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OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #01-2018, CHANGE 1

TO: Chief Local Elected Officials
Workforce Development Board Chairs
Workforce Development Board Staff
WIOA Equal Opportunity Officers
Oklahoma Works Core System Partners

FROM: Sarah Ashmore, Interim Executive Director

DATE: July 10, 2019

SUBJECT: WIOA Section 188 Discrimination Complaint Procedures Governing WIOA Activities and Oklahoma Works (One-Stop) Center Activities

PURPOSE: 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 on the WIOA Section 188 Discrimination Complaint Procedures. It should be noted that initiation of a discrimination action does not mean there has been a violation, but notifying the Civil Rights Center (CRC) as soon as possible offers the best avenue for recipients to receive technical assistance (TA) to ensure compliance.

REFERENCES: These policies and procedures govern discrimination complaint investigations arising under Section 188 of the Workforce Innovation and Opportunity Act (WIOA) at 29 U.S.C. § 3248, as implemented by 29 C.F.R. §§ 38.69-38.79. The policies and procedures are issued in compliance with:

- WIOA Section 188, which prohibits discrimination against all individuals in the United States 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 against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;

RESCISSIONS	EXPIRATION DATE
OWDI #01-2018	Continuing

The Oklahoma Office of Workforce Development is an equal opportunity employer/program.
Auxiliary aids and services are available upon request to individuals with disabilities.

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, as amended, which prohibits discrimination on the bases of race, color and national origin;

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as amended, which prohibits discrimination against qualified individuals with disabilities;

- The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, as amended, which prohibits discrimination on the basis of age; and

- Title IX of the Education Amendments of 1972, 29 U.S.C. § 1681 *et seq.*, as amended, which prohibits discrimination on the basis of sex in educational programs.

MESSAGE: The Nondiscrimination Complaint Form or its equivalent, along with the "Complainant Consent/Identity Release Form" (hereinafter referred to as "Consent Form"), and the "Notice of Investigatory Uses of Personal Information" (together referred to as the "Discrimination Complaint Package") must be in writing, signed, and filed with the Equal Opportunity (EO) Officer within 180 days of the date of the alleged adverse action (*see* Attachment A).

All discrimination complaints involving denial of access to, or participation in programs and activities delivered by or through a "recipient" as defined at 29 C.F.R. § 38.4(zz) must be filed with the EO Officer for LWDB, Oklahoma Employment Security Commission Unemployment Insurance (UI) EO Officer, State EO Officer at the Oklahoma Office of Workforce Development, or the U.S. Department of Labor Civil Rights Center. Authority of each Office is as follows:

U.S. Department of Labor's Civil Rights Center	90 calendar days has passed from the date of receipt of a WIOA Section 188 discrimination complaint.
Oklahoma Office of Workforce Development State EO Officer	Either upon (1) recusal or unavailability of the first-line EO Officer; or (2) at any time the State EO Officer determines it is appropriate to assume jurisdiction of a discrimination complaint investigation.

Oklahoma Employment Security Commission Unemployment Insurance EO Officer	All complaints alleging discrimination in UI policies, practices, procedures, or determinations, including failure to provide language interpretation or translation services for limited English proficient persons, or auxiliary aids and services for individuals with disabilities. For complaints alleging an adverse UI determination in violation of WIOA Section 188, all UI appeals must be exhausted prior to assuming jurisdiction of the complaint.
EO Officer for the Local Workforce Development Board	All non-UI complaints alleging discrimination under WIOA Section 188 and arising in the LWDB service area, e.g. complaints arising from services provided in an Oklahoma Works Center.

The Discrimination Complaint Package may be made available in Braille or large print (*i.e.,* 18-point font) on request of a person who is blind or has low vision by the LWDB. Moreover, all complaint notices, procedures, and forms must contain a "Babel" notice pursuant to 29 C.F.R. § 38.9(g)(3), which provides:

Recipients must include a "Babel notice," indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on websites.

I. The Discrimination Complaint

Any person, or the person's representative, who believes that an individual or class of individuals has been or is being discriminated against on a basis prohibited by Title I of WIOA may file a complaint. Prohibited bases of discrimination are race, color, national origin (including limited English proficiency), gender (including pregnancy discrimination, childbirth, and related medical conditions, transgender status, and gender identity), age, religion, disability, political affiliation or belief, and for beneficiaries only, citizenship, and WIOA participant status. *See 29 U.S.C. § 3248 and* 29 C.F.R. § 38.5.

The EO Officer shall provide assistance, as needed, to any person filing a discrimination complaint under these procedures, including but not limited to individuals who are limited English proficient, and individuals with disabilities.

An overview of the process set forth in these procedures is as follows:

Action	Completion date from date of receipt of complaint
Jurisdiction determination	As soon as possible, but no later than 14 calendar days
Rejection of a complaint (no jurisdiction)	As soon as possible, but no later than 14 calendar days
Notice of acceptance (*see* special procedures for complaints alleging age-based discrimination)	As soon as possible, but no later than 30 calendar days
Appointment of mediator	As soon as possible, but no later than 45 calendar days; conciliation agreement due to EO Officer no later than 65 calendar days
Notice of final action (if no mediation occurs, or is unsuccessful), or EO Officer's issuance of executed conciliation agreement	As soon as possible, but no later than 90 calendar days

For any communication identifying an equal opportunity issue with a LWDB, or for any matter that may quickly escalate to a formal complaint (*e.g.,* a formal or informal complaint filed by an advocacy group or community-based organization), the State EO Officer must be notified at eoofficer@okcommerce.gov within three (3) business days of receipt, even if it is determined that there is no jurisdiction to investigate the matter under this policy and WIOA Section 188. These communications must also be logged in on the Communications Log (*see* Attachment D). The Communications Log is also submitted quarterly to the State EO Officer on the same dates as the Discrimination Complaint Logs.

As the administrative entity, OOWD will coordinate monitoring activities in such a way to avoid

duplication of efforts and increase efficiencies. Annual EO monitoring will occur concurrently with programmatic monitoring. This monitoring may take place virtually, onsite or via a desk review. The EO Officer will conduct annual monitoring of actions taken by LWDBs in response to equal opportunity and nondiscrimination issues raised in this policy.

