

**EQUAL OPPORTUNITY  
NONDISCRIMINATION  
POLICIES AND PROCEDURES  
(29 CFR Part 37 Implementing Section 188 of WIA)**

- I. **Introduction**: It is anticipated that this section of the manual will be most useful when employed as a desk manual by EO Officers to be consulted frequently as a guide to ensure that no individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I-funded program or activity.

II. **Nondiscrimination Procedures for WIA**

Purpose: To help ensure that recipients of WIA Title I-financial assistance are aware of and are in compliance with equal opportunity laws and regulations.

The purpose of this part is to implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), which are contained in section 188 of WIA. Section 188 prohibits 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. This part clarifies the application of the nondiscrimination and equal opportunity provisions of WIA and provides uniform procedures for implementing them.

1. **Assurance Required**

2. **Designation of Responsible Office**: The Equal Opportunity Section in the office of the recipient is designated as the office responsible for ensuring enforcement of, and to the extent possible, developing and issuing procedures for compliance with applicable federal nondiscrimination regulations, laws, and executive orders.

3. **Responsibilities of the Equal Opportunity WIA**

- a. Disseminate equal opportunity policy through available avenues in the state.
- b. Identify other equal opportunity officials with major responsibility to develop policies, objectives, and guidelines.
- c. Develop and implement a system for review of discrimination and equal opportunity impact on service delivery area job training plans.
- d. Develop and implement procedures to assure that WIA programs and activities are accessible to the disabled.

- e. Conduct self-evaluation of programs which utilize Title IX and Section 504.
- f. Develop and implement systems for monitoring compliance of subrecipients.
- g. Develop and implement a system for corrective action where there is non-compliance.
- h. Develop and implement a system for technical assistance and training, as resources are available.
- i. Establish a community relations program for each local WIB as resources are available.
- j. Develop and implement a data collection, record-keeping and reporting system.
- k. Establish and adhere to a Methods of Administration (MOA) for state programs as defined in 29 CFR 37. Regulations at 29 CFR 37 require each state to set up and maintain systems and procedures to carry out the following nine requirements.
  - (1) Designate an equal opportunity officer.
  - (2) Communicate equal opportunity policy, and train staff to carry it out.
  - (3) Review all contracts, plans, and agreements for equal opportunity provisions, and include a nondiscrimination assurance in all agreements.
  - (4) Make efforts to provide universal access to program and activities.
  - (5) Ensure program and site access to individuals with disabilities.
  - (6) Collect and maintain data to examine discrimination.
  - (7) Monitor recipients for compliance.
  - (8) Handle discrimination complaints.
  - (9) Obtain corrective actions or apply sanctions for discrimination.Each of the above Methods of Administration shall be designed to give reasonable guarantee that all recipients will comply and are complying with nondiscrimination and equal opportunity provisions of the Act and 29 CFR 37.

The MOA shall be: (1) in writing, (2) updated periodically (3) signed by the Governor (recipient only), and (4) familiar to everyone making decisions about people.

#### 4. Responsibilities of the Subrecipient

- a. Develop an Equal Opportunity Compliance Program (EOCP) that includes the following:
  - (1) Equal Opportunity Policy Statement/Assurance.
  - (2) Designation of EO Officer.
    - (a) Position description of EO officer's duties, including average hours spent on EO activities.
    - (b) Organizational chart showing EO officer's location within the organization.
  - (3) Communicate EO policy, and train staff to carry it out.
    - (a) Participant and employee orientation forms, containing the EO notice with room for participant/employee signature.
    - (b) Description and schedule of training planned on EO requirements during the coming year.
    - (c) Publication showing the EO auxiliary aid and accessible telephone numbers.
  - (4) Staff Utilization Analysis.
  - (5) Corrective Action Plan.
  - (6) Ensure program and site access to those with disabilities.
    - (a) Policy/procedures regarding treatment of applicants for employment/participants with disabilities, and integrated setting.
    - (b) Policy/procedure requiring reasonable accommodation, auxiliary aids and services.
    - (c) Policy/procedures about effective communications; materials in alternate formats, provision of readers, and qualified interpreters.

- (d) Policy/procedures regarding site selection to assure accessibility.
  - (e) Self-evaluation and status of corrective actions.
- (7) Description of how the local WIB will address universal access.
- (8) Description of programs to overcome sex stereotyping in occupations traditional to the other sex.
- b. Develop a written discrimination complaint procedure.
5. **Equal Opportunity Compliance Program**: To ensure that equal opportunity principle are adhered to in both staffing and the delivery of services, the recipient and subrecipient are required to develop an equal opportunity compliance program which incorporates standards and procedures required by the recipient. The EOCP should contain the following:
- (a) **EO Policy Statement/Assurance**: A policy statement must be issued and signed by the recipient/subrecipient with a commitment of top level support for equal opportunity from the chief administrative officials. It should affirm the recipient's/subrecipient's policy of nondiscrimination and full equality of opportunity.
  - (b) **Designation of EO Officer, Responsible Employee**: Each subrecipient shall make public the name of at least one employee designate to coordinate equal opportunity as provided in 29 CFR 37. This employee shall report directly to the subrecipient's chief administrative officer and shall be trained in accordance with standards and procedures prescribed by the recipient.
  - (c) **Dissemination of Equal Opportunity Policy**: The nondiscrimination procedures in the job training programs must include procedures for dissemination of an equal opportunity policy to insure awareness and understanding of the program by all segments of the local communities. This is a crucial factor in determining the eventual success of our efforts toward achieving the goal of equal opportunity for the WIB programs.
- (1) **Notice**: A local WIB shall take initial and continuing steps to notify WIA applicants, and participants, applicants for employment and employees, unions or professional organizations holding collective bargaining or professional agreements with the recipient, and members of the public that it does not discriminate. The notice (in language specified in 34.23(a)(5)) should be posted prominently, provided by recipients to other recipients when financial assistance is passed, available in formats suitable for those with visual or hearing impairments but no less effective than communications with others, available in languages other than English

where a significant portion of the eligible population needs information in a language other than English.

- (2) **Publications:** Each local WIB shall display prominently, in reasonable numbers and places, posters which state that it operates a program or programs subject nondiscrimination provisions pursuant to Section 188 of the Act and 29 CFR 37. These posters shall consist of the specific working in 29 CFR 37.30 the availability of further information from the recipient and explain briefly the procedures for filing a complaint.
- (a) If the local WIB publishes or uses recruitment materials, informational publications, or other materials which it distributes or makes available to all participants, beneficiary, referral sources, applicants, employees or the public, it shall include in those materials or publications a statement of policy and a summary of the nondiscrimination requirements applicants to the subrecipient, information as to complaint procedures, and a summary of the requirements for participation by beneficiaries. The requirements of this paragraph may be met either by including appropriate inserts in existing materials and publications or by revising and reprinting such materials.
- (b) Recruitment brochures and other materials or media messages distributed to the public to describe a WIA program or participation requirements shall include a notice stating that the program is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities."
- Where phone numbers are listed, TDD/TTY relay service numbers should also be provided. If a significant part of the eligible population needs information in a language other than English, the recipient should provide both the initial notice and other materials in the needed language where appropriate considering program scope and population size.
- (c) A subrecipient shall not use or distribute a publication of the type which suggests, by text or illustration, that the subrecipient treats beneficiaries, participants, applicants, or where applicable, employees, differently on any basis as specified in Section 188 of the Act and 29 CFR 37.
- d. **Staff Utilization Analysis:** The most important section of the equal opportunity compliance program is the staff utilization analysis of subrecipient's internal administrative staff by sex, race, and job category. The nature of the local WIB's equal opportunity program, as well as corrective action, is based on this analysis. The stereotyping analysis consists of the following:

The local WIB shall determine the extent to which minorities and females are being underutilized in any job category, considering the following factors:

- (1) The minority and female population of the subrecipient's area of jurisdiction.
- (2) The size and composition of the minority and female civilian labor force of the subrecipient's labor area.
- (3) The subrecipient's minority and female stereotyping as compared to the total civilian labor force of the local WIB's market area.

The local WIB should make a realistic assessment of its actual and anticipated expansion, contraction and turnover of the stereotyping then establish specific steps to project new hires and internal promotions for the grant period. Consideration should be given to the following factors:

- (a) The availability of promotable and transferable minorities and female within the organization.
  - (b) The general availability of minorities and females having requisite skills in the subrecipient's labor market area.
- e. **Corrective Action:** Based on the foregoing analysis, the local WIB must state its conclusions, by job groups, as to whether or not women and members of each minority class are being underutilized. If the analysis shows an underutilization on the local WIB's internal administrative staff, the local WIB shall take corrective action by outreach and positive recruitment, training, or job restructuring.

