



## **POLICY NO. 21B**

### **NONDISCRIMINATION AND EQUAL OPPORTUNITY COMPLAINT PROCEDURES FOR WIA PROGRAMS, AMENDED**

#### **PURPOSE**

To provide and implement uniform procedures for discrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA) Title I financially assisted programs or activities. These procedures cover complaints alleging violations of the discrimination and equal opportunity provisions, and apply to the Mendocino County Workforce Investment Board (WIB) and other WIA Title I grant recipients.

#### **BACKGROUND**

WIA Section 188 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against any beneficiary of programs on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I financially assisted program or activity. Title 29 CFR Part 37 implements the nondiscrimination and equal opportunity provisions specified in Section 188 of WIA.

In compliance with the nondiscrimination and equal opportunity provisions of the WIA and Title 29 CFR Section 37.76, the WIB Equal Opportunity (EO) Officer must:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations with the Local Workforce Investment Area (LWIA) for noncompliance with applicable nondiscrimination and equal opportunity provisions;
- Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures.
- Establish a system to record discrimination complaints.

Small recipients and service providers, as defined in Title 29 CFR Section 37.4, must designate an individual who will be responsible for the developing and publishing of complaint procedures and the processing of complaints as required by Section 37.76 through 37.79.

The WIA Title I Governor's 15 and 25 percent subgrantees, except LWIAs, are not required to designate an EO Officer, but must designate an individual who will be responsible for adopting and publishing the Employment Development Department's (EDD) complaint procedures. Therefore, in lieu of local complaint procedures, the WIA Title I Governor's 15 and 25 percent

subgrantees must adopt the Employment Development Department's (EDD) nondiscrimination and equal opportunity complaint procedures. The complaint procedures must include the option to file a charge of discrimination directly with the Civil Rights Center (CRC). For more information, contact the State EO Officer listed below:

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

## REFERENCES

- Section 188 of the Workforce Investment Act of 1998
- WIA Directive WSD07-6, Subject: Nondiscrimination and Equal Opportunity Procedures (January 16, 2008)
- Mendocino County WIB Policy No. 4D, Subject: Nondiscrimination and Equal Opportunity Policy (February 25, 2008)
- Americans with Disabilities Act of 1990, Title II, Subpart A
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (CFR) Sections 667.275 and 658.400
- Title 29 CFR Parts 31, 32, and 37
- Title 41 CFR Subpart 101-19.6
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- WIA Directive WIA04-20, Subject: Limited English Proficiency (May 12, 2005)
- Fair Employment and Housing Act (Government Code, Title 2, Division 3, Part 2.8), Chapters 1-6

## DEFINITIONS

**Beneficiary**: One of the individuals intended by Congress to receive aid, benefits, services, or training from a recipient.

**Complaint**: For this directive only, means an allegation of a violation of the WIA nondiscrimination and equal opportunity provisions.

**Equal Opportunity (EO) Officer**: For purposes of this procedure, means the EO Officer for the WIB.

**Recipient**: Per Title 29 CFR Part 37, means any entity to which financial assistance under WIA 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 WIA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of WIA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 37, to the extent that they participate in the One-Stop delivery system.

**Small recipient**: A small recipient is a recipient who (1) serves a total of fewer than 15 beneficiaries during the entire grant year and (2) employs fewer than 15 employees on any given day during the grant year.

## **POLICY**

It is the policy of the WIB to foster and ensure equal opportunity and nondiscrimination in the operation of the Workforce Investment Act, Public Law 105-220 programs and activities. The following procedures shall govern the treatment and handling of all grievances or complaints in connection with all WIA Title I grant programs and activities conducted by the WIB or its subrecipients of WIA funds.

## **PROCEDURES**

- A. 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 WIA may file a written complaint, or a representative may file the complaint on his or her behalf.
- B. The complaint may be filed either with the EO Officer, Mendocino County Workforce Investment Board, 631. S. Orchard Ave., Ukiah, CA 95482, or directly with CRC, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.