LWDB recipients shall monitor their activities and One Stop Centers to ensure compliance with EO nondiscrimination policies. State recipients, including the EO Officer at each core partner agency (OOWD, CareerTech, Department of Rehabilitation Services (DRS), Oklahoma Employment Security Commission (OESC)), shall ensure formalized assurances that the complaints received through their agencies directly related to claims in One Stop Centers shall be investigated. The State EO Officer must be notified of the results of any EO nondiscrimination investigation and of any formal complaints filed and/or investigated regarding employment with a recipient. State recipient EO Officers will monitor annually and provide reports to the OOWD State EO Officer for coordination of a state report.

A corrective action plan must be submitted to the State EO Officer at eoofficer@okcommerce.gov with remedies for all issues identified in the corrective action plan to be completed within 30 days or within a reasonable time frame agreed upon by all parties. The purpose of this is to ensure that all equal opportunity and nondiscrimination issues identified are proactively and promptly addressed to avoid intentionally or inadvertently violating civil rights.

At any time, the State EO Officer has the discretion to take over an investigation conducted by a local EO Officer and/or remand a complaint received by OOWD to a local EO Officer for processing, unless a conflict of interest exists on behalf of the State EO Officer.

In the event a complaint is filed by an employee of a service provider or small recipient regarding the recipient's employment practices, the EO Officer may coordinate the investigation of the complaint with the personnel department of the recipient if, in the EO Officer's judgment, the recipient has adequate procedures and resources in place to investigate the complaint.

A service provider or small recipient will work in conjunction with the EO Officer regarding complaints of discrimination.

II. Methods of Filing

Before a communication is reviewed to determine whether it meets the jurisdictional requirements for investigation, it must be in writing and signed. Communications that do not meet these basic requirements are not classified as "discrimination complaints" for purposes of this process, and are not included in the "Discrimination Complaint Log" as discussed below in these procedures. However, all equal opportunity and nondiscrimination related communications, including non-written communications, not recorded on the "Discrimination

Complaint Log," shall be recorded on the "Communications Log" (Attachment D). The purpose of the "Communications Log" is to keep track of any EO issue that arises, regardless of whether it constitutes a complaint.

Prior to concluding that a communication does not meet the jurisdiction requirements, every effort shall be made to provide the Complainant notice and an opportunity to cure any deficiencies (*i.e.,* contact the complainant by phone, email, or regular mail to explain what additional information the EO Officer needs to determine if there is jurisdiction.

Definitions

Business Day is defined as Monday through Friday, excluding weekends and holidays.

Complainant is defined as the individual alleging s/he suffered discrimination (*i.e.*, was subjected to an adverse act) in a WIOA-funded program or activity.

Respondent is defined as the alleged wrongdoer. More than one Respondent may be named in a complaint.

Recipient is defined at 29 C.F.R. § 38.4(zz) and is any entity that, either directly or indirectly, receives WIOA-Title I funding, or is part of the system of delivering WIOA Title I services, aid, benefits, or training.

A. Verbal Communication; In-Person and Telephone

No verbal communication (*i.e.,* in-person or telephonic) may be accepted for processing as a discrimination complaint. In addition, verbal communications are not recorded in the "Discrimination Complaint Log," as these communications are not in writing and signed.

Rather, any person seeking to lodge a discrimination complaint in-person or over the telephone must be notified that such a complaint must be in writing and signed. On request, the EO Officer shall assist an individual in completing the Discrimination Complaint Package (*see* Attachment A). Any signed Nondiscrimination Complaint Form or equivalent submitted by the Complainant or Complainant's representative in-person to the EO Officer shall be date-stamped as of the date of in-person delivery for purposes of determining timeliness.

The EO Officer also shall ensure that a signed Consent Form and "Notice of Investigatory Uses of Personal Information" is in the investigative file.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the

"Discrimination Complaint Log," as it is not signed.

B. By Electronic Mail (Email)

1. Generally

If a signed copy of the Nondiscrimination Complaint Form or its equivalent is scanned and emailed to the EO Officer as an attachment, then the date of filing is the date on which the email is received by the EO Officer. Within five (5) business days, the EO Officer shall notify the individual that the email was received and is being reviewed.

To document the filing date in the investigative file for purposes of timeliness, the EO Officer shall download and print the email along with the attachment and/or upload the email and any attachment to an electronic database. The date of receipt of the email constitutes the filing date for purposes of determining timeliness.

2. Effect of Unsigned Nondiscrimination Complaint Form

If the EO Officer receives an unsigned Nondiscrimination Complaint Form, or equivalent communication, by email, then the EO Officer shall download and print the original email along with any attachment. Within five (5) business days, notification of the deficiency shall be made in writing via email to the sender's address with instructions for the sender to print the communication, sign it, and submit it to the EO Officer within 10 calendar days by:

- Scanning the signed communication and transmitting it by email;
- Sending the signed communication by regular mail; or
- Transmitting the signed communication by fax.

If the sender cures the deficiency and submits a signed communication, then the date of receipt of the original, unsigned email shall constitute the date of filing for purposes of timeliness. The signed communication shall be added to the investigative file. This policy ensures that the rights of the individual filing the communication are protected to the maximum extent possible.

3. Consent Form

The EO Officer also shall ensure that a signed Consent Form and "Notice of Investigatory Uses of Personal Information" is in the investigative file.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the

"Discrimination Complaint Log," as it is not signed.

C. By Facsimile (Fax)

1. Generally

If a signed copy of the Nondiscrimination Complaint Form, or equivalent communication, is transmitted by fax to the EO Officer, then the date of filing is the date on which the fax is received by the EO Officer. Within five (5) business days, the EO Officer shall notify the individual that the fax was received and is being reviewed. The date of receipt of the fax constitutes the filing date for purposes of determining timeliness.

2. Effect of Unsigned Nondiscrimination Complaint Form

If the EO Officer receives an unsigned Nondiscrimination Complaint Form, or equivalent unsigned communication, by fax, then the EO Officer shall place the original, unsigned fax in the investigative file. Within five (5) business days, written notification of the deficiency shall be sent to the sender with instructions for the sender to print the communication, sign it, and submit it within 10 calendar days to the EO Officer by:

- Scanning the signed communication and transmitting it by email;
- Sending the signed communication by regular mail; or
- Transmitting the signed communication by fax.

If the sender cures the deficiency and submits a signed communication, then the date of receipt of the original, unsigned fax shall constitute the date of filing for purposes of timeliness. The signed communication shall be added to the investigative file. This policy ensures that the rights of the individual filing the communication are protected to the maximum extent possible.

