these regulations. ***The state requires that Local Areas notify the EDD’s Equal Employment Opportunity (EEO) Office whenever the designation of the Local Area EO Officer changes.***

The Local Area EO Officer’s responsibilities include the following:

- Serving as the liaison with the EDD EEO Office.
- Investigating and monitoring the Local Area’s and its subrecipients’ WIOA Title I funded activities and programs.
- Reviewing the Local Area’s organizations’ and its subrecipients’ written policies.
- Developing, publishing, and enforcing the Local Area’s discrimination complaint procedures.

- Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with 29 CFR Section 38.40, and how an individual may file a complaint consistent with 29 CFR Section 38.69.
- 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.

Local Areas will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of the WIOA and 29 CFR Part 38.

Local Areas must submit a copy of their EO Officer's position description and organizational chart showing the relationship of EO Officer to their Local Area Executive Director.

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

Or, email to EEOMAIL@edd.ca.gov.

The Local Area EO Officer's contact information such as name, position title, business address, including email address, and telephone number (voice and Telecommunications Device for the Deaf, 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. It must also be ensured that the Local Area 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 Local Area 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.

Small Recipients and Service Providers

Small recipients and service providers, as defined in 29 CFR Section 38.4, 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 29 CFR Section 38.72 through 38.75.

Governor's Discretionary and Dislocated Worker Additional Assistance Subrecipients

Additionally, the WIOA Title I Governor's Discretionary and Dislocated Worker Additional Assistance subrecipients (excluding Local Areas) are not required to designate an EO Officer, but must designate an individual who will be responsible for adopting and publishing the EDD's complaint procedures. Therefore, in lieu of a local complaint procedure, the WIOA Title I Governor's Discretionary and Dislocated Worker Additional Assistance subrecipients 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 DOL's Civil Rights Center (CRC).

For more information, contact the State EO Officer at the following address:

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

Or, email to EEOMAIL@edd.ca.gov.

Notice and Communication

A recipient must provide initial and continuing notice that it does not discriminate on any prohibited basis. Attachment 1 of this directive contains the notice/poster relating to *Equal Opportunity is the Law* along with language highlighting the right to file a complaint under *What to Do if You Believe You Have Experienced Discrimination*. This notice/poster must meet the following criteria:

- Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's website pages.
- Disseminated in internal memoranda and other written or electronic communications with staff.
- Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available.
- Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.

(29 CFR Section 38.36[a]).

The notice must be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, and applicants for employment and employees and participants with visual impairments. Where notice has been given in an alternate format to registrants,

applicants, eligible applicants/registrants, participants, applicants for employment and employees with a visual impairment, a record that such notice has been given must be made part of the employee's or participant's file. The notice must be provided in appropriate languages other than English (29 CFR Section 38.36[b]).

As it concerns communication, recipients must indicate that the WIOA Title I-financially assisted program or activity in question is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities." This must be included on recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper to staff, clients, or the public at large, to describe programs financially assisted under WIOA Title I or the requirements for participation by recipients and participants.

Where such materials indicate that the recipient may be reached by voice telephone, the materials must also provide the TTY number or equally effective communications system, such as a videophone, captioned telephone, or a relay service. The California Relay Service can be reached by dialing 711 or 1-800-735-2922.

Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted programs or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law) and indicate that auxiliary aids and services are available upon requests to individuals with disabilities.

A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis, except as such treatment is otherwise permitted under federal law or regulation.

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted programs or activity, whether this be in person or over the internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR Part 38, including the right to file a complaint of discrimination with the recipient or the Director of the CRC. This information must be communicated in appropriate languages as required in 29 CFR Section 38.9 and in formats accessible for individuals with disabilities as required in 29 CFR Part 38 and specified in Section 38.15.

In California, the 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.

Data and Information Collection and Maintenance

Each recipient must collect and maintain nondiscrimination data. The system and format in which the records and data are kept must be designed to allow the Governor and the CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of the WIOA and 29 CFR Part 38.

