



**WORKFORCEALLIANCE**  
**OF THE NORTH BAY**  
DRIVING WORKFORCE TALENT

**REGIONAL WORKFORCE DEVELOPMENT BOARD  
POLICY AND OVERSIGHT COMMITTEE MEETING  
AGENDA**

**Tuesday, October 2, 2018  
3:00 PM**

**Locations:**

**Napa County: Workforce Alliance of the North Bay Offices, 1546 First Street, Second Floor, Napa, CA**  
**Lake County: 100 C Street, Galt, CA**  
**Marin County: 1800 Ignacio Blvd, Novato, CA**  
**Mendocino County: 175 E. Church St. Ukiah, CA**

CALL TO ORDER		
I.	3:00	A. Introductions B. Public Comment
CONSENT CALENDAR		
These matters typically include routine financial or administrative <b>action items</b> requiring a vote. Any item will be discussed separately at the request of any person. Items are approved with one single motion		
II.	3:05	A. None
REGULAR CALENDAR		
III.	3:05	A. Purpose and goals The committee will review its assigned purpose and goals for the policy and oversight committee. Expectations will be discussed as a part of this agenda item.  B. Calendar The committee will discuss a calendar for meetings. <b>(Action)</b>  C. Review and approve Workforce Alliance of the North Bay's policies. <b>(Action)</b> Staff requests the committee review, make recommendations if needed, approve and forward policies on to the regional workforce board/executive committee. 1. Incident Reporting 2. Limited English Proficiency 3. Personally Identifiable Information 4. Nondiscrimination and Equal Opportunity  D. Review 2017-18 Performance Reports Committee will discuss current performance report format, review 2017-18 performance of AJCC contractors and discuss other indicators of performance.
INFORMATION/DISCUSSION ITEMS		
IV.	4:20	A. None
MEMBER/DIRECTOR REPORTS		
V.	4:20	A. Member B. Director
ADJOURN		
VI.	4:30	

## INCIDENT REPORTING

---

### PURPOSE

This policy outlines the procedure for reporting incidents, including but not limited to criminal fraud, criminal abuse, or other criminal activity and noncriminal complaints, such as gross waste of funds, to the Compliance Review Office (CRO) of the Employment Development Department (EDD) and the Department of Labor's (DOL) Office of Inspector General (OIG). This policy applies to the Workforce Alliance of the North Bay (Alliance) and its subrecipients under the Workforce Innovation and Opportunities Act (WIOA). Nothing in this procedure should preclude or discourage the reporting of criminal incidents to local authorities as well.

### SCOPE

Workforce Innovation and Opportunity Act Title I contracted Service Providers

### RESPONSIBLE PARTY

Workforce Alliance of the North Bay  
Regional Workforce Development Board

### REFERENCES

- Title 20 Code of Federal Regulations (CFR) Sections 667.505 and 667.630
- DOL Training Employment and Guidance Letter 2-12, Employment and Training Administration (ETA) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct (July 12, 2012)
- Workforce Services Directive WSD12-18, Incident Reporting (June 12, 2013)

### DOCUMENTS

- Incident Report Form

### DEFINITIONS

*Complaint* – for this policy, means criminal and noncriminal complaints accepted by DOL as incidents, such as gross waste of funds, mismanagement, and dangers to public health and safety.

*Subrecipient* - for this policy, means a recipient that does not receive WIOA funds directly from the State, but rather through the Alliance.

*Emergency* – a situation involving imminent health or safety concerns, or the imminent loss of funds exceeding an amount larger than \$50,000.

*Employee/Participant Misconduct* – actions occurring during or outside work hours that reflect negatively on the Employment Development Department (EDD) or its mission, including, but not limited to: conflict of interest or the appearance of conflict of interest involving outside employment, business and

professional activities; the receipt or giving of gifts, fees, entertainment, and favors; misuse of government property; and, misuse of official information and other activities that might adversely affect the confidence of the public in the integrity of the government as well as serious violations of federal and State laws.