If the Grant Recipient of WIA Title I finds that there is reasonable cause to believe that the local WIB has discriminated in violation of 29 CFR Parts, 37, 32, 34 and Section 188 of the Act in the delivery of services, the Grant Recipient of WIA Title I shall notify the local WIB of such findings. The notification shall include suggested remedial action deemed necessary to overcome the effects of the alleged discriminatory actions.

A local WIB shall take corrective action to overcome the effects of conditions which have resulted in limited participation in any program by persons of a particular race, color, sex, national origin, age, or disability.

If a local WIB operating a program which serves the elderly or children in addition to persons of other ages provides special benefits to the elderly or children these benefits shall be presumed to be corrective action

provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

- f. **Ensure Program and Site Access to Those with Disabilities:** All local WIB must ensure that program and activities are physically and programmatically accessible to individuals with disabilities.
  - g. **Universal Access:** Local WIB must take appropriate steps to ensure that they are providing universal access to their WIA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. Such efforts may include, but are not limited to:
    - (1) Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
    - (2) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and
    - (3) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.
7. **Discrimination Prohibited:** No individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I-funded program or activity.
8. **Specific Discrimination Prohibited**
- (a) For the purpose of this section, prohibited ground" means race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I-financially assisted program or activity.
  - (b) A recipient must not, directly or through contractual, licensing, or other arrangements, on a prohibited ground:
    - (1) Deny an individual any aid, benefits, services, or training provided under a WIA Title I-funded program or activity;

- (2) Provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIA Title I-funded program or activity;
  - (3) Subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIA Title I-funded program or activity;
  - (4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIA Title I-funded program or activity;
  - (5) Treat an individual differently from others in determining whether s/he satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIA Title I-funded program or activity;
  - (6) Deny or limit an individual with respect to any opportunity to participate in a WIA Title I-funded program or activity, or afford him or her an opportunity to do so that is different from the opportunity afforded others under a WIA Title I-funded program or activity;
  - (7) Deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIA Title I-funded program or activity; or
  - (8) Otherwise limit on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIA Title I-financially assisted aid, benefits, services, or training.
- (c) A recipient must not, directly or through contractual, licensing, or other arrangements:
- (1) Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground in providing any aid, benefits, services, or training to registrants, applicants or participants in a WIA Title I-funded program or activity; or
  - (2) Refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in undue hardship, as defined in Section 37.4.
- (d) (1) In making any of the determinations listed in paragraph (d)(2) of this section, either directly or through contractual, licensing, or other

arrangements, a recipient must not use standards, procedures, criteria, or administrative methods that have any of the following purposes or effects:

- (i) subjecting individuals to discrimination on a prohibited ground; or
  - (ii) defeating or substantially impairing, on a prohibited ground, accomplishment of the objectives of either:
    - (A) the WIA Title I-funded program or activity; or
    - (B) the nondiscrimination and equal opportunity provisions of WIA or this part.
- (2) The determinations to which this paragraph applies include, but are not limited to:
- (i) the types of aid, benefits, services, training, or facilities that will be provided under any WIA Title I-funded program or activity;
  - (ii) the class of individuals to whom such aid, benefits, services, training, or facilities will be provided; or
  - (iii) the situations in which such aid, benefits, services, training, or facilities will be provided.
- (3) Paragraph (d) of this section applies to the administration of WIA Title I-funded programs or activities providing aid, benefits, services, training, or facilities in any manager, including, but not limited to:
- (i) outreach and recruitment;
  - (ii) registration;
  - (iii) counseling and guidance;
  - (iv) testing;
  - (v) selection, placement, appointment, and referral;
  - (vi) training; and
  - (vii) promotion and retention
- (4) A recipient must not take any of the prohibited actions listed in paragraph (d) of this section either directly or through contractual, licensing, or other arrangements.

- (e) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:
- (1) On a prohibited ground:
    - (i) excluding individuals from a WIA Title I-financially assisted program or activity;
    - (ii) denying them the benefits of such a program or activity; or
    - (iii) subjecting them to discrimination; or
  - (2) Defeating or substantially impairing the accomplishment of the objectives of either:
    - (i) the WIA Title I-financially assisted program or activity; or
    - (ii) the nondiscrimination and equal opportunity provisions of WIA or this part.
- (f) (1) A recipient must not permit participants to be employed or trained in sectarian activities.
- (2) With regard to a facility that is, or will be, primarily used or inherently devoted either:
- (i) for sectarian instruction; or
  - (ii) as a place of worship, a recipient must not permit participants to be employed or trained in any way to:
    - (i) construct,
    - (ii) operate, or
    - (iii) maintain any part of that facility.
- (3) If a facility is not primarily or inherently devoted to sectarian instruction or religious worship, a recipient may permit the use of WIA Title I funds to employ participants to maintain the facility, if the organization that operates the facility is part of a program or activity that provides services to participants.
- (g) The exclusion of an individual from programs or activities limited by Federal statute or Executive Order to a certain class or classes of

individuals of which the individual in question is not a member is not prohibited by this part.

**Section 37.7 What specific discriminatory actions based on disability are prohibited by this part?**

- (a) In providing any aid, benefits, services, or training under a WIA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, on the ground of disability:
  - (1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
  - (2) 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;
  - (3) Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefits, or to reach the same level of achievement as that provided to others;
  - (4) Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class or individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;
  - (5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
  - (6) 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.
- (b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants.
- (c) A recipient must not deny a qualified individual with a disability the opportunity to participate in WIA Title I-financially assisted programs

or activities despite the existence of permissibly separate or different programs or activities.

- (d) A recipient must administer WIA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- (e) A recipient must not, directly or through contractual, licensing or other arrangements, use standards, procedures, criteria, or administrative methods:
  - (1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability;
  - (2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIA Title I-funded program or activity with respect to individuals with disabilities; or
  - (3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.
- (f) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:
  - (1) On the basis of disability:
    - (i) using qualified individuals from a WIA Title I-financially assisted program or activity;
    - (ii) denying them the benefits of such a program or activity; or
    - (iii) subjecting them to discrimination; or
  - (2) Defeating or substantially impairing the accomplishment of the disability-related objectives of either:
    - (i) the WIA Title I-financially assisted program or activity; or
    - (ii) the nondiscrimination and equal opportunity provisions of WIA or this part.
- (g) A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discriminate on the basis of disability.

- (h) A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient are not, themselves, covered by this part.
- (i) A recipient must not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class or individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.
- (j) Nothing in this part prohibits a recipient from providing aid, benefits, services, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.
- (k) A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIA Title I or this part.
- (l) A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
- (m) The exclusion of an individual without a disability from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part.
- (n) This part does not require a recipient to provide any of the following to individuals with disabilities:
  - (1) personal devices, such as wheelchairs;

- (2) individually prescribed devices, such as prescription eyeglasses or hearing aids;
  - (3) readers for personal use or study; or
  - (4) services of a personal nature, including assistance in eating, toileting, or dressing.
- (o) (1) Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provided under WIA Title I or this part that such individual chooses not to accept.
- (3) Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

**Reasonable accommodation and reasonable modification for individuals with disabilities.**

- (a) With regard to aid, benefits, service, 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 undue hardship. See the definitions of "reasonable accommodation" and "undue hardship" in Section 37.4 of this part.
- (1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.
- (2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of "undue hardship" in Section 37.4. 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 or individuals who requested the accommodation.
- (3) If a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

(b) A recipient must also make reasonable modification in policies, practices, or procedures when the modification 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. See the definition of "fundamental alteration" in Section 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.

(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of "fundamental alteration" in Section 37.4. 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 or individuals who requested the modification.

(3) If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

#### **How to communicate with individuals with Disabilities.**

(a) Local WIB must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities, are as effective as communications with others.

(b) A local WIB must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the WIA Title I-financially assisted program or activity. In determining what type of auxiliary aid or service is appropriate and necessary, such local WIB must give primary consideration to the requests of the individual with a disability.

(c) Where a local WIB communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and/or employees, the local WIB must use

telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications system, such as telephone relay services.

- (d) A local WIB must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.
- (e) (1) A local WIB must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the most current standards prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101-19.6. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information.
- (2) The intentional symbol for accessibility must be used at each primary entrance of an accessible facility.
- (f) This section does not require a local WIB to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity.
  - (1) In those circumstances where a local WIB believes that the proposed action would fundamentally alter the WIA Title I-financially assisted program, activity, or service, the local WIB has the burden of proving that compliance with this section would result in an alteration.
  - (2) The decision that compliance would result in such an alteration must be made by the local WIB after considering all resources available for use in the funding and operation of the WIA Title I-financially assisted program, activity, or service, and must be accompanied by a written statement of the reasons for reaching that conclusion.
  - (3) If an action required to comply with this section would result in the fundamental alteration described in paragraph (f)(1) of this section, the local WIB must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the local WIB.