Nondiscrimination data must include, but is not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Such information must be kept for a period of not less than three years from the close of the applicable program year, stored in a manner that ensures confidentiality, and must be used only for the purposes of any of the following:

- Recordkeeping and reporting.
- Determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities.
- Determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner.
- Other use authorized by law.

Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (e.g., through password protection).

LEP and Preferred Language Data

As indicated in 29 CFR Section 38.41, "LEP and preferred language" has been added to the list of categories of information that each recipient must record about each applicant, registrant, eligible applicant/registrant, participant, and terminee. It should be noted that this data collection obligation would not apply to applicants for employment and employees because the obligation as to LEP individuals in 29 CFR Section 38.9 does not apply to those categories of individuals. A recipients' collection of information relates directly to serving (not employing) LEP individuals.

As it relates to the collection of "LEP and preferred language" data, the CRC has decided to delay enforcement for two years from the January 3, 2017 effective date of 29 CFR Part 38 in

order to allow recipients adequate time to update their data collection and maintenance systems. This means that full compliance is required by January 3, 2019, when the CRC will begin enforcing the collection of “LEP and preferred language” data.

Local Area Complaint Log

Each recipient must promptly notify the state or CRC when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity.

Each recipient must maintain a log of complaints filed with the recipient that allege discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity. The log must include the following:

- The name and address of the complainant
- The basis of the complaint
- A description of the complaint
- The date the complaint was filed
- The disposition and date of disposition of the complaint
- Other pertinent information

Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

The EDD EEO Office requires a copy of the Local Area complaint log annually (each calendar year). Please mail the complaint log to the following address:

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

Or, email to EEOMAIL@edd.ca.gov.

Affirmative Outreach

The guidelines found in 29 CFR Section 38.40 require recipients to take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs

and activities. These steps should involve reasonable efforts to include members of the various groups protected by 29 CFR Part 38 including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, LEP individuals, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to, the following:

- Advertising the recipient's programs and/or activities in media such as newspapers or radio programs that specifically target various populations.
- Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations.
- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Discrimination Prohibited Based on Disability

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, whether directly or through contractual, licensing, or other arrangements, on the basis of disability, a recipient must not do any of the following:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings.
- Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others.
- Provide a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.
- Provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirements of the *Rehab Act* as amended by the WIOA, including those provisions that prioritize opportunities in competitive integrated employment.
- Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards.
- Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.

Accessibility Requirements

No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. Recipients that are subject to Title II of ADA of 1990 must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, comply with the applicable federal accessible design standards, such as the *ADA Standards for Accessible Design* (1991 or 2010) or the *Uniform Federal Accessibility Standards*. In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the *Rehab Act* and the implementing regulations at 29 CFR Part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA that is not enforced by the CRC. As indicated in Section 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

All WIOA Title I-financially assisted programs and activities must be programmatically accessible. This includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

Reasonable Accommodation and Reasonable Modifications for Individuals with Disabilities

With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. For more information on what would constitute undue hardship as it relates to a reasonable accommodation of individuals with disabilities, please see the definition of “undue burden or undue hardship” found in 29 CFR Section 38.4(rrr)(1).

With regard to any aid, benefit, service, training, and employment, a recipient must also 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 service, program, or activity, which would constitute a fundamental alteration. For more information, see the definition of “fundamental alteration” found in 29 CFR Section 38.4(z).

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 or modification.

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 hardship or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

In addition, a recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others.

A Reasonable Accommodation Policy and Procedure Guide (Attachment 3) should be used when processing reasonable accommodation requests. This document should contain two sections: (1) provide general guidance and definitions for use when processing reasonable accommodation requests, and (2) provide step-by-step instructions on how to process these requests.

Service Animals

Generally, a recipient shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Mobile Aids and Devices

A recipient must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

A recipient must make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the recipient has adopted.