3. Consent Form

The EO Officer also shall ensure that a signed Consent Form and "Notice of Investigatory Uses of Personal Information" is in the investigative file.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the "Discrimination Complaint Log," as it fails to meet the technical requirements for a discrimination complaint.

D. By Mail

1. Generally

If a signed copy of the Nondiscrimination Complaint Form is transmitted by mail (regular, express, certified, or registered), then the date of filing is the postmark date. Within five (5) business days, the EO Officer shall notify the individual that the communication was received and is being reviewed.

To document the filing date in the investigative file, the EO Officer shall retain the envelope documenting the postmark date. If the postmark date is illegible, then the date on which the EO Officer date-stamps the communication as being received shall constitute the date of filing for purposes of timeliness.

2. Effect of Unsigned Nondiscrimination Complaint Form

If the EO Officer receives an unsigned Nondiscrimination Complaint Form, or other unsigned communication by mail, then the EO Officer shall place the unsigned communication in the investigative file along with the envelope. Within five (5) business days, written notification of the deficiency shall be sent to the individual with instructions to sign the communication, and submit it within 10 calendar days to the EO Officer by:

- Scanning the signed communication and transmitting it by email;
- Sending the signed communication by regular mail; or
- Transmitting the signed communication by fax.

If the sender cures the deficiency and timely submits a signed communication, then the postmark date of receipt of the original, unsigned communication shall constitute the date of filing for purposes of timeliness. This policy ensures that the rights of the individual filing the communication are protected to the maximum extent possible.

3. Consent Form

The EO Officer also shall ensure that a signed Consent Form and "Notice of Investigatory Uses of Personal Information" is in the investigative file.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the "Discrimination Complaint Log," as it is not signed.

E. Other Signed, Written Communication

Per 29 C.F.R § 38.70, an individual is not required to utilize the Nondiscrimination Complaint Form when filing a discrimination complaint; rather, the EO Officer shall receive any signed, written communication alleging an adverse action on a prohibited basis (*e.g.,* race, color, national origin, disability, religion, gender, age) against a "recipient" as defined at 29 C.F.R. § 38.4(zz).

As with the filing of the Nondiscrimination Complaint Form, the EO Officer must determine whether all jurisdictional requirements are met prior to initiating an investigation. Depending on the method of filing the communication (*e.g.,* email, fax, mail), the EO Officer shall follow the same procedures as are applicable to the filing of the Nondiscrimination Complaint Form. And, the individual must sign the Consent Form accompanying the "Notice of Investigatory Uses of Personal Information" (*see* Attachment A).

F. Effect of EO Officer Unavailable or Disqualified—Conflict of Interest

If the EO Officer is unavailable (*e.g.,* extended leave), or is disqualified (*e.g.,* actual or apparent conflict of interest) to handle a particular discrimination complaint, the State EO Officer (or official designee) shall appoint an EO Officer or other appropriate official to investigate the discrimination complaint.

If any party requests disqualification of a local EO Officer because of a conflict of interest, the State EO Officer (or official designee) shall, in his or her sole discretion, determine whether a local EO Officer is disqualified with regard to any particular complaint or inaction. Issuance of an adverse decision by a local EO Officer will not alone demonstrate that the local EO Officer is disqualified to handle a discrimination complaint.

If it is determined that the local EO Officer is disqualified to conduct the investigation of a particular complaint, then the complaint shall be assigned to the State EO Officer or other appropriate official to conduct the discrimination complaint investigation pursuant to these procedures. If the State EO Officer (or official designee) determines the assigned EO Officer is qualified to handle a particular discrimination complaint, then the EO Officer shall not be disqualified and shall promptly continue processing the complaint pursuant to these procedures.

The State EO Officer's (or official designee's) determination regarding unavailability shall be in writing, copies shall be sent to the parties, and the determination shall be final upon issuance. A copy of the written notification shall be placed in the investigative file.

Likewise, the State EO Officer's (or official designee's) determination in response to a party's request for disqualification of the EO Officer shall be in writing, copies shall be sent to the parties, and the determination shall be final upon issuance. A copy of the written

notification shall be placed in the investigative file.

III. Types of Discrimination Complaints

A. Individual

An "individual" discrimination complaint is filed by one person, or the authorized representative of one person. An individual discrimination complaint alleges adverse treatment of the individual on a prohibited basis. For example:

- A customer alleges he could not complete program forms because he is limited English proficient, and the forms are available only in English.
- The mother of a 17-year-old alleges that her son was not allowed to enroll in an on-the-job training program because of the son's age.
- An attorney files a complaint alleging her client, a black man, was referred to a lower paying job than comparably qualified white men.

Individual discrimination complaints may be accepted for investigation provided the jurisdictional requirements are met, and such signed, written complaints are recorded in the "Discrimination Complaint Log" (*see* Attachment E).

B. Class Action

A class action discrimination complaint is filed by more than one person and/or their authorized representative(s). A class action complaint alleges a common type of adverse treatment against a group of individuals on a common prohibited basis. For example, a group of women allege they are referred to lower paying jobs than comparably qualified men.

Class action complaints may be accepted for investigation, provided the jurisdictional requirements are met, and such signed, written complaints are recorded in the "Discrimination Complaint Log" (*see* Attachment E).

C. Third Party

A third-party discrimination communication is lodged by an individual (not an authorized representative) or an organization on behalf of a category of similarly-situated persons. The aggrieved person(s) may, or may not, be identified in the communication. For example, the Islamic Association files a communication alleging that persons of the Muslim faith are not afforded the same on-the-job training opportunities as comparably qualified persons who are not of the Muslim faith.

All third party communications must be treated as complaints and individuals must be

notified of their rights to file a formal complaint until it is determined there is no jurisdiction. Third-party communications cannot be accepted for investigation unless one or more affected individuals submit a signed Discrimination Complaint Form or its equivalent, and Consent Form accompanying the Notice of Investigatory Uses of Personal Information (*see* Attachment A). Third-party communications do not constitute discrimination complaints, and such communications are not recorded in the "Discrimination Complaint Log." Third party communications must be logged in the "Communications Log."

The local EO Officer and the State EO Officer may utilize third-party communications for purposes of monitoring the program or activity at issue.

D. Anonymous Communications

An anonymous communication, whether verbal or written, shall not be considered a discrimination complaint as it is not signed and there is no name or contact information for the allegedly aggrieved individual. And, anonymous complaints are not recorded in the "Discrimination Complaint Log" (*see* Attachment E). These communications are logged in the "Communications Log" (*see* Attachment D). Before it is determined that a communication is anonymous, attempts must be made to notify the aggrieved individual and inform of the right to file a formal complaint.