### **Employment Practices**

- (a) Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in

employment practices in the administration of, or in connection with, any WIA Title I-funded program or activity.

- (b) Employee selection procedures. In implementing this section, a local WIB must comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3.
- (c) Standards for employment-related investigations and reviews. In any investigation or compliance review, the Director must consider Equal Employment Opportunity Commission (EEOC) regulations, guidance and appropriate case law in determining whether a local WIB has engaged in an unlawful employment practice.
- (d) As provided in Section 37.3(b) of this part, 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, have been incorporated into this part by reference. Therefore, local WIBs must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.
- (e) Local WIBs that are also employers, employment agencies, or other entities covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. See 29 CFR part 1630 and 28 CFR part 35.
- (f) Similarly, local WIBs that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision. See 8 U.S.C. 1324b, as amended.
- (g) This rule does not preempt consistent State and local requirements.

#### **Intimidation and Retaliation Prohibited**

- (a) A local WIB must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has:
  - (1) filed a complaint alleging a violation of Section 188 of WIA or this part;
  - (2) opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or this part;

- (3) furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:
- (i) administration of the nondiscrimination and equal opportunity provisions of WIA or this part;
  - (ii) exercise of authority under those provisions; or
  - (iii) exercise of privilege secured by those provisions; or
- (4) otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIA or this part.
- (b) The sanctions and penalties contained in Section 188(b) of WIA or this part may be imposed against any local WIB that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

#### **The Civil Rights Center (CRC)**

The Civil Rights Center (CRC), in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of WIA and this part, and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

#### **The Director's interpretations of this part.**

The Director will make any rulings under, or interpretations of, the nondiscrimination and equal opportunity provisions of WIA or this part.

#### **The Secretary delegates the responsibilities of this part.**

- (a) The Secretary may from time to time assign to officials of other departments or agencies of the Government (with the consent of such department or agency) responsibilities in connection with the effectuation of the nondiscrimination and equal opportunity provisions of WIA and this part (other than responsibility for final decisions under Section 37.112), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of the nondiscrimination and equal opportunity provisions of WIA or this part to similar programs and similar situations.

- (b) Any action taken, determination made, or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this section has the same effect as if the action had been taken by the Director.

**The Director's responsibilities to coordinate with other Civil Rights agencies.**

- (a) Whenever a compliance review or complaint investigation under this part reveals possible violation of one or more of the laws listed in paragraph (b) of this section, or of any other Federal civil rights law, that is not also a violation of the nondiscrimination and equal opportunity provisions of WIA or this part, the Director must attempt to notify the appropriate agency and provide it with all relevant documents and information.
- (b) This section applies to the following laws:
- (1) Executive Order 11246, as amended;
  - (2) Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793);
  - (3) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);
  - (4) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);
  - (5) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.);
  - (6) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);
  - (7) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.);
  - (8) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b); and
  - (9) Any other Federal civil rights law.

**Section 37.16 The recipient's obligations under other laws, and what limitations.**

- (a) Effect of State or local law or other requirements. The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA or this part are not excused or reduced by any State or local law or other requirement that, on a prohibited ground, prohibits or limits an individual's eligibility to receive aid, benefits, services, or training; to participate in any WIA Title I-financially assisted program

or activity; to be employed by and local WIB; or to practice any occupation or profession.

- (b) Effect of private organization rules. The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA and this part is not excused or reduced by any rule or regulation of any private organization, club, league or association that, on a prohibited ground, prohibits or limits an individual's eligibility to participate in any WIA Title I-financially assisted program or activity to which this part applies.
- (c) Effect of the availability of employment opportunities. In recruiting, selecting, or placing individuals in programs or activities, a local WIB must not consider whether job opportunities in any particular occupation or profession will be available to, or denied to:
- (1) Qualified individuals with disabilities, because of their disabilities; or
  - (2) Individuals of a particular race, color, religion, sex, national origin, age, political affiliation or belief or citizenship, because of those prohibited grounds.

#### **Recordkeeping and Other Affirmative Obligations of Recipients.**

##### **Assurances**

#### **The grant applicant's obligation to provide a written assurance.**

- (a) (1) Each application for financial assistance under Title I of WIA, as defined in Section 37.4, must include the following assurance:

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, **the grant applicant assures** that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

**Section 188 of the Workforce Investment Act of 1998 (WIA)**, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity;

**Title VI of the Civil Rights Act of 1964**, as amended, which prohibits discrimination on the basis of race, color and national origin;

**Section 504 of the Rehabilitation Act of 1973**, as amended, which prohibits discrimination against qualified individuals with disabilities;

**The Age Discrimination Act of 1975**, as amended, which prohibits discrimination on the basis of age; and

**Title IX of the Education Amendments of 1972**, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

- (3) The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of the WIA is made available, whether or not it is physically incorporated in such document and whether or not there is a written agreement between the Department and the local WIB, between the Department and the Governor, between the Governor and the local WIB, or between participants. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.

- (b) Continuing State programs. Each Strategic five-year State Plan submitted by a State to carry out a continuing WIA Title I-funded program or activity must provide a statement that the WIA Title I-funded program or activity is (or, in the case of a new WIA Title I-funded program or activity, will be) conducted in compliance with the nondiscrimination and equal opportunity provisions of WIA and this part, as a condition to the approval of the five-year Plan and the extension of any WIA Title I-financial assistance under the Plan. The State also must certify that it has developed and maintains a Methods of Administration under Section 37.54.

**The recipient's obligation under the assurance is how long it lasts and how broad is the obligation?**

- (a) Where the WIA Title I financial assistance is intended to provide, or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient, or (in the case of a subsequent transfer) the transferee, for the longer of:

- (1) the period during which the property is used either:
  - (i) for a purpose of which WIA Title I financial assistance is extended; or
  - (ii) for another purpose involving the provision of similar services or benefits; or
- (2) the period during which either:
  - (i) the recipient retains ownership or possession of the property; or
  - (ii) the transferee retains ownership or possession of the property without compensating the Departmental grantmaking agency for the fair market value of that ownership or possession.
- (b) In all other cases, the assurance will obligate the local WIB for the period during which WIA Title I financial assistance is extended.

#### **Section 37.22 The use of covenants.**

- (a) Where WIA Title I financial assistance is provided in the form of a transfer of real property, structures, or improvements on real property or structures, or interests in real property or structures, the instrument effecting or recording the transfer must contain a covenant assuring nondiscrimination and equal opportunity for the period described in Section 37.21.
- (b) Where no Federal transfer of real property or interest therein from the Federal Government is involved, but real property or an interest therein is acquired or improved under a program of WIA Title I financial assistance, the local WIB must include the covenant described in paragraph (a) of this section in the instrument effecting or recording any subsequent transfer of such property.
- (c) When the property is obtained from the Federal Government, the covenant described in paragraph (a) of this section also may include a condition coupled with a right of reverter to the Department in the event of a breach of the covenant.

#### **Equal Opportunity Officers**

##### **Designation of an Equal Opportunity Officer.**

Every recipient must designate an Equal Opportunity Officer ("EO Officer"), except small local WIB and service providers, as defined in Section 37.4. The responsibilities of small local WIB and service providers are described in Sections 37.27 and 37.28.

### **Who is eligible to serve as an Equal Opportunity Officer?**

A senior-level employee of the recipient should be appointed as the local WIB's Equal Opportunity Officer. Depending upon the size of the local WIB, the size of the local WIB's WIA Title I-financially assisted programs or activities, and the number of applicants, registrants, and participants served by the local WIB, the EO Officer may, or may not, be assigned other duties. However, s/he must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.

### **The responsibilities of an Equal Opportunity Officer.**

An Equal Opportunity Officer is responsible for coordinating a local WIB's obligations under this part. Those responsibilities include, but are not limited to:

- (a) Serving as the local WIB's liaison with CRC;
- (b) Monitoring and investigating the local WIB's activities, and the activities of the entities that receive WIA Title I funds from the local WIB, to make sure that the local WIB and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIA Title I and this part;
- (c) Reviewing the local WIB's written policies to make sure that those policies are nondiscriminatory;
- (d) Developing and publishing the local WIB's procedures for processing discrimination complaints under Sections 37.76-37.79, and making sure that those procedures are followed;
- (e) Reporting directly to the appropriate official (including, but not limited to, the State WIA Director, Governor's WIA Liaison, Job Corps Center Director, SESA Administrator, or LWIA grant recipient) about equal opportunity matters;
- (f) Undergoing training (at the local WIB's expense) to maintain competency, if the Director requires him/her and/or his/her staff to do so; and
- (g) If applicable, overseeing the development and implementation of the local WIB's Methods of Administration under Section 37.54.

