



Oklahoma Office of Workforce Development
900 N. Portland Ave.
Oklahoma City, OK 73107

OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #13-2017, CHANGE 1

TO: Workforce Development Board Chairs
Workforce Development Board Staff
Workforce Development Fiscal Agents

FROM: Erin E. Risley-Baird, Executive Director

DATE: October XX, 2017

SUBJECT: Nondiscrimination and Equal Opportunity Policy

PURPOSE: To issue additional communication requirements to the State EO Officer, add requirement that local areas send LWDA EO Officer job descriptions and organizational chart to State EO Officer, deleted the conciliation process and replaced with Alternative Dispute Resolution, add a state level complaint and discrimination process, and add the State EO Officer will conduct, at a minimum, annual monitoring of local areas nondiscrimination and equal opportunity policies and programs.

The Oklahoma Office of Workforce Development (OOWD) as the Governor’s chosen Workforce Innovation and Opportunity Act (WIOA) administrative entity provides this issuance as guidance to communicate Oklahoma’s process and procedures regarding nondiscrimination and equal opportunity procedures. This policy applies to all Local Workforce Development Areas (LWDAs), and is effective immediately.

REFERENCES:

- Civil Rights Act of 1964 Titles VI and VII (42 USC §2000d et seq.)
- Education Amendments of 1972 Title IX (20 USC § 1681 et seq.)
- Rehabilitation Act of 1973 (Rehab Act) Title V, Section 504 (29 USC § 794 et seq.)
- Age Discrimination Act of 1975 (42 USC § 6101 et seq.)
- Americans with Disability Act of 1990 (ADA), as amended by American Disabilities Act Amendments Act (ADAAA) (42 USC §12101 et seq., Public Law 110-325, 122 Stat. 3553 (2008))
- Workforce Innovation and Opportunity Act (WIOA) Sections 121(b), 183(c), and 188 (29 USC § 3151, 3243, and 3248)

RESCISSIONS OWDI #13-2017	EXPIRATION DATE Continuing
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- Title 29 CFR Part 38

DEFINITIONS:

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

Complainant: Any participant or other personally interested or personally affected party, group, or agency alleging a non-criminal violation of the requirements of WIOA Title I or a related agreement or service.

Days: Calendar days, unless otherwise specified.

Recipient: Any entity to which financial assistance under the WIOA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of WIOA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of 29 CFR Part 38, to the extent that they participate in the One-Stop delivery system (29 CFR § 38.4(z)).

MESSAGE:

Provisions of the Nondiscrimination Plan

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

Assurances

Contracts, cooperative agreements, job training plans, and policies and procedures must contain the nondiscrimination assurance specified in 29 CFR § 38.25 and 38.26. The nondiscrimination assurance must state the grant applicant will “comply fully with the nondiscrimination and equal opportunity provisions of the WIOA” (29 CFR Part 38 Preamble) and acknowledge the government’s right to seek judicial enforcement of the nondiscrimination assurance. Also in accordance with 29 CFR § 38.25, each application for federal financial assistance under WIOA Title I must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or the DOL prior to, and as a condition of, receiving federal financial assistance under WIOA Title I (including both new and continuing assistance).

Nondiscrimination Statement

The Oklahoma Office of Workforce Development (OOWD), Recipients, and Subrecipients/Subgrantees must maintain a policy to provide equal opportunity in all services and activities. Discrimination is strictly prohibited on the grounds of race, ethnicity,

orientation, religion, sex, gender, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I-financially assisted program or activity.

Designation of Local EO Officers

Each LWDA must designate an EO Officer who is responsible for coordinating its obligation under these regulations. The state requires that LWDA's notify the State Equal Opportunity (EO) Officer and the Oklahoma Office of Workforce Development (OOWD) whenever the designation of the Local Area EO Officer changes.

Local EO Officers

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

- Serving as the liaison with the State EO Officer and OOWD.
- Investigating and monitoring the Local Area's and its subrecipients' WIOA Title I funded activities and programs.
- Reviewing the Local Area's organizations' and its subrecipients' written policies.
- Developing, publishing, and enforcing the Local Area's discrimination complaint procedures.
- Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with 29 CFR § 38.40, and how an individual may file a complaint consistent with 29 CFR § 38.69.
- Participating in continuing training and education, and ensuring that assigned staff receives the necessary training and support to maintain competency.
- Informing participants, employees, and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint process works.