IV. Determining Jurisdiction

Once a signed, written Nondiscrimination Complaint Package is received, a jurisdiction determination must be made. The EO Officer shall provide the complainant with notice and an opportunity to cure any jurisdictional deficiencies.

A. Completed within 14 Calendar Days

Within 14 calendar days of the date of receipt of a discrimination complaint, the EO Officer shall (1) determine whether jurisdiction to investigate the complaint exists, and (2) issue a written notice accepting or rejecting the discrimination complaint as discussed further below.

B. Assign Identifier

Each complaint received by the EO Officer shall be assigned a unique identifier by the EO Officer for purposes of processing and tracking the complaint. The identifier shall be the calendar year in which the discrimination complaint was received, followed-by the designation "WIOA," and followed-by the sequential number in which the complaint was received. For example, the 11th discrimination complaint received in calendar year 2018 would be designated 2018-WIOA-11.

C. Elements of Jurisdiction

The complaint must comply with the following basic federal requirements in order for jurisdiction to be present:

- The complaint must be in writing;
- The complaint must be signed by the Complainant (*i.e.,* the aggrieved person), or the Complainant's authorized representative;
- The complaint must identify a Respondent who is a "recipient" under 29 C.F.R. § 38.4(zz);
- The complaint must contain sufficient contact information for the Complainant (*e.g.,* address, telephone number, email address);
- The complaint must allege a prohibited basis of discrimination (*e.g.,* race, color, national origin, gender, age, disability, political affiliation, religion);
- The complaint must set forth an "issue," or adverse action;
- The "issue" or adverse action must have occurred within 180 days of the filing of the complaint; and
- The complaint must have "apparent merit"—said differently, does the complaint allege an adverse action taken by Respondent against the Complainant on a prohibited basis?

D. Recipient Defined

In determining jurisdiction, the regulations define "recipient" very broadly as follows:

> *Recipient* means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient) . . .. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to the Governor under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, for purposes of this part, 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 this part, to the extent that they participate in the one-stop delivery system. "Recipient" includes, but is not limited to:
>
> (1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
> (2) State Workforce Agencies;
> (3) State and Local Workforce Development Boards;
> (4) LWDB grant recipients;

(5) One-stop operators;
(6) Service providers, including eligible training providers;
(7) On-the-Job Training (OJT) employers;
(8) Job Corps contractors and center operators;
(9) Job Corps national training contractors;
(10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
(11) Placement agencies, including Job Corps contractors that perform these functions;
(12) Other National Program recipients.

Recipients include "one-stop partners" as defined at Section 121(b) of WIOA, but the "ultimate beneficiary" of a WIOA Title I program or activity is not a "recipient." 29 C.F.R. § 38.4(zz).

E. Unemployment Insurance (UI) Benefits, Special Considerations

If a complaint alleges an adverse decision regarding unemployment insurance benefits on a prohibited basis, the EO Officer must determine whether all administrative remedies have been exhausted (*i.e.,* all appeals taken and a final determination issued with OESC). If the UI adjudication process is not completed, the complaint is premature and the EO Officer shall not commence an investigation of the complaint unless and until such time as the adverse decision is final, and all other jurisdictional requirements are met.

F. Opportunity to Cure Deficiencies

To give the individual the fullest protection of the law, the EO Officer shall provide notice, and an opportunity to cure, any jurisdictional deficiencies. To the extent possible, the EO Officer shall provide assistance to the individual in addressing any jurisdictional deficiencies. The EO Officer cannot advocate on behalf of, or give advice to, the Complainant. Rather, the EO Officer must offer clarification of what is being asked or requested. The goal here is to ensure resolution of the nondiscrimination and equal opportunity issues identified, regardless of any technical or de minimis deficiencies.

IV. Rejecting a Complaint

A. Notice issued in 14 calendar days

Within 14 calendar days of receipt of the complaint, the EO Officer shall make a jurisdiction determination.

If the EO Officer determines that a complaint will be rejected for *any jurisdictional defect*

other than timeliness, and the Complainant failed to cure the defect after being afforded notice and an opportunity to do so, then written notice shall be sent to the Complainant as soon as possible (*i.e.,* within 14 calendar days of the date of receipt of the complaint when the jurisdiction determination is made), but no later than 30 calendar days of the date on which the complaint was received. The complaint shall be recorded in the "Discrimination Complaint Log" (*see* Attachment E) with a proper notation as to its disposition.

If the EO Officer determines that a complaint is untimely (*i.e.,* it was not filed within 180 days of the date on which the alleged discriminatory conduct occurred), then written notice shall be sent to the Complainant as soon as possible (*i.e.,* within 14 calendar days of the date of receipt of the complaint when the jurisdiction determination is made), but no later than within 30 calendar days of the date on which the complaint was received. The complaint shall be recorded in the "Discrimination Complaint Log" (*see* Attachment E), with a proper notation as to its disposition.

B. Rude and unprofessional conduct

Complaints alleging rude or unprofessional customer service must be referred to the recipient within 14 calendar days of the date on which the complaint is received, and the Complainant must receive written notice of the referral. The recipient must contact the Complainant and, if appropriate, direct refresher training to staff members involved on successful engagements with customers and treating all customers with respect and dignity as required by the Oklahoma Workforce Development Issuance (OWDI) #16-2017, addressing grievance and complaint process policies.

V. Accepting a Complaint for Investigation

A. Notice Issued in 30 Calendar Days

Within 30 calendar days of the date of receipt of a Nondiscrimination Complaint Package, if all jurisdictional requirements are met, the EO Officer shall notify the Complainant and named Respondent(s) that the complaint has been accepted for investigation. The complaint shall be recorded in the "Discrimination Complaint Log" (*see* Attachment E)

B. Alternative Dispute Resolution (ADR) & Mediation

The EO Officer shall make every effort to expeditiously resolve the complaint without the need for an investigation. Informal mediation of the complaint occurs between the EO Officer and parties to a complaint. This form of mediation is particularly useful with regard to denial of access to apply for, or participate in, a program or activity.

Formal mediation occurs between a third-party neutral (not the EO Officer conducting the investigation), and the parties to the complaint. The EO Officer does not participate in, or attend, the mediation. Formal mediation, in the discretion of the EO Officer, may be used for class action complaints, or complicated individual complaints involving multiple issues and/or bases. However, the parties must agree to formal mediation voluntarily, and they must execute a "Consent to Mediate" form (*see* Attachment B).