### **The recipient's obligations relating to the Equal Opportunity Officer.**

A recipient has the following obligations:

- (a) Making the Equal Opportunity Officer's name, and his or her position title, address, and telephone number (voice and TDD/TTY) public;
- (b) Ensuring that the EO Officer's identity and contact information appears on all internal and external communications about the local WIB's nondiscrimination and equal opportunity programs;
- (c) Assigning sufficient staff and resources to the Equal Opportunity Officer, and providing him/her with the necessary support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part; and
- (d) Ensuring that the EO Officer and his/her staff are afforded the opportunity to receive the training necessary and appropriate to maintain competency.

**The obligations of small recipients regarding Equal Opportunity Officers.**

Although small local WIBs do not need to designate Equal Opportunity Officers who have the full range of responsibilities listed above, they must designate an individual who will be responsible for developing and publishing of complaint procedures, and the processing of complaints, as explained in Sections 37.76-37.79.

**The obligations of service providers regarding Equal Opportunity Officers.**

Service providers, as defined in Section 37.4, are not required to designate an Equal Opportunity Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIA and this part rests with the Governor or LWIA grant recipient, as specified in the State's Methods of Administration.

**Notice and Communication**

**The local WIB's obligations to disseminate its equal opportunity policy.**

- (a) A local WIB must provide initial and continuing notice that it does not discriminate on any prohibited ground. This notice must be provided to:
  - (1) Registrants, applicants, and eligible applicants/registrants;
  - (2) Participants;
  - (3) Applicants for employment and employees;

- (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
  - (5) Subrecipients that receive WIA Title I funds from the recipient; and
  - (6) Members of the public, including those with impaired vision or hearing.
- (b) As provided in Section 37.9, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.

**Section 37.30 What specific wording must the notice contain?**

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 bases:

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 funded 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/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-funded 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 of, or in connection with, such a program or activity.

**What to Do if You Believe  
You Have Experienced Discrimination**

If you think that you have been subjected to discrimination under a WIA Title I-funded program or activity, you may file a complaint with the local WIB. If you think that you have been subjected to discrimination under a WIA Title I-funded program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The local WIB's Equal Opportunity Officer (or the person whom the local WIB has designated for this purpose); or

The Director, Civil Rights Center (CRC), U. S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the local WIB, you must wait either until the local WIB issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the local WIB does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the local WIB to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the local WIB).

If the local WIB does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

**Section 37.31 Where must the notice required by Section 37.29-37.30 be published?**

- (a) At a minimum, the notice required by Sections 37.29-37.30 must be:
  - (1) posted prominently, in reasonable number and places;
  - (2) disseminated in internal memoranda and other written or electronic communications;
  - (3) included in handbooks or manuals; and
  - (4) made available to each participant, and made part of each participant's file.
- (b) The notice must be provided in appropriate formats to individuals with visual impairments. Where notice has been given in an alternate

format to a participant with a visual impairment, a record that such notice has been given must be made a part of the participant's file.

**When must the notice required by Section 37.29-37.30 be provided?**

The notice required by Sections 37.29-37.30 must be initially provided within 90 days of the effective date of this part, or of the date this part first applies to the local WIB, whichever comes later.

**Who is responsible for meeting the notice requirement with respect to service providers?**

The Governor or the LWIA grant recipient, as determined by the Governor and as provided in that State's Methods of Administration, will be responsible for meeting the notice requirement provided in Sections 37.29-37.30 with respect to a State's service providers.

**The type of notice that a local WIB must include in publications, broadcasts, and other communications?**

- (a) Local WIBs must indicate that the WIA Title I-funded 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," in 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 funded under Title I of WIA or the requirements for participation by local WIBs and participants. Where such materials indicate that the local WIB may be reached by telephone, the materials must state the telephone number of the TDD/TTY or relay service used by the local WIB, as required by Section 37.9(c).
- (b) Local WIBs that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIA Title I-funded program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIA Title I-funded program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.
- (c) A local WIB must not communicate any information that suggests, by text or illustration, that the local WIB treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground specified in Section 37.5, except

as such treatment is otherwise permitted under Federal law or this part.

**The local WIB's responsibilities to provide services and information in language other than English.**

- (a) A significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I-financially assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity. Where such a significant number or proportion exists, a local WIB must take the following actions:
  - (1) Consider:
    - (i) the scope of the program or activity, and
    - (ii) the size and concentration of the population that needs services or information in a language other than English; and
  - (2) Based on those considerations, take reasonable steps to provide services and information in appropriate languages. This information must include the initial and continuing notice required under Sections 37.29-37.30 of this part, and all information that is communicated under Section 37.34 of this part.
- (b) In circumstances other than those described in paragraph (a) of this section, a local WIB should nonetheless make reasonable efforts to meet the particularized language needs of limited-English-speaking individuals who seek services or information from the local WIB.

**The local WIB's responsibility to communicate information during Orientation.**

During each presentation to orient new participants, new employees, and/or the general public to its WIA Title I-funded program or activity, a local WIB must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIA and this part, including the right to file a complaint of discrimination with the local WIB or the Director.

**Data and Information Collection and Maintenance**

**What are the local WIB's responsibilities to collect and maintain data and other information?**

- (a) The Director will not require submission of data that can be obtained from existing reporting requirements or sources, including those of other agencies, if the source is known and available to the Director.

- (b) (1) The local WIB must collect such data and maintain such records, in accordance with procedures prescribed by the Director, as the Director finds necessary to determine whether the local WIB has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA or this part. The system and format in which the records and data are kept must be designed to allow the governor and CRC to conduct statistical or other quantifiable data analyses to verify the local WIB's compliance with section 188 of WIA and this part.
- (7) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. The local WIB must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrator, participant, terminee, applicant for employment, and employee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA Title I-funded programs or activities; determining the extent to which the local WIB is operating its WIA Title I-funded program or activity in a nondiscriminatory manner; or other use authorized by law.
- (c) The local WIB must maintain, and submit to CRC upon request, a log of complaints filed with it that allege discrimination on the ground(s) of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIA Title I-financially assisted program or activity. The log must include: the name and address of the complainant; the ground of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information.
- (d) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.
- (e) A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor of LWIA grant recipient, as provided in the State's Methods of Administration.

**The information grant applicants and local WIBs provide to CRC.**

In addition to the information which must be collected, maintained, and, upon request, submitted to CRC under Section 37.37:

- (a) Each grant applicant and local WIB must promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the ground 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. This notification must include:
- (1) the names of the parties to the action or lawsuit;
  - (2) the forum in which each case was filed; and
  - (3) the relevant case numbers.
- (b) Each grant applicant (as part of its application) and local WIB (as part of a compliance review conducted under Section 37.63, or monitoring activity carried out under Section 37.65) must provide the following information:
- (1) the name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or local WIB to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
  - (2) information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or local WIB during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include:
    - (i) the names of the parties;
    - (ii) the forum in which each case was filed; and
    - (iii) the relevant case numbers.
- (c) At the discretion of the Director, grant applicants and local WIBs may be required to provide, in a timely manner, any information and data necessary to investigate complaints and conduct compliance reviews on grounds prohibited under the nondiscrimination and equal opportunity provisions of WIA and this part.
- (d) At the discretion of the Director, local WIBs may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the Director considers necessary to

determine compliance with the nondiscrimination and equal opportunity provisions of WIA or this part.

- (e) At the discretion of the Director, grant applicants may be required to submit, in a timely manner, the particularized information necessary to determine whether or not the grant applicant, if funded, would be able to comply with the nondiscrimination and equal opportunity provisions of WIA or this part.
- (f) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

**Records retention requirements.**

- (a) The local WIB must maintain the following records for a period of not less than three years from the close of the applicable program year:
  - (1) the records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and
  - (2) such other records as are required under this part or by the Director.
- (b) Records regarding complaints and actions taken on the complaints must be maintained for a period of not less than three years from the date of resolution of the complaint.

**What access to sources of information must grant applicants and local WIBs provide the Director?**

- (a) Each grant applicant and local WIB must permit access by the Director during normal business hours to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, monitoring activities associated with a State's development and implementation of a Methods of Administration, and inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIA or this part.
- (b) Asserted consideration of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance with the

nondiscrimination and equal opportunity provisions of WIA and this part.

- (c) Whenever any information that the Director asks a grant applicant or local WIB to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the grant applicant or local WIB made to obtain it.