A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Form (DL 1-2014a, attached), which may be obtained either from the EO Officer or from CRC. However, no specific form or format is required to make a complaint valid. The EO Officer, or a designated alternate, will be available to assist in the preparation and completion of a complaint.

The complainant or his/her representative will be permitted to file by mail or by delivery in person to the EO Officer or designated alternate.

- C. A complaint filed pursuant to Title 29 CFR 37 must be filed within 180 days of the alleged discrimination. The official filing of the complaint is the date the complaint is received by the EO Officer. The CRC, for good cause shown, 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 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 CRC and does not create a defense for the respondent.
- D. Complaints must be filed in writing and shall:
  - 1. Be signed by the complainant or his or her representative;
  - 2. Contain the complainant's name, address, or other means of contacting him or her;
  - 3. Identify the respondent; and
  - 4. Describe the complainant's allegation in sufficient detail to allow CRC or the EO Officer, as applicable, to determine whether:
    - a) CRC or the WIB has jurisdiction over the complaint;
    - b) The complaint was filed timely; and
    - c) The complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA.
- E. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.

F. Complaints filed with the WIB:

1. The EO Officer shall issue an initial written acknowledgement within five working days of receipt by the EO Officer of a complaint alleging discrimination by a WIA Title I recipient and shall include a notice of the complainant's right to representation in the complaint process. The initial notice will be sent by registered mail, return receipt requested.

2. The EO Officer shall provide a copy of the complaint to the following:

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

3. The EO Officer shall send a written statement of the issue(s) to the complainant within 30 days of the date on which the complaint is filed. The statement shall be sent by registered mail, return receipt requested. The statement will include:

- a) A list of the issues raised in the complaint;
- b) For each such issue, a statement whether the EO Officer will accept the issue for investigation or reject the issue, and the reasons for each rejection;
- c) A period for fact-finding or investigation of the circumstances underlying the complaint; and
- d) A period during which the EO Officer attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution.

4. Alternative Dispute Resolution (ADR):

- a) The complainant must be immediately offered alternative dispute resolution upon receipt of the complaint. The choice whether to use ADR or the customary process rests with the complainant; the preferred form of ADR is mediation.
- b) Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent) to communicate their concerns and come to an agreement about how to resolve a dispute. The mediator does not make decisions, rule as to who is right or wrong, take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences. As the law allows, mediation proceedings and the information shared are confidential, and no information divulged during this mediation may be used in court or any legal or administrative proceedings.
- c) If the parties do not reach an agreement under ADR, the complainant may file directly with CRC as described in Title 29 CFR Sections 37.71 through 37.74.
- d) A party to any agreement reached under ADR may file a complaint with 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 CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
  - CRC must evaluate the circumstances to determine whether the agreement has been breached. If CRC determines that the agreement has been breached, the

complainant may file a complaint with CRC based upon his or her original allegation(s) and CRC will waive the time deadline for filing such a complaint.

5. If the complainant elects not to participate in the ADR process, the EO Officer shall investigate the circumstances underlying the complaint.
6. During the resolution process, the EO Officer shall assure that all parties involved are given due process. These due process elements include:
  - a) Notice to all parties of the specific charges;
  - b) Notice to all parties of the responses to the allegations;
  - c) The right of both parties to representation;
  - d) The right of each party to present evidence, and to question others who present evidence; and
  - e) A decision made strictly on the evidence on the record.
7. All complaints filed under this process will be treated confidentially except to the extent necessary to conduct the investigation, hearing or judicial procedure. The identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the Act shall be kept confidential to the extent possible, consistent with a fair determination of the issues.
8. At any point in the investigation of the complaint, the complainant, respondent, or the EO Officer may request that the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.
  - a. Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.
  - b. If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legally binding contract and falls under contract law.
9. The EO Officer shall issue a Notice of Final Action within 90 days of the date on which the complaint is filed. The Notice of Final Action shall contain the following information:
  - a) For each issue raised in the complaint, a statement of either:
    - The EO Officer's decision for each issue and an explanation of the reasons underlying the decision, or
    - A description of the way the parties resolved the issue; and
  - b) Notice that the complainant has the right to file a complaint with CRC, within 30 days of receipt of the Notice of Action,, if he or she is dissatisfied with the EO Officer's final action on the complaint.
10. If the 90 days expire and the complainant does not receive a Notice of Final Action from the EO Officer, or the EO Officer failed to issue a Notice of Final Action, the complainant or his/her representative may, within 30 days of the expiration of the 90-day period, file a complaint with CRC. In other words, the complaint must be filed with CRC within 120 days of the date on which the complaint was filed with the WIB.
11. CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 37.81, or for other good cause shown.