*Fraud, Misfeasance, Nonfeasance or Malfeasance* – any alleged deliberate action which may be in violation of government statutes and regulations. This category includes, but is not limited to, indications of bribery, forgery, extortion, embezzlement, theft of participant checks, kickbacks from participants or contractors, intentional payments to a contractor without the expectation of receiving services, payment to ghost enrollees, misuse of appropriated funds, misrepresenting information in official reports, and falsification of records and claims regarding trainees (e.g. knowingly enrolling ineligible participants). Criminal fraud is a type of larceny and is punishable under both federal and California law as a felony. Civil fraud is subject to tort actions under civil laws.

*Gross Mismanagement* - any actions or situations arising out of management ineptitude or oversight and leading to a major violation of the legislative process, regulations, or contract/grant provisions. These actions or situations have the potential to severely hamper accomplishment of program goals, waste government resources, and jeopardize future support for a particular project. This category includes, but is not limited to, unauditable records, unsupported costs, highly inaccurate fiscal reports or program reports, payroll discrepancies, payroll deductions not paid to the IRS or the State of California, and lack of good internal control procedures.

*Incident Report* - the primary form for reporting instances of fraud, misapplication of funds, gross mismanagement, and any other incidents of known or suspected criminal or other serious activities.

*Misapplication of Funds* - any alleged deliberate use of funds, assets or property not authorized or provided for by legislation or regulations, grants, or contracts. This category includes, but is not limited to, nepotism, political patronage, use of participants for political activity, ineligible enrollees, conflict of interest, failure to report income from federal funds, violation of contract/grant procedures, the use of government funds for other than specified purposes, and the use of WIOA funds for other than WIOA purposes.

*Standard of Conduct Violations* - violations of terms and conditions stipulated in the subgrant agreement. The relevant stipulations in the subgrant agreement are General Assurances, Employment of Former State Employees, Conducting Business Involving Relatives, Conducting Business Involving Close Personal Friends and Associates, Avoidance of Conflict of Economic Interest, and Maintenance of Effort.

*OIG Hotline* - The OIG operates the hotline to receive and process allegations of fraud, waste, and abuse concerning grants, contracts, programs and operations. The OIG also uses the hotline to address allegations of criminal activity and serious misconduct involving government employees.

---

---

## POLICY

### I. General

- A. All Alliance staff members and subrecipients that receive WIOA funds must be alert for instances of fraud, abuse, and criminal activity committed by staff, contractors, or program participants and report all such instances to the Alliance, OIG and the EDD CRO immediately.
- B. Each Alliance subrecipient shall establish appropriate internal program management procedures to prevent and detect fraud, abuse, and criminal activity. These procedures must include a reporting process to ensure that the Alliance, OIG and CRO are notified

immediately of any allegations of WIOA-related fraud, abuse, or criminal activity. Internal management procedures must be in writing and include the designation of a person on the subrecipients' staff who will be responsible for such notifications.

- C. Alliance subrecipients must establish, document, and implement procedures to immediately notify the Alliance of any suspected or proven fraud, abuse, or other criminal activity involving WIOA-funded activities. Subrecipients must be alert for instances of fraud, abuse, and criminal activity committed by staff, contractors, or program participants and report all such instances to the Alliance, OIG and CRO immediately. Subrecipients detecting the presence or appearance of fraud, abuse, or other criminal activity must obtain sufficient information to provide a clear, concise report of each incident. Reports must include a statement of all facts, known at the time, as well as any known or estimated loss of WIOA funds resulting from the incident. It is important that an initial report is made to the Alliance, OIG and CRO within one working day of the detection of the incident. The submission of an incident report should not be delayed even if all facts are not readily available. Any facts subsequently developed by the subrecipient are to be forwarded in a supplemental incident report.
- D. The reporting procedures do not supersede the responsibility for subrecipients to safeguard WIOA funds by taking prompt and appropriate corrective action when any evidence of a violation of WIOA or its implementing regulations is found.