No party shall be charged any fee for formal or informal mediation services.

If the EO Officer determines that a complaint is appropriate for formal mediation, and all parties to the complaint voluntarily agree to participate in this mediation, the EO Officer shall assign a third-party neutral, no later than 45 calendar days from the date of receipt of the complaint. Within 20 calendar days of the date on which a third-party neutral is assigned to conduct the mediation, or upon submission of a settlement agreement, *whichever occurs first*, the EO Officer shall: (1) either initiate an investigation, or (2) close the complaint due to resolution of all issues.

C. Conciliation Agreements

Resolution of a complaint through formal or informal mediation shall be recorded in a written agreement, which is signed by the parties (*see* Attachment C). The written agreement shall be maintained with the record of the complaint for a period of not less than three (3) years from the date of final action related to resolution of the complaint or compliance review. 29 C.F.R. § 38.43. The conciliation agreement shall be finalized in writing within 90 days of the receipt of a complaint, if the parties resolve the matter through mediation or other alternative dispute resolution.

D. Age Discrimination, Special Procedures

With few exceptions, the Age Discrimination Act of 1975 at 42 U.S.C. § 6101 *et seq.* prohibits discrimination on the basis of *any* age in federally-funded, federally-assisted, and federally-conducted programs and activities. This means a recipient/provider may not exclude, deny, or provide different or lesser services to beneficiaries or potential beneficiaries on the basis of age—*any* age. However, the statute does not prohibit the consideration of age for purposes of determining eligibility in certain "targeted" programs (*e.g.,* youth training programs, employment programs for older Americans).

The U.S. Department of Health and Human Services (HHS) has oversight and coordination responsibility for the Age Discrimination Act. Per 45 C.F.R. Part 90, all complaints filed *with Federal departments and agencies* under the Age Discrimination Act be forwarded to the Federal Mediation and Conciliation Services (FMCS). FMCS has 60 days to attempt to

resolve the complaint through mediation. *See* 45 C.F.R. § 90.43(c)(3).

Therefore, if a complaint alleges discrimination on the basis of age, the EO Officer shall inform the Complainant that, if the complaint is filed with the U.S. Department of Labor's Civil Rights Center, it will be referred to the FMCS for attempted mediation. If the Complainant elects to have the complaint investigated by the EO Officer, s/he will have the opportunity to engage in informal or formal mediation as discussed below in these procedures. This complaint is recorded in the "Discrimination Complaint Log" (*see* Attachment E).

VI. The Investigation and Final Action Notice

A. Completed in 90 Calendar Days

Within 90 calendar days of the date on which the Nondiscrimination Complaint Package is filed, if the complaint is not resolved through informal or formal mediation, the EO Officer shall develop a complaint investigation plan, conduct an investigation, and issue a written notice of final action to the parties resolving the complaint. 29 C.F.R. § 38.76.

At any time, the State EO Officer may take jurisdiction of the investigation in writing to the assigned EO Officer. In such cases, the assigned EO Officer shall fully cooperate with any and all requests for documents, information, and electronic or paper records inspections. The State EO Officer shall retain sole jurisdiction over investigation of the matter, and shall issue the written notice of final action to the parties if the matter is not resolved through mediation.

B. Conducting the Investigation

When conducting the investigation, the EO Officer first shall interview the Complainant. Then, any named Respondent(s) shall be interviewed. First-hand witnesses may be interviewed in the EO Officer's discretion to resolve one or more particular factual disputes.

Documents necessary to make a determination on the discrimination complaint shall be collected from the parties and, if needed, any witnesses. It is within the EO Officer's discretion to determine whether in-person interviews and/or inspections are needed, or whether a desk audit and telephone interviews may be conducted.

After interviews of the named Respondent(s) and witness(es) are conducted, the EO Officer shall interview the Complainant in order to afford the Complainant every opportunity to establish the elements of proof in support of his or her discrimination

complaint.

Whether conducted in person, or by telephone, the EO Officer shall take notes during the interviews. For each interviewee having knowledge of material and relevant facts, the EO Officer shall prepare a written statement of the interview, and shall require that the interviewee sign and date the statement after the interviewee has the opportunity to make any changes or modifications to the statement. Statements of interviewees shall be used by the EO Officer to render factual findings in the notice of final action.

C. Issuing the Notice of Final Action

Not later than 90 calendar days from the date of filing of the complaint, the EO Officer shall issue a notice of final action setting forth all relevant investigative findings, as well as any sanctions and required corrective actions. With regard to sanctions and corrective actions, the EO Officer shall set forth deadlines for the completion of sanctions and corrective actions along with the procedures that will be followed for Respondent(s)' failure to comply.

If the EO Officer determines that prohibited discrimination was not proven, the EO Officer shall issue a notice of final action setting forth all relevant findings of fact, and the reasons discrimination was not established.

The notice of final action shall be issued to the Complainant, named Respondent(s), and their representatives (if any). A notation shall be placed in the "Discrimination Complaint Log."

D. Withdrawal of the Discrimination Complaint

At any time prior to issuance of a notice of final action, the Complainant may request withdrawal of the discrimination complaint. The request must be in writing. If the EO Officer determines that the request is made voluntarily, and is not the result of intimidation or threat of retaliation, the EO Officer shall issue a written notice to all parties stating that the complaint has been withdrawn and the matter is closed. The disposition of this complaint is recorded in the "Discrimination Complaint Log" as "withdrawn".

E. Death of the Complainant

If the Complainant dies during pendency of the investigation of his or her complaint, then the EO Officer shall proceed to complete the investigation to the extent practicable, and issue a notice of final action. This is designed to ensure that the program or activity at issue is operating in compliance with WIOA's nondiscrimination and equal opportunity

mandates.

VII. The Discrimination Complaint Log

A. Generally

The EO Officer shall maintain a "Discrimination Complaint Log" (*see* Attachment E). Every discrimination complaint shall be recorded in the log regardless of the nature of disposition of the complaint (*i.e.* withdrawal, settlement, dismissal, rejection for lack of jurisdiction, determination on the merits).

With regard to each discrimination complaint, the EO Officer shall maintain records pertaining to the complaint, and all actions taken on the complaint (including recording disposition of the complaint in the "Discrimination Complaint Log"), for a period of not less than three (3) years from the date of resolution of the complaint.