12. The EO Officer shall notify the complainant in writing immediately upon determining that the WIB does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA. 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 CRC within 30 days of receipt of the Notice.
13. Where an alleged violation of the Act or regulation is also an alleged violation of another law, nothing shall preclude an individual or organization from filing a complaint or grievance under such other law or agreement with respect to the non-WIA cause of action, as well as filing a complaint under WIA.

#### G. Corrective Actions/Sanctions for LWIA Recipients

##### 1. Overview of Corrective Actions, Sanctions, and Violations:

- a) Corrective actions and sanctions are intended to guarantee equal access to programs, activities, and employment opportunities provided by WIA financially assisted recipients. Corrective actions or sanctions will be applied as necessary when violations of WIA Title 1, Section 188 or 29 CFR Part 37 are found.
- b) Corrective actions must be appropriate for the violation identified and serve to end the discrimination or redress specific violation(s). Sanctions may include termination of funding (partial, offset, and/or temporary suspension). Timeframes will be established as necessary that set the minimum time necessary to completely redress the violation. Follow-up monitoring will occur to ensure that commitments to take corrective and remedial actions are fulfilled.
- c) Violations may range in seriousness from technical violations, such as failure to post EO notices, to discrimination violations based on the prohibited grounds of discrimination or equal opportunity protections afforded by the law.

##### 2. Corrective Actions:

- a) Corrective action is indicated in the following circumstances:
  - A monitoring review or an on-site review identifies a technical deficiency, a failure to follow through on a written assurance, or a barrier to universal **access to** programs or services.
  - The assessment of the circumstances surrounding a complaint and/or grievance reveals barriers to equal opportunity or access.
  - A WIA Title I subrecipient refuses to implement voluntary corrective action, submit requested data or documentation, or provide access to premises or records during a compliance review.
- b) When the local EO Officer identifies the need for corrective action, s/he will recommend to the WIB voluntary corrective action(s) and a reasonable minimum timeframe to completely correct each situation for which corrective action is recommended.
- c) Corrective actions must correct the specific violation and/or make whole the complainant. There may be instances where a violation has not yet occurred, but the subrecipient will be notified of the potential problem so that corrective action may be taken on the recipient's own volition.
- d) Violations:
  - Technical Violations:

- When only technical violations are found, the EO Officer will notify the responsible officer of the subrecipient in writing of the violations found and a recommended corrective action plan. The subrecipient may submit a proposed corrective action plan. However the determination of the EO Officer as to the terms of the corrective action plan is final. The subrecipient will be given a specific time frame within which to correct the technical violation and will be required to provide a written assurance that the violation is corrected and will not recur. The EO Officer will be available to the subrecipient for technical assistance and guidance.
- Findings of Discrimination:  
When there are findings of discrimination, a conciliation agreement is required. A conciliation agreement calls for corrective action and is comprised of an introduction describing whom the agreement is between, the event that brought about the agreement, and the legal authority by which the investigation was conducted. Also included in the agreement is a section that describes each deficiency and the action required to correct it, the timeframe(s) for completion of the corrective action(s), and an enforcement section that describes the consequences of a breach of the agreement.