Complaint Processing Procedures

The Local Area EO Officer must do the following:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the Local Area 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. (Please note, although the Local Area does not have the same contractual jurisdiction with vendors as with service providers, the Local Area 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 Local Area should continue to utilize the services of the vendor.)
- Establish a logging system to record discrimination complaints.

The Local Areas complaint processing procedures must specify the following:

- 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 the WIOA may file a written complaint by using the Discrimination Complaint Form – Local Area (Attachment 2), which was developed to assist clients, participants, and service providers. This form is available for use by the Local Area in an effort to provide more consistent information when processing discrimination complaints from participants of WIOA and Wagner-Peyser funded programs and activities. The Local Area is encouraged to personalize the form with the name of the Local Area, logo and slogan information, and use the form for any and all discrimination complaints that may be received. Finally, it should be noted that a representative may also file a complaint on behalf of a person who believes that they have been subjected to discrimination.
- The complaint may be filed either with the Local Area's EO Officer (or the person designated for this purpose), or directly with the CRC at DOL, 200 Constitution Avenue N.W., Room N 4123, Washington, D.C. 20210.
- A complaint filed, pursuant to 29 CFR Section 38.69, 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.

- Complaints must be filed in writing by completing the Discrimination Complaint Form – Local Area (Attachment 2) or your personalized Local Area locally developed form. Regardless of the form used, all complaints must include the following information:
 - The complainant’s name, address, or other means of contacting him or her.
 - Identity of the respondent.
 - A description of the complainant’s allegation(s) in sufficient detail to allow the CRC or Local Area EO Officer, as applicable, to determine whether (1) the CRC or the Local Area 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 the WIOA).
 - The signature of the complainant or his or her authorized representative.

Finally, it should be noted that both complainant and respondent have the right to be represented by an attorney or other individual of his or her choice.

- An Alternative Dispute Resolution (ADR). 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. 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 29 CFR Sections 38.69 through 38.72.

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 Local Area

The Local Area EO Officer shall issue a written acknowledgement of receipt by the Local Area of a complaint alleging discrimination by a WIOA Title I recipient and shall include a notice of the complainant's right to representation in the complaint process.

The EDD EEO Office requires the Local Area 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***

Or, email to EEOMAIL@edd.ca.gov.

If the complainant elects not to participate in the ADR process, the Local Area EO Officer shall investigate the circumstances underlying the alleged complaint.

Conciliation

At any point in the investigation of the complaint, the complainant, respondent, or the Local Area EO Officer may request that the parties attempt conciliation. The Local Area EO Officer shall facilitate such conciliation efforts.

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.

The Local Area 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 Local Area 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.

If the 90 days expire and the complainant does not receive a Notice of Final Action from the Local Area, or the Local Area 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 Local Area.

The CRC may extend the 30-day time limit if the complainant is not notified, as provided in 29 CFR Section 38.77, or for other good cause shown.

The Local Area 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 the WIOA. 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.

During the resolution process, the Local Area EO Officer shall assure that all parties involved are given due process. These due process elements include the following:

- 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
- A decision made strictly on the evidence on the record

Actions by the CRC

The CRC determines acceptance of a complaint filed pursuant to 29 CFR Section 38.78. When the CRC accepts a complaint for investigation, it shall do the following:

- Notify the Local Area and the complainant of the acceptance of the complaint for investigation.
- Advise the Local Area and complainant on the issues over which the CRC has accepted jurisdiction.

The Local Area, the complainant, or a representative may contact the CRC for information regarding the complaint filed. 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 (29 CFR Section 38.79).

In accordance with WIOA Section 183(c), the CRC 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 U.S., at any designated time and place.

Where the CRC lacks jurisdiction over a complaint, the CRC shall do the following:

- Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of the WIOA or 29 CFR Part 38.
- Refer the complainant to the appropriate federal, state, or local authority, when possible.