**What responsibility do grant applicants, local WIBs, and the Department have to maintain the confidentiality of the information collected?**

The identity of any individual who furnished information relating to, or assisting in, an investigation or a compliance review must be kept confidential to the extent possible, consistent with a fair determination of the issues. An individual whose identify it is necessary to disclose must be protected from retaliation (see Section 37.11).

**The local WIB's responsibilities under this part to provide universal access to WIA Title I-financially assisted programs and activities.**

The local WIB must take appropriate steps to ensure that they are providing universal access to their WIA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. Such efforts may include, but are not limited to:

- (a) Advertising the local WIB's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- (b) Sending notices about openings in the local WIB's programs and/or activities to schools or community service groups that are various populations; and
- (c) Consulting with appropriate community service groups about ways in which the local WIB may improve its outreach and service to various populations.

### **Corrective Actions and Sanctions.**

- (1) As part of the Notice of Final Action, the WIB may impose any corrective or remedial action, which may be, imposed by the Director of CRC under 29 CFR Section 37.94.
- (2) In addition to the corrective actions and remedies described in 29 CFR Section 27.94, the WIB may require that the respondent complete one or more of the following:
  - develop an appropriate equal opportunity policy;
  - remove any discriminatory information from the complainant's records; and
  - provide equal opportunity training for all staff members.
- (3) The respondent shall inform the WIB within ten days of receipt of the Notice of Final Action that it has accepted the WIB's resolution of the complaint and that it will complete the required corrective actions listed in the Notice.
- (4) If the complaint involved discrimination against an applicant for employment, a respondent may be required by the WIB to make a written offer of employment of the type and grade denied to the applicant, unless the record indicates the applicant would not otherwise have been hired. If the employment is accepted, the appointment may be retroactive, with back pay, from the date the applicant would have been hired to the date of actual employment. The applicant may be deemed to have been employed from the retroactive date for all purposes except for meeting a probationary or trial employment period.
- (5) Monetary relief required by a Notice of Final Action may not be paid from federal funds.

### **Sanctions**

If the WIB finds a recipient to be in violation of the nondiscrimination and equal opportunity provisions of the WIA, or such entity has not accepted a suggested resolution or conciliation agreement, or has breached an establishment resolution or conciliation agreement, the WIB may impose sanctions.

- (A) If no findings are reported, the monitoring report will be closed out and the monitoring agency will send a close out letter to the monitored entity with the report. If there are findings, a letter closing the report will be issued within 10 calendar days of the receipt of the last response. If corrective action is determined acceptable, the close out letter will constitute final action on the report.

- (B) If, after two (2) responses from the monitored entity, corrective action is determined to be inadequate and findings are unresolved, a final determination will be written which will include identification of the unresolved issues and identify what steps are to be taken as a result of the unresolved issues. Within ten (10) calendar days, copies of the letter and all related written reports and communication will be sent to the monitored entity, Workforce Investment Board, Board Chair, the monitoring agency's resolution staff, and the Department of Labor, if applicable.
- (C) If sanctions are imposed, the monitored entity has the option of appealing through the WIA grievance process. Ten (10) calendar days after the final action on the grievance or the notification of imposed sanctions, copies of the report, responses and other related written communication will be mailed to the local Workforce Investment Board Chairperson.

### **Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIA.**

#### **Section 37.50 To whom does this subpart apply?**

This subpart applies to State Programs as defined in Section 37.4. However, the provisions of Section 37.529b) do not apply to State Employment Security Agencies (SESAs), because the Governor's liability for any noncompliance on the part of a SESA cannot be waived.

#### **Governor's oversight responsibilities.**

The Governor is responsible for oversight of all WIA Title I-funded State program. This responsibility includes ensuring compliance with the nondiscrimination and equal opportunity provisions of WIA and this part, and negotiating, where appropriate, with a local WIB to secure voluntary compliance when noncompliance is found under Section 37.95(b).

#### **To what extent may a Governor be liable for the actions of a local WIB s/he has financially assisted under WIA Title I?**

- (a) The Governor and the local WIB are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIA and this part by the local WIB, unless the Governor has:
- (1) Established and adhered to a Methods of Administration, under Section 37.54, designed to give reasonable guarantee of the local WIB's compliance with such provisions;
  - (2) Entered into a written contract with the recipient that clearly establishes the local WIB's obligations regarding nondiscrimination and equal opportunity;

- (3) Acted with due diligence to monitor the local WIB's compliance with these provisions; and
  - (4) Taken prompt and appropriate corrective action to effect compliance.
- (b) If the Director determines that the Governor has demonstrated substantial compliance with the requirements of paragraph (a) of this section, s/he may recommend to the Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying local WIB.

**The Governor's oversight responsibilities regarding local WIB's recordkeeping.**

The Governor must ensure that local WIBs collect and maintain records in a manner consistent with the provisions of Section 37.37 and any procedures prescribed by the Director under Section 37.37(b). The Governor must further ensure that local WIBs are able to provide data and reports in the manner prescribed by the Director.

**The Governor's obligations to develop and maintain a Methods of Administration.**

- (a) (1) Each Governor must establish and adhere to a Methods of Administration for State programs as defined in Section 37.4. In those States in which one agency contains both SESA or unemployment insurance and WIA Title I-financially assisted programs, the Governor should develop a combined Methods of Administration.
- (3) Each Methods of Administration must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIA and this part.
- (b) The Methods of Administration must be:
  - (1) In writing, addressing each requirement of 37.54(d) with narrative and documentation;
  - (2) Reviewed and updated as required in Section 37.55; and
  - (3) Signed by the Governor.
- (c) [Reserved]

- (d) At a minimum, each Methods of Administration must:
- (1) Describe how the State programs and local WIBs have satisfied the requirements of the following regulations:
    - (i) Sections 37.20-37.22 (assurances);
    - (ii) Sections 37.23-37.28 (Equal Opportunity Officers);
    - (iii) Sections 37.29-37.36 (Notice and Communication);
    - (iv) Sections 37.37-37.41 (Data and Information Collection and Maintenance);
    - (v) Section 37.42 (Universal Access);
    - (vi) Section 37.53 (Governor's Oversight Responsibilities Regarding Local WIB's Recordkeeping); and
    - (vii) Sections 37.76-37.79 (Complaint Processing Procedures); and
  - (2) Include the following additional elements:
    - (i) A system for determining whether a grant applicant if funded, and/or a training provider, if selected as eligible under Section 122 of the Act, is likely to conduct its WIA Title I-financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in this part;
    - (ii) A system for periodically monitoring the compliance of local WIBs with WIA Section 188 and this part, including a determination as to whether each local WIB is conducting its WIA Title I-financially assisted program or activity in a nondiscriminatory way. At a minimum, each periodic monitoring review required by this paragraph must include:
      - (A) a statistical or other quantifiable analysis of records and data kept by the local WIB under Section 37.37, including analyses by race/ethnicity, sex, age, and disability status;
      - (B) an investigation of any significant differences identified in (A) above in participation in the programs, activities, or employment provided by the local WIB, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the local WIB's records and any other appropriate means; and

- (C) an assessment to determine whether the local WIB has fulfilled its administrative obligations under section 188 or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the MOA;
- (iii) a review of local WIB policy issuances to ensure they are nondiscriminatory;
- (iv) a system for reviewing local WIBs' 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;
- (v) Procedures for ensuring that local WIBs comply with the requirements of Section 504 and this part with regard to individuals with disabilities;
- (vi) A system of policy communication and training to ensure that EO Officer and members of the local WIBs' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIA or this part are aware of and can effectively carry out these responsibilities;
- (vii) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and
- (viii) Supporting documentation to show that the commitments made in the Methods of Administration have been and/or are being carried out. This supporting documentation includes, but is not limited to:
  - (A) policy and procedural issuances concerning required elements of the Methods of Administration;
  - (B) copies of monitoring instruments and instructions;
  - (C) evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part;
  - (D) information reflecting the extent to which Equal Opportunity training, including training called for by Sections 37.25(f) and 37.26(c), is planned and/or has been carried out;

- (E) reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and
- (F) copies of any notices made under Sections 37.29-37.36.

**When must the Governor carry out his/her obligations with regard to the Methods of Administration?**

- (a) Within 180 days of either the date on which this Interim Final Rule is effective, or the date on which the Department gives final approval to a State's five-year Plan, whichever is later, a Governor must:
  - (1) Develop and implement a Methods of Administration consistent with the requirements of this part, and
  - (2) Submit a copy of the Methods of Administration to the Director.
- (b) The Governor must promptly update the Methods of Administration whenever necessary, and must notify the Director in writing at the time that any such updates are made.
- (c) Every two years from the date on which the initial MOA is submitted to the Director under Paragraph 37.55(a)(2), the Governor must review the Methods of Administration and the manner in which it has been implemented, and determine whether any changes are necessary in order for the State to comply fully and effectively with the nondiscrimination and equal opportunity provisions of WIA and this part.
  - (1) If any such changes are necessary, the Governor must make the appropriate changes and submit them, in writing to the Director.
  - (2) If the Governor determines that no such changes are necessary, s/he must certify, in writing, to the Director that the Methods of Administration previously submitted continues in effect.