Each EO Officer must produce his or her complete "Discrimination Complaint Log" to the State EO Officer at eoofficer@okcommerce.gov on or before each of the following dates:

- March 31
- June 30
- September 30
- December 31

B. What is *not* included

The following types of communications shall not be recorded by the EO Officer in the "Discrimination Complaint Log":

- Anonymous communications;
- Communications that are not signed and/or are not in writing;
- Third-party communications (*i.e.,* no written, signed complaint(s) have been filed by the aggrieved individual(s));
- Program complaints; or
- A complaint alleging discrimination by an individual or entity that is not a "recipient" as defined at 29 C.F.R. § 38.4(zz).

All communications not recorded in Section B on the "Discrimination Complaint Log," shall be recorded on the "Communications Log" (Attachment M). Each EO Officer must produce his or her complete "Communications Log" to the State EO Officer at eoofficer@okcommerce.gov on or before each of the following dates:

- March 31

- June 30
- September 30
- December 31

C. Bases of Complaints, Special Considerations

When recording the "prohibited basis" of a complaint in the "Discrimination Complaint Log," the EO Officer shall follow these guidelines:

- Complaints alleging discrimination on the basis of limited English proficiency (LEP) shall be recorded as national origin-based complaints.
- Gender-based complaints include allegations of discrimination based on gender, sexual orientation, pregnancy, familial status, transgender, and transsexual status.
- Harassment and hostile environment. *Quid pro quo* harassment and hostile environment constitute forms of prohibited discrimination when based on protected class characteristics (*Quid pro quo* means a favor or advantage granted or expected in return for something). For example, an allegation of hostile environment based on race would be recorded in the "Discrimination Log" as a race-based discrimination complaint. Similarly, a quid pro quo allegation of sexual harassment would be recorded as a gender-based discrimination complaint.
- Retaliation. WIOA's nondiscrimination provisions prohibit retaliation on the bases of (1) filing a complaint alleging a violation of Section 188 of the WIOA, (2) furnishing information to, or assisting or participating in any manner, in an investigation, review, hearing, or other activity related to:
    - Administering the WIOA's nondiscrimination provisions;
    - Exercising authority under these provisions;
    - Exercising a privilege secured by the provisions; or
    - Otherwise exercising any rights and privileges under the nondiscrimination an equal opportunity provisions of the WIOA.

  Retaliation constitutes a form of discrimination, and is recorded in the "Discrimination Complaint Log." The basis of this type of complaint shall be recorded as "retaliation."
- If a complaint alleges discrimination on more than one basis, then all asserted bases shall be recorded in the "Discrimination Complaint Log."

All items (electronic or paper) related to the discrimination complaint investigation, including discrimination complaint log entries, must be preserved for a period of not less than three (3) years from the date of final action related to resolution of the complaint. 29 C.F.R. § 38.43(b).

VIII. Confidentiality and Security of the Investigative File

The investigative file (including the discrimination complaint, investigative notes, witness statements, advisory memoranda pertaining to the complaint, and any other related documents) shall be kept in a locked filing cabinet, or, if maintained electronically, in an encrypted or password protected database. The only persons with access to the investigative file shall be:

- The EO Officer conducting the investigation;
- The State EO Officer;
- The Governor (or designee);
- The U.S. Department of Labor's Civil Rights Center.

Any and all medical information gathered in the course of a discrimination complaint investigation shall be kept confidential, and stored separately from the investigative file. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection) in compliance with 29 C.F.R. § 38.41(b)(3).

Any party, witness, or non-party to a complaint seeking copies of any one or more documents in the investigative file must follow the procedures set forth in Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq*. Any request for documentation in the investigative file shall be submitted to http://www.nfoic.org/oklahoma-sample-foia-request.

Certain exemptions to disclosure may apply. It is the policy of the EO Officer to maintain the highest possible level of confidentiality in conducting an investigation of a discrimination complaint. Therefore, information from an investigative file will be released only if an exemption cannot be invoked for that particular piece of information.

When EO complaints contain general grievance, complaint information, or other items that are outside the scope of the EO nondiscrimination process, staff may be allowed limited access to relevant confidential information in investigative files on a need-to-know basis including, supervisors, managers, and subject matter experts. In such cases, the EO Officer must provide notice to the complainant in writing explaining why the complaint is outside the scope of an EO nondiscrimination complaint under WIOA and provide instructions on how to re-file such complaints through other processes with the appropriate Federal, State, or local entity.

EQUAL OPPORTUNITY AND NONDISCRIMINATION: All recipients must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions,

transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title-I financially assisted program or activity.

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

INQUIRIES: If you have any questions about this issuance, please contact the State-level EO Officer in the Oklahoma Office of Workforce Development at eoofficer@okcommerce.gov. Contact information can also be found at http://www.oklahomaworks.gov/about/.

ATTACHMENTS:
A – Discrimination Complaint Form, Consent Form and Notice of Investigatory Uses of Personal Information
B – Consent to Mediate Form
C – Conciliation Agreement Template
D – Communication Log Template
E – Discrimination Complaint Log

Discrimination Complaint Procedures
Attachment A

Discrimination Complaint Form and Consent

WIOA EQUAL OPPORTUNITY AND NONDISCRIMINATION COMPLAINT FORM, CONSENT, AND NOTICE OF INVESTIGATORY USES

This form should be used by anyone who wishes to file a discrimination complaint against any person(s)/entity while involved in Oklahoma WIOA funded programs. To file a discrimination complaint, complete this form, sign on page 4, and return to the Local Equal Opportunity Officer as follows:

(Insert Contact Information Here)
Equal Opportunity Officer
Address
City, State, Zip
Telephone:
TDD:

1. Complainant Information

◯ Miss ◯ Ms. ◯ Mrs. ◯ Mr. ◯ Other

Home Phone: ( )
Work Phone: ( )
Cell Phone: ( )

Name: -

_____

Address:

_____

City, State, Zip:

_____

2. Complainant contact information

When is it a convenient time during business hours (8am – 5pm) to contact you by phone about this complaint?

Day	Monday	Tuesday	Wednesday	Thursday	Friday
Time					
Phone					

3. Contact information for the person(s) this complaint is against:

Provide the name of the entity where the person(s) work(s):

Name(s) of person(s):

Address of person(s)/entity:	City, State, Zip:
Telephone Number:	Date of first occurrence: Date of most recent occurrence:

4. Tell us about the incident(s)

- Explain briefly what happened:
- Provide the date(s) when the incident(s) occurred.
- Indicate who this program discrimination complaint is against. Include names and titles, if possible.
- If other people were treated differently than you, tell us how they were treated differently.
- Attach any documents that you think might help us better understand your complaint.