Local Areas will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of the WIOA and 29 CFR Part 38. Local Areas must submit a copy of their EO Officer's position description and organizational chart showing the relationship of EO Officer to their Local Area Executive Director. Please mail required documents to the following address: eoofficer@osuokc.edu

The Local Area EO Officer's contact information such as name, position title, business address, including email address, and telephone number (voice and Telecommunications Device for the Deaf, which is also known as teletypewriter [TTY]), must be publicized at the local level through a variety of means, including posters, handouts, and listings in local directories.

The Local Area EO Officer's identity and contact information must appear on all internal and external communications related to equal opportunity issues.

Attending periodic training is recommended for the LWDA EO Officer and assigned staff to keep abreast of equal opportunity issues. Resources for nondiscrimination and equal opportunity

are available on the [U.S. Department of Labor](#) and [Civil Rights Center](#) websites and through the state EO Officer.

Notice and Communication of EO Policy and Procedures

A recipient must provide initial and continuing notice that it does not discriminate on any prohibited basis, including display and distributions of the notice/poster relating to “Equal Opportunity is the Law.”

This notice/poster must meet the following criteria:

- Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient’s website pages.
- Disseminated in internal memoranda and other written or electronic communications with staff.
- Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available.
- Provided to each participant and employee; the notice must be made part of each employee’s and participant’s file. It must be a part of both paper and electronic files, if both are maintained (29 CFR § 38.36(a)).

The notice must be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, and applicants for employment and employees and participants with visual impairments. Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment and employees with a visual impairment, a record such notice has been given must be made part of the employee’s or participant’s file. The notice must be provided in appropriate languages other than English (29 CFR § 38.36(b)).

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

Where such materials indicate that the recipient may be reached by voice telephone, the materials must also provide the TTY number or equally effective communications system, such as a videophone, captioned telephone, or a relay service.

Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted programs or activity in question is an equal opportunity employer/program (or otherwise indicate that

discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law) and indicate that auxiliary aids and services are available upon requests to individuals with disabilities.

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

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

Data and Information Collection and Maintenance

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

Per 29 CFR § 38.42, each recipient must promptly notify the CRC Director, State EO Officer, and Executive Director of OOWD when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity. This notification must include the information required by 29 CFR § 38.42(a).

LWDA Complaint Log

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

Each recipient must maintain a log of complaints filed with the recipient that allege discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and

related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity. The log must include the following:

- Name and address of complainant;
- Basis of the complaint;
- Description of the complaint;
- Date complaint was filed;
- Disposition and date of disposition of the complaint; and
- Other relevant information.

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

Complaint Logs and any other relevant information must be maintained for at least 3 years, per 29 CFR § 38.43. The LWDA EO Officers submit complaint reports on a quarterly basis to the State EO Officer.

Communication of Equal Opportunity Issues to State EO Officer

Anytime an equal opportunity issue arises within a LWDA, the State Equal Opportunity Officer must be notified within 3 business days. Notifications may be sent via email to: eoofficer@osuokc.edu. Equal opportunity and nondiscrimination issues, include official complaints and issues the LWDA EO Officer determines might quickly escalate into a formal complaint.

At any time, the State EO Officer may determine, based on the facts, that a particular nondiscrimination and equal opportunity issue should be investigated and processed at the state level, rather than the local level.

Affirmative Outreach

The guidelines found in 29 CFR § 38.40 require recipients to take appropriate steps to ensure they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by 29 CFR Part 38 including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, limited English proficiency (LEP) individuals, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to, the following:

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

Discrimination Prohibited Based on Disability

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

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

Accessibility Requirements

No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR Part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the Americans with Disabilities Act (ADA) that is not enforced by the CRC. As indicated in Section 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

All WIOA Title I-financially assisted programs and activities must be programmatically accessible. This includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including

assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

Reasonable Accommodation and Reasonable Modifications for Individuals with Disabilities

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

With regard to any aid, benefit, service, training, and employment, a recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity, which would constitute a fundamental alteration. For more information, see the definition of “fundamental alteration” found in 29 CFR § 38.4(z).