**Compliance Procedures**

**How does the Director evaluate compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?**

From time to time, the Director may conduct pre-approval compliance reviews of grant applicants for, and post-approval compliance reviews of local WIBs of, WIA Title I financial assistance, to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

Reviews may focus on one or more specific programs or activities, or one or more issues within a program or activity. The Director may also investigate and resolve complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIA and this part.

**Is there authority to issue subpoenas?**

Yes, Section 183(c) of WIA authorizes the issuance of subpoena. A subpoena may direct the individual named on the subpoena to take the following actions:

- (a) to appear:
  - (1) before a designated CRC representative,
  - (2) at a designated time and place;
- (b) to give testimony; and/or
- (c) to produce documentary evidence.

The subpoena may require the appearance of witnesses, and the production of documents, from any place in the United States, at any designated time and place.

**Compliance Reviews**

**What are the authority and procedures for conducting pre-approval compliance reviews?**

- (a) As appropriate and necessary to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA or this part, the Director may review any application, or class or applications, for Federal financial assistance under Title I of WIA, before and as a condition of their approval. The basis for such review may be the assurance specified in Section 37.20, information and reports submitted by the grant applicant under this part or guidance published by the Director, and any relevant records on file with the Department.
- (b) Where the Director determines that the grant applicant for Federal financial assistance under WIA Title I, if funded, might not comply with the nondiscrimination and equal opportunity requirements of WIA or this part, the Director must:
  - (1) notify, in a timely manner, the departmental grantmaking agency and the Assistant Attorney General of the findings of the pre-approval compliance review; and

- (2) issue a Letter of Findings. The Letter of Findings must advise the grant applicant, in writing, of:
  - (i) The preliminary findings of the review;
  - (ii) The proposed remedial or corrective action under Section 37.94 and the time within which the remedial or corrective action should be completed;
  - (iii) Whether it will be necessary for the grant applicant to enter into a written Conciliation Agreement as described in Section 37.95 and 37.97; and
  - (iv) The opportunity to engage in voluntary compliance negotiations.
- (c) If a grant applicant has agreed to certain remedial or corrective actions in order to receive WIA Title I-funded Federal financial assistance, the Department must ensure that the remedial or corrective actions have been taken, or that a Conciliation Agreement has been entered into, before approving the award of further assistance under WIA Title I. If a grant applicant refuses or fails to take remedial or corrective actions or to enter into a Conciliation Agreement, as applicable, the Director must follow the procedures outlined in Sections 37.98-37.100.

**What are the authority and procedures for conducting post-approval compliance reviews?**

- (a) The Director may initiate a post-approval compliance review of any local WIB to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part. The initiation of a post-approval review may be based on, but need not be limited to, the results of routine program monitoring by other Departmental or Federal agencies, or the nature or frequency of complaints.
- (b) A post-approval review must be initiated by a Notification Letter, advising the local WIB of:
  - (1) The practice to be reviewed;
  - (2) The programs to be reviewed;
  - (3) The information, records, and/or data to be submitted by the local WIB within 30 days of the receipt of the Notification Letter, unless this time frame is modified by the Director; and

- (4) The opportunity, at any time before receipt of the Final Determination described in Section 37.99-37.100, to make a documentary or other submission that explains, validates or otherwise addresses the practices under review.
- (c) The Director may conduct post-approval reviews using such techniques as desk audits and on-site reviews.

**What procedures must the Director follow when CRC has completed a post-approval compliance review?**

- (a) Where, as the result of a post-approval review, the Director has made a finding of noncompliance, s/he must issue a Letter of Findings. This Letter must advise the local WIB, in writing of:
  - (1) The preliminary findings of the review;
  - (2) Where appropriate, the proposed remedial or corrective action to be taken, and the time by which such action should be completed, as provided in Section 37.94;
  - (3) Whether it will be necessary for the local WIB to enter into a written assurance and/or Conciliation Agreement, as provided in Sections 37.96-37.97; and
  - (4) The opportunity to engage in voluntary compliance negotiations.
- (b) Where no violation is found, the local WIB must be so informed in writing.

**What is the Director's authority to monitor the activities of a Governor?**

- (a) The Director may periodically review the adequacy of the Methods of Administration established by a Governor, as well as the adequacy of the Governor's performance under the Methods of Administration, to determine compliance with the requirements of Section 37.50-37.55. The Director may review the Methods of Administration during a compliance review under Sections 37.62-37.63, or at another time.
- (b) Nothing in this subpart limits or precludes the Director from monitoring directly any WIA Title I recipient or from investigating any matter necessary to determine a local WIB's compliance with the nondiscrimination and equal opportunity provisions of WIA or this part.

**What happens if a local WIB fails to submit requested data, records, and/or information, or fails to provide CRC with the required access?**

The Director may issue a Notice to Show Cause to a local WIB failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the local WIB's failure or refusal to:

- (a) Submit requested information, records, and/or data within 30 days of receiving a Notification Letter;
- (b) Submit, in a timely manner, information, records, and/or data requested during a compliance review, complaint investigation, or other action to determine a local WIB's compliance with thenondiscrimination and equal opportunity provisions of WIA or this part; or
- (c) Provide CRC access in a timely manner to a recipient's premises, records, or employees during a compliance review, as required in Section 37.40.

**What information must a Notice to Show Cause contain?**

- (a) A Notice to Show Cause must contain:
  - (1) A description of the violation and a citation to the pertinent nondiscrimination or equal opportunity provision(s) of WIA and this part;
  - (2) The corrective action necessary to achieve compliance or, as may be appropriate, the concepts and principles of acceptable corrective or remedial action and the results anticipated; and
  - (3) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.
- (b) A Notice of Show Cause must give the local WIB 30 days to show cause why enforcement proceedings under the nondiscrimination and equal opportunity provisions of WIA or this part should not be instituted.

**How may a local WIB show cause why enforcement proceedings should not be instituted?**

A local WIB may show cause why enforcement proceedings should not be instituted by, among other means:

- (a) Correcting the violation(s) that brought about the Notice to Show Cause and entering into a written assurance and/or entering into a Conciliation Agreement, as appropriate,
- (b) Demonstrating that CRC does not have jurisdiction, or
- (c) Demonstrating that the violation alleged by CRC did not occur.

**What happens if a local WIB fails to show cause?**

If the local WIB fails to show cause why enforcement proceedings should not be initiated, the Director must follow the enforcement procedures outlined in Sections 37.99-37.100.

**Complaint Processing Procedures**

**Who may file a complaint concerning discrimination connected with WIA Title I?**

Any person who believes that either s/he, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or this part, may file a written complaint, either by him/herself or through a representative.

**Where may a complaint be filed?**

A complainant may file a complaint with either the local WIB or the Director. Complaints filed with the Director should be sent to the address listed in the notice in Section 37.30.

**When must a complaint be filed?**

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

**What information must a complaint contain?**

Each complaint must be filed in writing, and must contain the following information:

- (a) The complainant's name and address (or another means of contacting the complainant);
- (b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
- (c) A description of the complainant's allegations. This description must include enough detail to allow the Director or the local WIB, as applicable, to decide whether:
  - (i) CRC or the local WIB, as applicable, has jurisdiction over the complaint;
  - (ii) The complaint was filed in time; and
  - (iii) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or this part; and
- (d) The complainant's signature or the signature of the complainant's authorized representative.

**Are there any forms that a complainant may use to file a complaint?**

Yes. A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the local WIB's EO Officer, or from CRC at the address listed in the notice contained in Section 37.30.

**Is there a right of representation in the complaint process?**

Yes. Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.