5. Please list below any person(s) (witnesses) that we can contact for additional information to support or clarify the complaint.

Name	Address	Phone

6. If this complaint involves discrimination, please check the type of discrimination you experienced, such as age, race, color, religion, sexual orientation, national origin, physical or mental disability, etc. If you believe more than one basis was involved, you may check more than one box.

☐ Age-provide date of birth ☐ Color ☐ National Origin ☐ Political Belief ☐ Retaliation ☐ Gender – *Specify* ☐ F ☐ M ☐ Race – *indicate race* ☐ Of Hispanic or Latino Origin ☐ Not of Hispanic or Latino Origin	☐ Citizenship or status as an alien U.S. worker ☐ Disability ☐ Political Affiliation ☐ Religion ☐ Sexual Harassment ☐ Status as a program participant under the Workforce Innovation and Opportunity Act (WIOA) ☐ Other *(specify)*

7. Have you previously filed a complaint against this person(s)/entity? ☐ Yes ☐ No

If Yes, answer the questions below. If No, move to Section 8.

a. Was your complaint in writing? ☐ **Yes** ☐ **No**

b. On what date did you file the complaint?

c. Name of office where you filed your complaint:

Address:

_____

City:

_____

Phone:

_____

Contact person *(if known)*:

_____

d. Have you been provided a final decision or report? ☐ **Yes** ☐ **No**

If you marked "Yes", please attach a copy of the complaint decision or report.
8. What corrective action or remedy do you seek? Please explain:
9. Choosing a personal representative:
• You may choose to have someone else represent you in dealing with this complaint. It may be a relative, friend, an attorney, or someone else. • If you choose to appoint someone to represent you, all of our communication to you will be routed through your representative.
Do you want to authorize a personal representative to handle this complaint? ☐ **Yes** ☐ **No**
If **"Yes"**, complete the section below. If **"No"**, go to Section 10.
AUTHORIZATION OF PERSONAL REPRESENTATIVE
I wish to authorize the individual identified below to act on my behalf as my personal representative, in matters such as mediation, settlement conferences, or investigations regarding this complaint.
Name:
☐ I am an attorney representing the complainant. ☐ I am not an attorney representing the complainant.
Mailing address:
City: State: Zip:
Phone: FAX:
E-mail:
10. Alternate Dispute Resolution (ADR) also known as mediation.
Notice: You must indicate if you wish to mediate your case. The Equal Opportunity Officer cannot begin to process your complaint until you have made a selection. Please check "**YES**" or "**NO**" in the space below.

- Mediation is an alternative to having your complaint investigated.
- Neither party loses anything by mediating.
- The parties to the complaint review the facts, discuss opinions about the facts, and strive for an agreement that is satisfactory for both.
    - Agreement to mediate is not an admission of guilt by the person(s)/entity that you claim discriminated against you.
    - Mediation is conducted by a trained, qualified and impartial mediator.
    - You (or your Personal Representative) have control to negotiate a satisfactory agreement.
    - Terms of the agreement are signed by the complainant and the person(s)/entity that you claim discriminated against you.
    - Agreements are legally binding on both sides.
    - If an agreement is not reached, a formal investigation will start.
    - Failure to keep an agreement will result in a formal investigation.
    - A formal investigation will be opened if retaliation is reported.

- **Do you wish to mediate your complaint?** ☐ **YES**, I want to mediate. ☐ **NO**, please investigate.

If you select "YES", you will be contacted within five (5) business days with more information.

11. Complainant Signature:

You must sign this form for your complaint to be processed.

- **Faxed or otherwise electronically delivered complaints will be logged into our system; however, an official investigation cannot begin until the original, signed copy is received by our office.**

By signing below, I attest that all of the information contained in this complaint is true to the best of my knowledge. I request that the necessary action be taken to resolve this matter, and I release my personal records so that this matter may be thoroughly investigated. This release is only to the extent necessary to reasonably and fully investigate this matter and is not a general release of all my personal records.

Signature:	**Date:**

COMPLAINANT CONSENT/IDENTITY RELEASE FORM

_____
(Printed name of Complainant)

Please read the information below, check the appropriate box, and sign this form. I have read the Notice of Investigatory Uses of Personal Information. As a complainant, I understand that in the course of an investigation it may become necessary for the investigator to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of the investigator to honor requests under the Oklahoma Open Records Act, 51 §24A.1 *et seq*. I understand that it may be necessary for the investigator to disclose information, including personally identifying details, which is gathered as a part of the investigation of my complaint. In addition, I understand that as a complainant I am protected by federal civil rights statutes and regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by applicable nondiscrimination laws.

CONSENT GRANTED–
I have read and understand the above information and authorize the investigator to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the investigator to receive material and information about me pertinent to the investigation of my complaint. This release includes, but is not limited to, personal records and medical records. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.

_____
Signature of Complainant

Date: _____

CONSENT DENIED –
I have read and understand the above information and do not want the investigator to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint, and may result in the closure of the investigation.

_____
Signature of Complainant

Date: _____

NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION:
NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES

Complainants and individuals who cooperate in an investigation, proceeding or hearing conducted by this investigator are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

A recipient may not force its employees to be represented by the recipient's counsel nor may it intimidate, threaten, coerce or discriminate against any employee who refuses to reveal to the recipient the content of an interview. A complainant does, however, have the right to representation by the individual of complainant's choice during an interview with the investigator.

The laws and regulations which govern this investigator's compliance and enforcement authority provide that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual because he/she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under my jurisdiction, or has asserted rights protected by applicable federal civil rights laws.

Information obtained from the complainant or other individual, which is maintained in the investigative file, may be exempt from disclosure under the State of Oklahoma Open Records Act, 51 §24A.1 *et seq*. if release of such information would constitute an unwarranted invasion of personal privacy.

Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. No law requires a complainant to give personal information to the investigator, and no sanctions will be imposed on complainants or other individuals who deny the investigator's request. However, if the investigator fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

The investigator does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under the Oklahoma Open Records Act, 51 §24A.1 *et seq*. The investigator will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under Oklahoma Open Records Act, 51 §24A.1 *et seq*., or otherwise required by law.