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

If a requested accommodation would result in undue hardship or a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such hardship or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient. In addition, a recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others.

Complaint Processing Procedures

The LWDA EO Officer must do the following:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the LWDA for noncompliance with applicable nondiscrimination and equal opportunity provisions.
- Develop and publish procedures for resolving allegations against service providers and subrecipients/subgrantees for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures.
- Establish a logging system to record discrimination complaints.

The LWDA complaint processing procedures must specify the following:

- Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIOA may file a written complaint by using the Equal Opportunity and Nondiscrimination Complaint Form, which was developed to assist clients, participants, and service providers. This form is available for use by the LWDA in an effort to provide more consistent information when processing discrimination complaints. The LWDA is encouraged to personalize the form with the name of the LWDA and use the form for any and all discrimination complaints that may be received.
- The complaint may be filed either with the LWDA's EO Officer (or the person designated for this purpose), the State EO Officer, or directly with the CRC at:
 - DOL, 200 Constitution Avenue N.W., Room N 4123, Washington, D.C. 20210.
- A complaint filed, pursuant to 29 CFR Section 38.69, must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.
- Complaints must be filed in writing by completing the Equal Opportunity and Nondiscrimination Complaint Form. If the Equal Opportunity and Nondiscrimination Complaint Form is not used, the complaint must include the following information:
 - The complainant's name, address, or other means of contacting him or her.
 - Identity of the respondent.
 - A description of the complainant's allegation(s) in sufficient detail to allow the CRC, State EO Officer, or LWDA EO Officer, as applicable, to determine whether (1) the CRC, State EO Officer, or the LWDA has jurisdiction over the complaint, (2) the complaint was filed timely, and (3) the complaint has apparent merit (i.e., whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA).
 - The signature of the complainant or his or her authorized representative.
- Both complainant and respondent have the right to be represented by an attorney or other individual of his or her choice. Also, a representative may file a complaint on

behalf of a person who believes they have been subjected to discrimination, per 29 CFR § 38.72

- The complainant must be offered an Alternate Dispute Resolution (ADR) immediately upon receipt of the complaint. The Complainant may request ADR at any time after the complainant has filed a written complaint with the recipient, but before the Notice of Final Action has been issued, per 29 CFR § 38.72(c). The choice whether to use ADR rests with the complainant.

Alternative Dispute Resolution (ADR)

The preferred form of ADR is mediation. Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicates their concerns, and comes to an agreement about how to resolve a dispute. The mediator does not make decisions, rule as to who is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

At any point in the investigation of the complaint, the complainant, respondent, LWDA EO Officer, or State EO Officer may request that the parties attempt to use ADR. The State EO Officer shall facilitate these efforts. The choice to use ADR rests with the complainant.

The State or LWDA shall be allowed 90 days to issue a Notice of Final Action from the date on which the complaint was filed. If, during the 90-day period, the State or Local Area issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.

If the 90 days expire and the complainant does not receive a Notice of Final Action or the State or LWDA fails to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the CRC within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the CRC within 120 days of the date on which the complaint was filed with the LWDA.

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

The State or LWDA shall notify the complainant in writing immediately upon determining it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of the WIOA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.

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

- A notice to all parties of the specific charges;
- A notice to all parties of the responses to the allegations;
- The right of both parties to representation;
- The right of each party to present evidence, and to question others who present evidence; and
- A decision made strictly on the evidence on the record.

A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

- The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
- The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in 29 CFR Sections 38.69 through 38.72.

State Level Discrimination and Complaint Process

Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIOA may file a written complaint by using the Equal Opportunity and Nondiscrimination Complaint Form, which was developed to assist clients, participants, and service providers.

- The complaint may be filed either with the State EO Officer, or directly with the CRC at:
 - DOL, 200 Constitution Avenue N.W., Room N 4123, Washington, D.C. 20210.
- A complaint filed, pursuant to 29 CFR Section 38.69, must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.
- Complaints must be filed in writing by completing the Equal Opportunity and Nondiscrimination Complaint Form. If the Equal Opportunity and Nondiscrimination Complaint Form is not used, the complaint must include the following information:
 - The complainant's name, address, or other means of contacting him or her.
 - Identity of the respondent(s).