### 3. Sanctions:

- a) The WIB's intent is to be fully supportive of the local workforce development system. To that end, sanctions will be a last resort, and used when the subrecipient does not abide by the terms of the corrective action agreement. Technical assistance, clarification, and reasonable corrective action opportunities will be offered first. Sanctions will be determined by the deliberateness, seriousness, and/or frequency of the violation. Failure to respond in good faith to corrective action requirements will lead to progressive sanction activity.
- b) Sanctions which may be imposed by the WIB upon sub-recipients include, but are not limited to:
  - Reduction in funding.
  - Restriction from bidding on competitive or discretionary funds.
  - Disallowance of costs associated with the particular violation or deficiency.
  - Termination of future funding.

### H. Actions by CRC for Complaints Filed Against the WIB

1. CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 34.82. When CRC accepts a complaint for investigation, it shall:
  - a) Notify the EO Officer and the complainant of the acceptance of the complaint for investigation; and
  - b) Advise the EO Officer and complainant on the issues over which CRC has accepted jurisdiction.
2. The EO Officer, the complainant, or a representative may contact CRC for information regarding the complaint filed.
3. When a complaint contains insufficient information, 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.

4. CRC, per WIA Section 183(c), may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the United States, at any designated time and place.
5. Where CRC lacks jurisdiction over a complaint, CRC shall:
  - a) Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIA or Title 29 CFR Part 37; and
  - b) Refer the complainant to the appropriate federal, state, or local authority, when possible.
6. CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.
7. CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).
8. If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in Title 29 CFR, Parts 1690 or 1691, as appropriate. CRC will advise the complainant and the EO Officer of the referral.
9. Under the One-Stop delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grantmaking agency other than DOL, but participates as a partner in a One-Stop delivery system, the following procedures apply:
  - a) If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the federal grantmaking agency, CRC and the grantmaking agency have dual jurisdiction over the complaint. CRC will refer the complaint to the grantmaking agency for processing. The grantmaking agency's regulations will govern the processing of the complaint.
  - b) If the complainant alleges discrimination on the basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the federal grantmaking agency, CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to Title 29 CFR Part 37. CRC will advise the complainant and the EO Officer of the referral.
10. CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:
  - a) The mediation is voluntary; the parties must consent before the mediation process will proceed.
  - b) The mediation will be conducted under the guidance issued by CRC.
  - c) If the parties are unable to reach resolution of the complaint through the mediation, CRC will investigate and process the complaint under Title 29 CFR Sections 37.82 through 37.88.
11. After making such a cause finding, CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the EO Officer, in writing, of:

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

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

I. Corrective Actions/Sanctions for the WIB

- 1. A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively, must include the steps and the specific time period it will take the WIB to achieve voluntary compliance. (See Section 37.94 for corrective action steps.)
- 2. Monetary corrective action may not be paid from federal funds.
- 3. If the WIB receives a finding of noncompliance, the following sections of Title 29 CFR Part 37 may be referred to for detailed information:
  - a) Final Determinations, Sections 37.90-37.101
  - b) Breaches of Conciliation Agreements, Sections 37.102-37.105
  - c) Subpart E-Federal Procedures for Effecting Compliance, Sections 37.110-37.115

J. Intimidation and Retaliation Prohibited

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIA; 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 of WIA or Title 29 CFR Part 37. 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.

<b>Title</b>	<b>Nondiscrimination and Equal Opportunity Complaint Procedures for WIA Programs</b>		
<b>Policy Number</b>	21	<b>Revision Number</b>	21B
<b>Effective Date</b>	1-16-2008	<b>Revision Date</b>	
<b>References</b>	WIA Directive WSD07-6, Subject: Nondiscrimination and Equal Opportunity Procedures (January 16, 2008)		
<b>Key Words</b>			
<b>Author</b>	Laura Stebbins		
<b>Section(s) Amended</b>	References F – Complaints filed with the WIB #2, #8, and #9(b) Omitted specific name of State EO Officer throughout policy		
<b>Adopted Comm.</b>	Executive	<b>Date:</b>	3/12/2008
<b>Adopted WIB</b>	4/9/2008	<b>Attest:</b>	Laura Stebbins