The investigator generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the investigator to do his or her job. Also, the investigator may refuse a request for records compiled

for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy." The investigator will seek to invoke the exemptions at Oklahoma Open Records Act, 51 §24A.1 *et seq*., to the extent possible.

BABEL NOTICE (29 C.F.R. § 38.9(g)(3)):
This document contains vital information. If English is not your preferred language, contact [insert EO Officer's name and contact information] to obtain translation and/or interpretation services for the content of this document.

Discrimination Complaint Procedures
Attachment B

Consent to mediate form

AGREEMENT TO PARTICIPATE IN MEDIATION

We, the undersigned parties, understand and agree to the following in executing this "Agreement to Participate in Mediation":

Definition of mediation. Mediation is a process in which a neutral (the mediator) assists parties to a conflict in finding a mutually acceptable solution to their dispute.

Role of the mediator. The mediator facilitates discussion between the parties by assisting them in communicating, identifying and clarifying issues, and exploring potential solutions. The parties decide the outcome of the mediation.

Role of the parties. Each party agrees to participate in mediation in good faith and agrees to treat others in the mediation with respect and courtesy.

Confidentiality. Communications in mediation are confidential and may not be used in subsequent judicial or administrative proceedings, except for (a) communications used to plan or commit a crime, (b) threats of bodily injury, (c) information otherwise discoverable by legal procedures, (d) in any complaint for misconduct against an attorney or mediator who participates in the mediation process; (e) in any legal action to vacate the agreement, (f) when the parties agree to waive confidentiality in writing, or (g) as otherwise provided by law or rule. Threats of personal harm may be disclosed by the mediator as reasonably necessary to prevent people from harm.

In addition, all memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made by the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

(i) where all parties to the mediation agree, in writing, to waive the confidentiality,
(ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation,
(iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation,
(iv) where a threat to inflict bodily injury is made,
(v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime,

(vi) where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint,

(vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, or

(viii) as provided by law or rule.

Voluntary. Mediation is voluntary. Any party, or the mediator, may decide to stop the mediation at any time for any reason.

Joint and separate sessions. The mediation generally will occur with all parties present. The mediator may also meet separately with each party.

Legal advice. The mediator does not provide legal advice. Each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so.

Agreement. All terms of settlement are non-binding until they are put into a written agreement *and* signed by all parties. Any mediated agreement may affect the legal rights of the parties. Each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.

_____	_____
Party signature	Party signature
_____	_____
Party's representative (if present)	Party's representative (if present)
_____	_____
Other person present	Other person present
_____	
Mediator	

BABEL NOTICE (29 C.F.R. § 38.9(g)(3)):

This document contains vital information. If English is not your preferred language, contact [insert EO Officer's name and contact information] to obtain translation and/or interpretation services for the content of this document.

Discrimination Complaint Procedures
Attachment C

Settlement agreement template

NOTICE: Pursuant to 29 C.F.R. § 38.93, a conciliation agreement must:

(a) Be in writing;

(b) Address the legal and contractual obligations of the recipient;

(c) Address each cited violation;

(d) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;

(e) Provide for periodic reporting on the status of the corrective and remedial action;

(f) State that the violation(s) will not recur;

(g) State that nothing in the agreement will prohibit CRC from sending the agreement to the complainant, making it available to the public, or posting it on the CRC or recipient's Web site;

(h) State that, in any proceeding involving an alleged violation of the conciliation agreement, CRC may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement; and

(i) Provide for enforcement for a breach of the agreement.

IN THE MATTER OF:

[name and address of Complainant]

v. Complaint No.: _____

[name and address of Respondent(s)]

CONCILIATION AGREEMENT

On (insert date complaint filed), the undersigned Equal Opportunity (EO) Officer received a complaint filed by (insert name of Complainant), the Complainant, alleging that (insert name of Respondent/Recipient), the Respondent, denied the Complainant [access/training/aid/benefits/services/ bid/proposal] on the basis of (insert protected class).

A number of federal civil rights laws apply to our federally-assisted programs and activities, including (1) Title VI of the Civil Rights Act of 1964, as amended; (2) Section 504 of the Rehabilitation Act of 1973, as amended; (3) Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA); (4) Title II of the Americans with Disabilities Act (ADA) of 1990 as amended by the Americans With Disabilities Act Amendments Act (ADAAA) of 2008; (5) Title IX of the Education Amendments of 1972, as amended; and (6) the Age Discrimination Act of 1975.

As a whole, these statutes bar discrimination on the "basis" of race, color, national origin, religion, age, sex, disability, citizenship, political affiliation or belief, and/or status as a WIOA participant in programs funded, in part or in whole, by the U.S. Department of Labor. I determined that I had jurisdiction to investigate this matter, and the issue(s) presented for investigation was as follows:

[insert the issue accepted for investigation]

Through mediation, the parties have reached a settlement of this matter. The terms of the settlement are as follows:

1.
2.
3.

Respondent agrees that violation of applicable federal civil rights laws will not recur.

All corrective actions [have been completed.][will be completed on or before _____].

Respondent understands that failure to complete the corrective actions may result in suspension and/or loss of funding. Both parties understand that this *Settlement Agreement* is binding and enforceable by law, and the EO Officer may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

The undersigned EO Officer shall retain jurisdiction over this matter for a period of three (3) years to ensure completion of agreed-to corrective actions, and to monitor for future compliance by Respondent.

Signed on this ___ day of_____, 201_ by:

_____
Complainant

_____
Respondent Official

_____
EO Officer

_____
Representative (if any)

_____
Representative (if any)

BABEL NOTICE (29 C.F.R. § 38.9(g)(3)):
This document contains vital information. If English is not your preferred language, contact [insert EO Officer's name and contact information] to obtain translation and/or interpretation services for the content of this document.

Attachment D: COMMUNICATION LOG TEMPLATE

Name of Entity: _____

Date of Communication	Name	Contact Information	Identity of Federally Funded Program	Description	Action Taken

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

Attachment E: DISCRIMINATION COMPLAINT LOG TEMPLATE

Name of Entity: _____

Date of Complaint	Name of Complainant	Address of Complainant	Status of Complainant	Identity of Federally Funded Program	Date of Alleged Discriminatory Act	Grounds/Bases) of Complaint	Description/ Issue of Complaint	Name of Respondent	Is Respondent a recipient? Yes or No	Disposition	Date of Disposition	ADR Yes or No	Complaint Completed by

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.