## II. Reporting

- A. Immediately upon detection or discovery of information alleging fraud, abuse, or other criminal activity involving WIOA funds, the Alliance subrecipients will notify the Alliance Complaints Analyst by either telephone or email as follows:

**Tamara Ochoa**

Telephone: (707) 699-1650

Email: [tochoa@workforcealliancencorthbay.org](mailto:tochoa@workforcealliancencorthbay.org)

- B. Within one workday of detection or discovery of information alleging fraud, abuse, or other criminal activity involving WIOA funds, a written incident report shall be prepared by the detecting entity. The report must be submitted on the Alliance Incident Report Form containing the requested information. Submit the report to the Alliance, CRO, and OIG as follows:

The Alliance: Attention: Operations Unit  
Workforce Alliance of the North Bay  
1546 First Street, Napa, CA 94559

CRO: Attention: Compliance Resolution Unit  
Compliance Review Office, MIC 22  
Employment Development Department  
P.O. Box 826880  
Sacramento, CA 94280-001

OIG: (choose one of the following methods)  
Website: [www.oig.do.gov/hotlinecontact.htm](http://www.oig.do.gov/hotlinecontact.htm)  
Telephone: 1-800-347-3756  
FAX: (202) 693-7020  
Mail: Office of Inspector General  
Complaints Analysis Office  
200 Constitution Avenue, N.W., Room S-5506  
Washington, D.C. 20210

- C. Allegations considered to be of an emergency nature may be reported by telephone to the Compliance Resolution Unit Supervisor at (916) 653-0298 and by calling the OIG/DOL Hot Line at 1-800-347-3756 and followed immediately thereafter by a written incident report.
- D. Whenever the entity reporting the allegation of an incident believes that immediate action to prevent further financial loss or other damage is necessary, or recovery of funds or property may be impeded if immediate action is not taken, the reporting entity has the responsibility to take any action it deems appropriate, including contacting the local law enforcement agency. Any immediate action taken or planned by the reporting entity must be reported to the CRO when the incident report is submitted.
- E. The Workforce Services Division will forward any incident report it receives to the CRO. The CRO will record any incident report it receives in the WIOA Incident Report System and forward the incident report to DOL/ETA, Region 6, within one working day of receipt. However, the CRO may have to contact the reporting entity for clarification or additional details prior to forwarding it to Region 6. Concurrently with its transmittal of the incident report to Region 6, the CRO will, when applicable, notify the reporting entity to take appropriate action to recover misspent funds, or to contain its financial liability.
- F. Upon receipt, Region 6 will forward the incident report to the DOL Regional OIG, San Francisco. Subsequently, Region 6 will advise the EDD of the action to be taken by the DOL Regional OIG. If the OIG decides to investigate the incident, the CRO will wait for the OIG's results before commencing the state-level formal resolution. If the OIG decides not to investigate the incident, the CRO will request, when appropriate, a special monitoring review or an investigation by the appropriate state entities. Otherwise, the CRO will require the Alliance to submit its fact finding and local resolution.
- G. Allegations of fraud, abuse, or other criminal activity in WIOA-funded programs may originate from sources other than subrecipients. Such sources may include informants, independent auditors, or local law enforcement agencies. Whenever the EDD receives an allegation from such source, the CRO will prepare an incident report (DOL Form DL 1-156) and submit it to Region 6, in accordance with this directive. In such a case, the CRO will, when appropriate, inform the subject subrecipient of the incident reported and advise the latter of the need to take certain action. Upon contact from the CRO, the subrecipient will contact the Alliance Complaints Analyst and inform them of the report.
- H. During an investigation, based on a report of fraud or abuse, the DOL OIG investigators or auditors may contact a subrecipient regarding an incident of which the subrecipient was not previously aware. Upon learning of the incident from federal sources, the subrecipient should contact the CRO to determine whether the latter is aware of the incident. If the subrecipient is not aware of the allegations but the CRO is, then the CRO will, when appropriate, inform the subrecipient of the specific allegations contained in the incident report. The subrecipient will contact the Alliance Complaints Analyst and inform them of the allegations.
- I. Action will not be taken against any complainant for disclosing information concerning criminal or improper activities or making a valid complaint to proper authorities. Complainants may remain anonymous. If a complainant considers that their position will be compromised by reporting information via an incident report, they may send the report directly to the OIG.

---

---

## **POLICY UPDATE HISTORY**

(Date Board Approves) – New Policy

## **INQUIRIES**

Questions regarding this policy can be sent to the Complaints Analyst.