**The required elements of a recipient's discrimination complaint processing procedures.**

- (a) The procedures that a local WIB adopts and publishes must provide that the local WIB will issue a written Notice of Final Action on discrimination complaints within 90 days of the date of which the complaint is filed.
- (b) At a minimum, the procedure must include the following elements:

- (1) Initial, written notice to the complainant that contains the following information:
    - an acknowledgment that the local WIB has received the complaint, and
    - notice that the complainant has the right to be represented in the complaint process;
  - (2) A written statement of the issue(s), provided to the complainant, that includes the following information:
    - A list of the issues raised in the complaint, and
    - For each such issue, a statement whether the local WIB will accept the issue for investigation or reject the issue, and the reasons for each rejection;
  - (3) A period of fact-finding or investigation of the circumstances underlying the complaint;
  - (4) A period during which the local WIB attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in section (c) below;
  - (5) A written Notice of Final Action, provided to the complainant within 90 days of the date of which the complaint was filed, that contains the following information:
    - For each issue raised in the complaint, a statement of either:
      - (A) the local WIB's decision on the issue and an explanation of the reasons underlying the decision, or
      - (B) a description of the way the parties resolved the issue; and
    - Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if s/he is dissatisfied with the local WIB's final action on the complaint.
- (c) The procedures the local WIB adopts must provide for alternative dispute resolution (ADR). The local WIB's ADR procedures must provide that:
- (1) The choice whether to use ADR or the customary process rests with the complainant;

- (2) A party to any agreement reached under ADR may file a complaint with the Director 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 Director within 30 days of the date on which the non-breaching party learns of the alleged breach;
  - The Director must evaluate the circumstances to determine whether the agreement has been breached. If s/he determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing each a complaint.
- (3) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in Sections 37.71-37.74.

**The Governor or the LWIA are responsible developing and publishing complaint processing procedures for service providers?**

The Governor or the LWIA grant recipient, as provided in the State's Methods of Administration, must develop and publish, on behalf of its service providers, the complaint processing procedures required in Section 37.76. The service providers must then follow those procedures.

**Does a local WIB have any special obligations in cases in which the local WIB determines that it has no jurisdiction over a complaint?**

Yes. If a local WIB determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:

- (a) a statement of the reasons for that determination, and
- (b) notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

**If, before the 90-day period has expired, a local WIB issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?**

If, during the 90-day period, the local WIB issues its Notice of Final Action, but the complainant is dissatisfied with the local WIB's decision on the

complaint, the complainant or his/her representative may file a complaint with the Director within 30 days after the date on which the complainant receives the Notice.

**What happens if a local WIB fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?**

If, by the end of 90 days from the date on which the complainant filed the complaint, the local WIB has failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Director within 120 days of the date on which the complaint was filed with the local WIB.

**Are there any circumstances under which the Director may extend the time limit for filing a complaint with him/her?**

Yes. The Director may extend the 30-day time limit:

- (a) if the local WIB does not include in its Notice of Final Action the required notice about the complainant's right to file with the Director, as described in Section 37.76(b)(5)(ii); or
- (b) for other good cause shown.

The complainant has the burden of proving to the Director that the time limit should be extended.

**Does the Director accept every complaint for resolution?**

No. The Director must determine whether CRC will accept a particular complaint for resolution. For example, a complaint need not be accepted if:

- (a) it has not been timely filed;
- (b) CRC has no jurisdiction over the complaint; or
- (c) CRC has previously decided the matter.

**What happens if a complaint does not contain enough information?**

- (a) If a complaint does not contain enough information, the Director must try to get the needed information from the complainant.
- (b) The Director may close the complainant's file, without prejudice, if:

- (1) the Director makes reasonable efforts to try to find the complainant, but is unable to reach him/her; or
- (2) the complainant does not provide the needed information to CRC within the time specified in the request for more information.
- (c) If the Director closes the complainant's file, s/he must send written notice to the complainant's last known address.

**What happen if CRC does not have jurisdiction over a complaint:**

If CRC does not have jurisdiction over a complaint, the Director must:

- (a) notify the complainant and explain why the complaint falls outside the coverage of the nondiscrimination and equal opportunity provisions of WIA or this part; and
- (b) where possible, transfer the complaint to an appropriate Federal, State or local authority.

**Are there any other circumstances in which the Director will send a complaint to another authority?**

Yes. The Director refers complaints to other agencies in the following circumstances:

- (a) Where the complaint alleges discrimination based on age, and the complaint falls within the jurisdiction of the Age Discrimination Act of 1975, as amended, then the Director must refer the complaint, in accordance with the provisions of 45 CFR 90.43(c)(3).
- (b) Where the only allegation in the complaint is a charge of individual employment discrimination that is covered both by WIA or this part and by one or more of the laws listed below, then the complaint is a "joint complaint," and the Director may refer it to the EEOC for investigation and conciliation under the procedures described in part 1640. The relevant laws are:
  - (1) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e-17);
  - (2) the Equal Pay Act of 1963, as amended (29 U.S.C. 206(d));
  - (3) the Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, et seq.); and

(4) Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.).

(c) Where the Director makes a referral under this section, s/he must notify the complainant and the respondent about the referral.

**What must the Director do if s/he determines that a complaint will not be accepted?**

If a complaint will not be accepted, the Director must notify the complainant, in writing, about that fact, and provide the complainant his/her reasons for making that determination.

**What must the Director do if s/he determines that a complaint will be accepted?**

If the Director accepts the complaint for resolution, s/he must notify the complainant, the respondent, and the grantmaking agency. The notice must:

- (a) State that the complaint will be accepted,,
- (b) Identify the issues over which CRC has accepted jurisdiction; and
- (c) Explain the reasons why any issues were rejected.

**Who may contact CRC about a complaint?**

Both the complainant and the respondent, or their authorized representatives may contact CRC for information about the complaint. The Director will determine what information, if any, about the complaint will be released.

**May the Director offer the parties to a complaint the option of mediation?**

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

- (a) Mediation is voluntary; the parties must consent before the mediation process will proceed.
- (b) The mediation will be conducted under guidance issued by the Director.
- (c) If the parties are unable to reach resolution of the complaint through mediation, CRC will investigate and process the complaint under Sections 37.82-37.88 of this part.

### Determinations

**If a complaint is investigated, what must the Director do when the investigation is completed?**

At the conclusion of the investigation of the complaint, the Director must take the following actions:

- (a) Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or this part; and
- (b) Notify the complainant, the respondent, and the grantmaking agency, in writing, of that determination.

**What notice must the Director issue if s/he finds reasonable cause to believe that a violation has taken place?**

If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or this part, s/he must issue an Initial Determination. The Initial Determination must include:

- (a) The specific findings of the investigation;
- (b) The corrective or remedial action that the Department proposes to the respondent, under Section 37.94;
- (c) The time by which the respondent must complete the corrective or remedial action;
- (d) Whether it will be necessary for the respondent to enter into a written agreement under Sections 37.95-37.96; and
- (e) The opportunity to engage in voluntary compliance negotiations.

**What notice must the Director issue if s/he finds no reasonable cause to believe that a violation has taken place?**

If the Director determines that there is no reasonable cause to believe that a violation has taken place, s/he must issue a Final Determination under Section 37.100. The Final Determination represents the Department's final agency action on the complaint.

**What happens if the Director finds that a violation has taken place and the local WIB fails or refuses to take the corrective action listed in the Initial Determination?**

Under such circumstances, the Department must take the actions described in Section 37.99 of this part.

**What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIA or this part?**

- (a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued under Sections 37.62 or 37.63, 37.66-37.67, or 37.91 respectively, must include the specific steps the grant applicant or local WIB, as applicable, must take within a stated period of time in order to achieve voluntary compliance.
- (b) Such steps must include:
  - (1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIA or this part;
  - (2) Make whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a compliance review) or other monetary relief, hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and
  - (3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to outreach, recruitment and training designed to ensure equal opportunity.
- (c) Monetary relief may not be paid from Federal funds.

**What procedures apply if the Director finds that a recipient has violated the nondiscrimination and equal opportunity provisions of WIA or this part?**

- (a) Violations at State level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred at the State level, s/he must notify the Governor through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under Sections 37.62 or 37.63, 37.66-37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity

provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement, under paragraph (d) of this section.

- (b) Violations below State level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred below the State level, the Director must so notify the Governor and the violating local WIB(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under Sections 37.62 or 37.63, 37.66-37.67, or 37.91, respectively.
- (1) Such issuance must:
- Direct the Governor to initiate negotiations immediately with the violating local WIB(s) to secure compliance by voluntary means;
  - Direct the Governor to complete such negotiations within 30 days of the Governor's receipt of the Notice to Show Cause or within 45 days of the Governor's receipt of the Letter of Findings or Initial Determination, as applicable. The Director reserves the right to enter into negotiations with the local WIB at any time during the period. For good cause shown, the Director may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance must not exceed 60 days.
  - Include a determination as to whether compliance must be achieved by:
    - (A) immediate correction of the violation(s) and written assurance that such violations have been corrected, under Section 37.96;
    - (B) entering into a written Conciliation Agreement under Section 37.97;  
or
    - (C) both.
- (2) If the Governor determines, at any time during the period described in paragraph (b)(1)(ii), that a local WIB's compliance cannot be achieved by voluntary means, the Governor must so notify the Director.
- (3) If the Governor is able to secure voluntary compliance under paragraph (b)(1) of this section, s/he must submit to the Director for approval, as applicable:

- written assurance that the required action has been taken, as described in Section 37.96;
  - a copy of the Conciliation Agreement, as described in Section 37.97; or
  - both.
- (4) The Director may disapprove any written assurance or Conciliation Agreement submitted for approval under paragraph (b)(3) of this section that fails to satisfy each of the applicable requirements provided in Sections 37.96 or 37.97.
- (c) Violation in National Programs. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred in a National Program, s/he must notify the National Program grantmaking agency and the local WIB by issuing a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under Sections 37.62 or 37.63, 37.66-37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement under Sections 37.96 or 37.97, as applicable.