The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.

The CRC will refer complaints governed by the *Age Discrimination Act of 1975* to mediation as specified in 45 CFR Section 90.43(c)(3).

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 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the Local Area of the referral.

Under the AJCC 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 the AJCC delivery system, the following procedures apply:

- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of the WIOA 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 the WIOA, 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 29 CFR Part 38. The CRC will advise the complainant and the Local Area of the referral.

The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

- Because mediation is voluntary, both parties must consent before the mediation process proceeds.
- 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 29 CFR Sections 38.82 through 38.88.

After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the Local Area, in writing, of the following:

- 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 Local Area to enter into a written agreement
- The opportunity to participate in voluntary compliance negotiations

Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the Local Area. The Final Determination represents the DOL's final agency action on the complaint.

Complaint Determinations

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to 29 CFR Sections 38.86 or 38.87, 38.88 and 38.89, or 38.90, respectively, must include the steps and the specific time period it will take the Local Area to achieve voluntary compliance. See Section 38.90 for corrective action steps. Monetary corrective action may not be paid from federal funds.

If the Local Area receives a finding of noncompliance, the following sections of 29 CFR Part 38 may be referred to for detailed information:

- "Final Determinations," Sections 38.96 through 38.97
- "Breaches of Conciliation Agreements," Sections 38.98 through 38.100
- Subpart E – "Federal Procedures for Effecting Compliance," Sections 38.110 through 38.115

Intimidation and Retaliation are Prohibited

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following:

- A violation of the WIOA.
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA.

- 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 provisions of WIOA or 29 CFR Part 38.

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.

Governor's Oversight and Monitoring Responsibilities for State Programs

The EDD is responsible for the oversight and monitoring of all WIOA Title I-financially assisted state programs. Consequently, the EDD EEO Office will conduct ANNUAL onsite monitoring reviews of Local Areas. The annual onsite monitoring reviews will ensure that the Local Areas are in compliance with the nondiscrimination and equal opportunity provisions of the WIOA. The EDD EEO Office will determine whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way.

Additional Components of the Nondiscrimination Plan

The Nondiscrimination Plan must also include the following:

- A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of the WIOA, is likely to conduct its Title I-financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in 29 CFR Part 38.
- A review of recipient policy issuances to ensure they are nondiscriminatory.
- A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.
- Procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of 29 CFR Section 38.5 regarding race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, political affiliation or belief, citizenship, or participation in any WIOA Title I-financially assisted program or activity.
- Procedures for ensuring that recipients comply with the requirements of applicable federal disability nondiscrimination law, including Section 504; Title II of the ADA of 1990, as amended, if applicable; WIOA Section 188, with regard to individuals with disabilities.
- A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the

nondiscrimination and equal opportunity provisions of the WIOA or 29 CFR Part 38 are aware of and can effectively carry out these responsibilities.

- Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.
- Supporting documentation to show that the commitments made in the Nondiscrimination Plan have been and/or are being carried out. This supporting documentation includes, but is not limited to, the following:
 - Policy and procedural issuances concerning required elements of the Nondiscrimination Plan.
 - Copies of monitoring instruments and instructions.
 - Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by 29 CFR Part 38.
 - Information reflecting the extent to which equal opportunity training, including training called for by 29 CFR Section 38.29(f) and 38.31(f), is planned and/or has been carried out.
 - Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions.
 - Copies of any notices made under 29 CFR Section 38.34 through 38.40.

ACTION

Bring this directive to the attention of all relevant parties.

INQUIRIES

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

/S/ JAIME L. GUTIERREZ, Chief
Central Office Workforce Services Division

Attachments are available on the internet:

1. [Equal Opportunity is the Law/What to do if You Believe You Have Experienced Discrimination](#)
2. [Discrimination Complaint Form – Local Area](#)
3. [Reasonable Accommodation Policy and Procedure Guide](#)
4. [Summary of Comments](#)