# INCIDENT REPORT FORM

<p>1. Type of report (check one)</p> <p><input type="checkbox"/> Initial</p> <p><input type="checkbox"/> Supplemental</p> <p><input type="checkbox"/> Final</p> <p><input type="checkbox"/> Other <i>[specify]</i></p>	<p>2. Type of incident (check one)</p> <p><input type="checkbox"/> Conduct violation</p> <p><input type="checkbox"/> Criminal violation</p> <p><input type="checkbox"/> Program violation</p>
<p>3. Allegation against (check one)</p> <p><input type="checkbox"/> Contractor</p> <p><input type="checkbox"/> Program Participant</p> <p><input type="checkbox"/> Other <i>[(specify), give name and position of employee(s), list telephone number, Social Security Account number, if applicable, and other identifying data.]</i></p>	
<p>4. Location of incident</p> <p><i>[give complete name(s) and addresses of organizations(s) involved]</i></p>	
<p>5. Date and time of incident/discovery <i>[date, time]</i></p>	
<p>6. Source of complaint (check one)</p> <p><input type="checkbox"/> Audit    <input type="checkbox"/> Contractor    <input type="checkbox"/> Program Participant    <input type="checkbox"/> Public</p> <p><input type="checkbox"/> Investigative Law Enforcement Agency <i>[(specify)]</i></p> <p><input type="checkbox"/> Other <i>[(specify), give name and telephone number so additional information can be obtained.]</i></p>	
<p>7. Contacts with law enforcement agencies</p> <p><i>[specify name(s) and agency contacted and results]</i></p>	
<p>8. Persons who can provide additional information</p> <p><i>[(include custodian of records) name, position or job title, employment, local address (street, city and state) or organization, if employed and telephone number]</i></p>	
<p>9. Details of incident</p> <p><i>[describe the incident]</i></p>	

## LIMITED ENGLISH PROFICIENCY

---

### PURPOSE

The purpose of this policy is to transmit federal and state policy guidance regarding the prohibition against national origin discrimination as it affects persons with limited English proficiency (LEP).

### SCOPE

Workforce Innovation and Opportunity Act Title I contracted Service Providers

### RESPONSIBLE PARTY

Workforce Alliance of the North Bay  
Regional Workforce Development Board

### REFERENCES

- WIOA (Public Law 113-125) Section 188
- Title 29 CFR Part 38
- Department of Labor (DOL) Training and Employment Notice (TEN) 28-16, Subject: Best Practices, Partnership Models, and Resources Available for Serving English Language Learners, Immigrants, Refugees, and New Americans (January 9, 2017)

### DEFINITIONS

*Babel Notice* – a short notice included in a document or electronic medium (e.g. web site, “app,” email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages (29 CFR Section 38.4[i]).

*Employment-related training* – training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment (29 CFR Section 38.4[t]).

*LEP individual* – an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. An LEP individual may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing) (29 CFR Section 38.4[hh]).

*LEP Plan* – a written language access plan which assists in ensuring that LEP individuals have meaningful access to WIOA Title I – financially assisted programs and activities (29 CFR Section 38.9 Appendix).

*Meaningful Access* – language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.

*Primary language* – an individual's primary language is the language in which an individual most effectively communicates, as identified by the individual.



---

## POLICY

- I. Reasonable Steps to Ensure Meaningful Access for LEP individuals
  - A. The Workforce Alliance of the North Bay (The Alliance) and its service providers shall take reasonable steps to ensure that LEP individuals have meaningful access to their programs and activities. These reasonable steps shall include, but are not limited to, the following:
    - 1. Conducting an assessment of an LEP individual to determine their language assistance needs.
    - 2. Providing oral interpretation or written translation of both hard-copy and electronic materials, in the appropriate non-English languages, to LEP individuals.
    - 3. Conducting outreach to LEP communities to improve service delivery in needed languages.
  - B. Reasonable steps for providing meaningful access to training programs shall include, but are not limited to the following:
    - 1. Written training materials in appropriate non-English languages by written translation, or by oral interpretation, or summarization.
    - 2. Oral training content in appropriate non-English languages through in-person or telephone translation.
  - C. Furthermore, The Alliance and its service providers shall ensure that every program delivery method, whether it be in person, electronic, or by phone, conveys in the appropriate language how an LEP individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training available to them.
- II. Language Assistance Services
  - A. Language assistance generally comes in two forms: oral interpretation or written translation. The Alliance and its service providers shall ensure that these services are free of charge and provided in a timely manner. An LEP individual must be given adequate notice about the existence of interpretation and translation services and that they are available free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training.
- III. Interpreter Services
  - A. WIOA Service Providers for the Alliance shall not require an LEP individual to provide their own interpreter. Service Providers shall not rely on an LEP individual's minor child or adult family member or friend to interpret or facilitate communication, except for the following circumstances:
    - 1. In emergency situations while awaiting a qualified interpreter.
    - 2. When the information conveyed is of minimal importance to the services to be provided.
    - 3. When an LEP individual specifically requests that an accompanying adult provide language assistance and they agree to provide assistance to the individual. If the service provider permits an accompanying adult to serve as an interpreter for an LEP individual, it must make and retain a record of the LEP individual's decision to use their own interpreter.