**What are the required elements of a written assurance?**

A written assurance must provide documentation that the violation listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

**What are the required elements of a Conciliation Agreement?**

A Conciliation Agreement must:

- (a) Be in writing;
- (b) Address each cited violation;
- (c) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
- (d) Provide for periodic reporting on the status of the corrective and remedial action;
- (e) Provide that the violation(s) will not recur; and
- (f) Provide for enforcement for a breach of the agreement.

**When will the Director conclude that compliance cannot be secured by informal means?**

The Director will conclude that compliance cannot be secured by informal means under the following circumstances:

- (a) The grant applicant or recipient fails or refuses to correct the violation(s) within the time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or
- (b) The Director has not approved an extension of time for agreement on voluntary compliance, under Section 37.95(b)(1)(ii), and s/he either:
  - (1) Has not been notified, under Section 37.959b)(3), that the grant applicant or recipient has agreed to voluntary compliance;
  - (2) Has disapproved a written assurance or Conciliation Agreement, under Section 37.95(b)(4); or
  - (3) Has received notice from the Governor, under Section 37.95(b)(2), that the grant applicant or recipient will not comply voluntarily.

**If the Director concludes that compliance cannot be secured by informal means, what actions must s/he take?**

If the Director concludes that compliance cannot be secured by informal means, s/he must either:

- (a) Issue a Final Determination;
- (b) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or
- (c) Take such other action as may be provided by law.

**What information must a Final Determination contain?**

A Final Determination must contain the following information:

- (a) A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- (b) A statement of those matters upon which the grant applicant or recipient and CRC continue to disagree;

- (c) A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;
- (d) A statement of the grant applicant's or recipient's liability, and, if appropriate, the extent of that liability;
- (e) A description of the corrective or remedial actions that the grant applicant or recipient must take to come into compliance;
- (f) A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
  - (1) after the grant application or recipient is given the opportunity for a hearing, its WIA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
  - (2) the Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the grant applicant or recipient; or
  - (3) the Secretary may take any other action against the grant applicant or recipient that is provided by law;
- (g) A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in Sections 37.112-37.115; and
- (h) A determination of the Governor's liability, if any, under Section 37.52.

**Whom must the Director notify of a finding of noncompliance?**

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director must notify:

- (a) the grant applicant or recipient;
- (b) the Departmental grantmaking agency; and
- (c) the Assistant Attorney General.

**Breaches of Conciliation Agreements**

**What information must a notification of Breach of Conciliation Agreement contain?**

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 at 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.

**Whom must the Director notify if enforcement action under a Notification of Breach of Conciliation Agreement is commenced?**

In such circumstances, the Director must notify:

- (a) the Departmental grantmaking agency; and
- (b) the Governor, recipient or grant applicant, as applicable.

#### Federal Procedures for Effecting Compliance

**What enforcement procedures does the Department follow to effect compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?**

- (a) Sanctions; judicial enforcement. If compliance has not been achieved after issuance of a Final Determination under Section 37.99 – 37.100, or a Notification of Breach of Conciliation Agreement under Sections 37.102-37.105, the Secretary may:
  - (1) After opportunity for a hearing, suspend, terminate, deny or discontinue the WIA Title I financial assistance, in whole or in part;

- (2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or
  - (3) Take such action as may be provided by law.
- (b) Deferral of new grants. When proceedings under Section 37.111 have been initiated against a particular recipient, the Department may defer action on that recipient's applications for new WIA Title I financial assistance until a Final Decision under Section 37.112 has been rendered. Deferral is not appropriate when WIA Title I financial assistance is due and payable under a previously approved application.
- (1) New WIA Title I financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.
  - (2) New WIA Title I financial assistance does not include assistance approved before the beginning of proceedings under Section 37.111, or increases in funding as a result of changed computations of formula awards.

**What hearing procedures does the Department follow?**

- (a) Notice of opportunity for hearing. As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director must include, and serve on the grant application or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.
- (b) Complaint request for hearing; answer. (1) In the case of noncompliance that cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement is considered the Department's formal complaint. (2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges, 800 K Street N.W., Suite 400, Washington, DC 20001.
  - The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

- A request for hearing must be set forth in a separate paragraph of the answer.
  - The answer must specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement will have the effect of a denial. Findings of fact not denied are considered admitted. The answer must separately state and identify matters alleged as affirmative defenses, and must also set forth the matters of fact and law relied on by the grant applicant or recipient.
- (3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights Division, Room N-2464, U. S. Department of Labor, 200 Constitution Avenue NW, Washington DC 20210.
- (4) The failure of a grant applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, waives the right to a hearing; and
- Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement are considered admitted, and the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing. See Section 37.112(b)(3).
- (c) Time and place of hearing. Hearings will be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard must be given to the convenience of the parties, their counsel, and witnesses, if any.
- (d) Judicial process: evidence. (1) The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents authorized by Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).
- (5) Evidence. In any hearing or administrative review conducted under this part, evidentiary matters will be governed by the standards and principles set forth in the Uniform Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, part 18.

**What procedures for initial and final decisions does the Department follow?**

- (a) Initial Decision. After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties by certified mail, return receipt requested.
- (b) Exceptions: Final Decision. (1) Final decision after a hearing. The initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Secretary serves notice that s/he will review the decision.
- A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Secretary and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof.
  - Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Secretary within three days of such receipt.
  - A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.
  - Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.
  - Requests for extensions for the filing of exceptions or replies must be received by the Secretary no later than 3 days before the exceptions or replies are due.
  - If no exceptions are filed, the Secretary may, within 30 days of the expiration of the time for filing exceptions, on his or her own motion serve notice on the parties that the Secretary will review the decision.
  - Final Decision and Order.
- (A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

- (B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary has served notice on the parties that s/he will review the decision, as provided in paragraph (b)(1)(vi) of this section.
- Any case reviewed by the Secretary under this paragraph must be decided within 180 days of the notification of such review. If the Secretary fails to issue a Final Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.
- (2) Final Decision where a hearing is waived.
- If, after the issuance of a Final Determination under Section 37.100 or Notification of Breach of Conciliation Agreement under Section 37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in Section 37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.
  - When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuance of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.
- (3) Final agency action. A Final Decision and Order issued under Section 37.112(b) constitutes final agency action.

**What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?**

Any action to suspend, terminate, deny or discontinue WIA Title I financial assistance must be limited to the particular political entity, or part thereof, or other recipient (or grant applicant) as to which the finding has been made, and must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIA Title I financial assistance will become effective until:

- (a) The Director has issued a Final Determination under Section 37.100 or Notification of Breach of Conciliation Agreement under Section 37.104;
- (b) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or under the nondiscrimination and equal opportunity provisions of WIA or this part;
- (c) A Final Decision has been issued by the Secretary, the Administrative Law Judge's decision and order has become the Final Decision of the Secretary, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Decision of the Secretary, under Section 37.112(b); and
- (d) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

**What procedures does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?**

When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

- (a) the ability to comply with these regulations; and
- (b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIA.

**What procedures does the Department follow for post-termination proceedings?**

- (a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under Section 37.112(b) will be restored, where appropriate, to full eligibility to receive WIA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.
- (b) A grant applicant or recipient adversely affected by a Final Decision and order issued under Section 37.112(b) may at any time petition the

Director to restore its eligibility to receive WIA Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, sanctions imposed by the Final Decision and Order under Section 37.112(b)(1) and (2) must remain in effect.

- (c) The Director must issue a written decision on the petition for restoration.
  - (1) If the Director determines that the grant applicant or recipient has not brought itself into compliance, s/he must issue a decision denying the petition.
  - (2) Within 30 days of its receipt of the Director's decision, the recipient or grant applicant may file a petition for review of the decision by the Secretary, setting forth the grounds for its objection to the Director's decision.
  - (3) The petition must be served on the Director and on the Office of the Solicitor, Civil Rights Division.
  - (4) The Director may file a response to the petition within 14 days.
  - (5) The Secretary must issue the final agency decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.