- A description of the complainant’s allegation(s) in sufficient detail to allow the CRC or State EO Officer, as applicable, to determine whether (1) the CRC, State, or the LWDA has jurisdiction over the complaint, (2) the complaint was filed timely, and (3) the complaint has apparent merit (i.e., whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA).
 - The signature of the complainant or his or her authorized representative.
- Both complainant and respondent have the right to be represented by an attorney or other individual of his or her choice. Also, a representative may file a complaint on behalf of a person who believes they have been subjected to discrimination, per 29 CFR § 38.72
- The complainant must be offered mediation within 7 days of receiving the Nondiscrimination Complaint Form or written complaint. The choice whether to use ADR rests with the complainant. The Complainant may request ADR at any time after the complainant has filed a written complaint with the recipient, but before the Notice of Final Action has been issued, per 29 CFR § 38.72(c).
- When a Nondiscrimination Complaint Form or written discrimination complaint is received by the State EO Officer, the State EO Officer issues an Initial Written Notice, consistent with 29 CFR § 38.72(b) or a notice explaining lack of jurisdiction within 5 business days, consistent with 29 CFR § 38.74.
- When the State EO Officer determines there is jurisdiction, an Initial Written Notice, including an offer for mediation, is sent to the complainant within 5 business days. (29 CFR § 38.72). The complainant has 7 days to agree to mediation.
- When the complainant elects to participate in mediation, the State EO Officer will coordinate the mediation process within 45 days of the Initial Written Notice and complete a signed settlement agreement. Once there is a signed settlement agreement, the State EO Officer will issue the Notice of Final Action within 90 days.
- When the complainant does not agree to mediation or it is unsuccessful, the State EO Officer will complete fact-finding within 45 days of receipt of the Initial Written Notice or 30 days from unsuccessful ADR.
- A Notice of Final Action will be sent within 90 days from the date the written discrimination complaint was received by the State EO Officer. If the State issues its Notice of Final Action before the 90-day period ends, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or the complainant's representative may file a complaint with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 within 30 days after the date on which the complainant receives the Notice. (29 CFR § 38.75).
- The Notice of Final Action will include the following:
 - Jurisdiction;
 - The issues accepted for review;

- Findings of fact;
- Analysis;
- Conclusion; and
- Remedies and corrective actions

Actions by the CRC

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

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

The LWDA, the complainant, or a representative may contact the CRC for information regarding the complaint filed. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address (29 CFR Section 38.79).

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

- Because mediation is voluntary, both parties must consent before the mediation process proceeds.
- The mediation will be conducted under the guidance issued by the CRC.
- If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under 29 CFR Sections 38.82 through 38.88.

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

- The specific findings of the investigation;
- The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- Whether it will be necessary for the LWDA to enter into a written agreement; and
- The opportunity to participate in voluntary compliance negotiations.

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

Complaint Determinations

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

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

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

Intimidation and Retaliation Are Prohibited

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

- A violation of the WIOA.
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA.
- Furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

Governor’s Oversight and Monitoring Responsibilities for State Programs

OOWD is responsible for the oversight and monitoring of all WIOA Title I-financially assisted state programs. As a result, the State EO Officer will conduct, at a minimum, annual monitoring reviews, which may include onsite visits. The monitoring reviews will ensure that Local Areas are in compliance with the nondiscrimination and equal opportunity provisions of the WIOA. OOWD and the State EO Officer will determine whether each recipient is conducting its WIOA Title-I financially assisted program or activity in a nondiscriminatory way.

ACTION REQUIRED: This Oklahoma Workforce Development Issuance (OWDI) is to become a part of your permanent records and made available to appropriate staff and subrecipients.

INQUIRIES: If you have any questions about this issuance, please contact the State EO officer in the Oklahoma Office of Workforce Development. Contact information can be found at <http://www.oklahomaworks.gov/about/>.

ATTACHMENTS:

- Equal Opportunity Nondiscrimination Complaint Form
- Discrimination Complaint Log