- B. Finally, where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, Local Areas can still provide their own, independent interpreter, even if an LEP individual wants to use their own interpreter as well. This also applies in cases where the competency of the interpreter requested by the LEP individual is not established.

#### IV. LEPs and Vital Information

- A. Federal Regulations require written materials to be translated for those languages that are spoken by a significant portion of the population eligible to be served, or likely to be served. The Alliance has determined that a five percent (5%) threshold shall apply when considering which languages are spoken by a significant portion of the populations. No languages currently or have historically met the 5% threshold, however, the WIOA service providers of the Alliance will be responsible for periodically reviewing the potential eligible population of their assigned service area to determine if the language threshold has been met in their area.
- B. For all spoken languages and LEP individuals, the Alliance and its service provider shall take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service, or training that is available to them. Vital information may be conveyed orally if not translated.
- C. Finally, to the extent otherwise required by 29 CFR Part 38, once a service provider becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service, or training, the service provider must convey vital information in that language.

#### V. Babel Notice

- A. A babel notice is now required for all communications of vital information. “Babel Notice” means a notice which provides written translation in multiple languages of a phrase which informs LEP individuals of the availability of translation and interpretation services upon request. “Vital Information” shall include any notices, decisions, or letters sent to an individual, either electronically or in writing.
- B. Based on policy direction and state guidance, the Alliance has determined that the top 6 non-English spoken languages in California, as determined by the United States Census Home Survey, will be the necessary languages to be displayed on the Babel Notice. Service providers shall begin sending the Alliance Babel Notice with all communications of vital information.

#### VI. Written LEP Plan

- A. The Alliance and its service providers will develop, implement, and periodically revise an LEP plan that addresses the following elements in our local area to ensure meaningful access to LEP individuals:
  - 1. The process to determine the language needs of individuals who may or may seek to participate in programs and activities (self-assessment or needs – assessment) that receive financial assistance under WIOA Title I.
  - 2. The results of assessment.
  - 3. Timelines for implementing the LEP plan.
  - 4. All language services to be provided to LEP individuals.
  - 5. The manner in which LEP individuals will be advised of available services.
  - 6. Steps LEP individuals should take to request language assistance.

7. The manner in which service provider staff will provide language assistance services.
  8. Steps to be taken to implement the LEP plan.
  9. The manner in which service provider staff will be trained.
  10. Steps the service provider's will take to ensure quality control, including monitoring implementation, establishing a complaint process, timely addressing complaints, and obtaining feedback from stakeholders and employees.
  11. The manner in which the service providers will document the provisions of language services.
  12. The schedule for revising the LEP plan.
  13. The individual(s) assigned to oversee implementation of the LEP plan.
  14. Allocation of resources to implement the LEP plan.
- B. The elements of the LEP plan will be tailored to the Alliance service providers specific programs and activities. Revisions to the plan will reflect the following:
1. New recommendations and government guidance.
  2. Changes in the Local Area's operations as well as the experiences and lessons learned.
  3. Changing demographics.
  4. Stakeholder and beneficiary feedback.
- 

## **POLICY UPDATE HISTORY**

(Date Board Approves) – New Policy

## **INQUIRIES**

Questions regarding this policy can be sent to the Operations Analyst.

## PERSONALLY IDENTIFIABLE INFORMATION (PII)

---

### PURPOSE

The purpose of this policy is to provide guidance to Workforce Alliance of the North Bay (Alliance) service providers on compliance with the requirements of acquiring, handling, transmitting, and protecting Personally Identifiable Information (PII).

### SCOPE

Workforce Alliance of the North Bay Staff  
Workforce Innovation and Opportunity Act Title I contracted Service Providers

### RESPONSIBLE PARTY

Workforce Alliance of the North Bay  
Regional Workforce Development Board

### REFERENCES

- Workforce Innovation and Opportunity Act (WIOA)
- U.S. Department of Labor, Training and Employment Guidance Letter (TEGL) WIOA NO. 39-11
- Federal Information Processing Standards (FIPS) 140-2
- Office of Management and Budget (OMB) M-07-16

### DEFINITIONS

*Non-Sensitive PII* - Information that if disclosed, by itself, could not reasonably be expected to result in personal harm. Essentially, it is stand-alone information that is not linked or closely associated with any protected or unprotected PII. Examples of non-sensitive PII include information such as first and last names, e-mail addresses, business addresses, business telephone numbers, general education credentials, gender, or race. However, depending on the circumstances, a combination of these items could potentially be categorized as protected or sensitive PII.

*PII* - Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

*Protected PII* - Information that if disclosed could result in harm to the individual whose name or identity is linked to that information. Examples of protected PII include, but are not limited to, social security numbers (SSNs), credit card numbers, bank account numbers, home telephone numbers, ages, birthdates, marital status, spouse names, educational history, biometric identifiers (fingerprints, voiceprints, iris scans, etc.), medical history, financial information, and computer passwords.

*Sensitive Information* - Any unclassified information whose loss, misuse, or unauthorized access to or modification of could adversely affect the interest or the conduct of Federal programs, or the privacy to which individuals are entitled under the Privacy Act.

*Service Provider* - WIOA Title I contracted service providers for One-Stop Operator, and Adult, Dislocated Worker, and Youth Services, as well as any other contracted entity providing WIOA services.

---

## POLICY

- I. Federal Law and OMB policies require that PII and sensitive information be protected. To ensure compliance with Federal Law and Regulations, Alliance service providers must secure the storage and transmission of PII and sensitive data developed, obtained, or otherwise associated with Workforce Innovation and Opportunities Act (WIOA) funds.
- II. In addition to the requirement above, all grantees must also comply with all the following:
  - A. To ensure that such PII is not transmitted to unauthorized users, all PII and other sensitive data transmitted via e-mail or stored on CDs, DVDs, thumb drives, etc. must be encrypted using Federal Information Processing Standards (FIPS) 140-2 compliant and National Institute of Standards and Technology (NIST) validated cryptographic module. **Service providers must not e-mail unencrypted sensitive or protected PII to any entity.**
  - B. Service providers shall ensure that any PII used during the performance of their grant has been obtained in conformity with this policy and applicable Federal and State Laws governing confidentiality of information.
  - C. Service providers further acknowledge that all PII data obtained through the provision of WIOA services shall be stored in an area that is physically safe from access by unauthorized persons at all times and the data will be processed using grantee issued equipment, managed Information Technology (IT) services, and designated locations approved by the Alliance. Accessing, processing, and storing of WIOA grant PII data on personally owned equipment, at off-site locations (e.g. employee's home), and non-grantee managed IT services (e.g. Yahoo mail), is strictly prohibited.
  - D. Service providers' employees and other personnel who will have access to sensitive confidential/proprietary/private data must be advised of the confidential nature of the information, the safeguards required to protect the information, and that there are civil and criminal sanctions for noncompliance with such safeguards that are contained in Federal and State laws.
  - E. Service providers must have policies and procedures in place under which their employees and other personnel, before being granted access to PII, acknowledge their understanding of the confidential nature of the data and the safeguards with which they must comply in their handling of such data as well as the fact that they may be liable to civil and criminal sanction for improper disclosure.
  - F. Service providers must not extract information from data supplied for any purpose not stated in the related Memorandum of Understanding (MOU), contracts, and/or agreements.
  - G. Access to any PII created by the WIOA grant must be restricted to only those employees of the service provider who need it in their official capacity to perform duties in connection with the scope of work in related MOU, contracts, and/or agreements.
  - H. All PII data must be processed in a manner that will protect the confidentiality of the records/documents and is designed to prevent unauthorized persons from retrieving such records by computer, remote terminal, or any other means. Data may be downloaded to, or maintained on, mobile or portable devices only if the data are encrypted using NIST validated

software products based on FIPS 140-2 encryption. In addition, wage data may only be accessed from secure locations.

- I. Service providers must permit the Alliance to make onsite inspections during regular business hours for the purpose of conducting audits and/or conducting other investigations to assure compliance with the confidentiality requirements. In accordance with this responsibility, services providers must make records available to authorized persons for the purpose of inspection, review, and/or audit.
  - III. A service provider's failure to comply with these requirements, or any improper use or disclosure of PII for an unauthorized purpose may result in termination or suspension of the WIOA grant, or the imposition of special conditions or restrictions, or such other actions as the Alliance may deem necessary to protect the privacy of participants or the integrity of data.
  - IV. Protected PII is the most sensitive information encountered by service providers and it is important to protect this information. Service Providers are required to protect PII and sensitive information when transmitting, collecting, transporting, storing, and/or disposing of information as well. Outlined below are steps to be followed to help protect PII:
    - A. Before collecting PII or sensitive information from participants, have participants sign releases acknowledging the use of PII for WIOA purposes only.
    - B. Whenever possible, use unique identifiers for participant tracking instead of SSNs. When tracking individuals using an SSN, a truncated version should be used so that the full SSN does not display (\*\*\*-\*\*-1111 for example).
    - C. When disposing of paper files containing PII, the documents shall be shredded. Any PII stored electronically shall be deleted using a secure manner.
    - D. Records containing PII shall never be left unattended and computer terminals shall be password protected when a computer is left unattended for any length of time.
    - E. Documents containing PII shall be locked in cabinets when not in use and at the end of each business day.
    - F. When transporting documents containing PII, the documents shall be secured in a locked mobile file storage box/case.
  - V. Any perceived or suspected breach of PII either electronically or by other means shall be reported immediately to the Alliance Operations Analyst, who will report it to the US Department of Labor Employment and Training Administration (ETA) Information Security at [ETA.CSIRT@dol.gov](mailto:ETA.CSIRT@dol.gov), (202) 693-3444.
- 
- 

## **POLICY UPDATE HISTORY**

(Date Board Approves) – New Policy

## **INQUIRIES**

Questions regarding this policy can be sent to the Alliance Operations Analyst.

## **NONDISCRIMINATION AND EQUAL OPPORTUNITY**

---

### **PURPOSE**

This policy provides guidance on the nondiscrimination and equal opportunity provisions found in Section 188 of the Workforce Innovation and Opportunities Act (WIOA) and Title 29 Code of Federal Regulations (CFR) Part 38 prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries' only, citizenship or participation in a WIOA Title I financially assisted program.

### **SCOPE**

Workforce Innovation and Opportunity Act Title I contracted Service Providers

### **RESPONSIBLE PARTY**

Workforce Alliance of the North Bay  
Regional Workforce Development Board

### **REFERENCES**

- Civil Rights Act of 1964 (Public Law 88-352) Titles VI and VII
- Education Amendment of 1972 (Public Law 92-318) Title IX
- Rehabilitation Act of 1973 (Public Law 93-112) Title V, Section 504
- Age Discrimination Act of 1975 (Public Law 94-135)
- American Disabilities Act of 1990 (ADA) (Public Law 101-336)
- Workforce Innovation and Opportunities Act (WIOA) (Public Law 113-128) Sections 121(b), 188, and 183(c)
- Title 20 Code of Federal Regulations (CFR) Sections 658.400
- Title 28 CFR Part 35, Subpart A
- Title 29 CFR Parts 31, 32, 34, 38, and 1690-1691
- Title 41 CFR Part 101-19, Subpart 101-19.6
- Title 45 CFR Part 90, Subpart D, Section 90.43(c)(3)
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP)
- Fair Employment and Housing Act Government Code Section 12900 – 12996
- Dymally-Alatorre Bilingual Services Act (DABSA), Government Code Section 7290-7299.8
- Workforce Services Directive WSD17-01, Subject Nondiscrimination and Equal Opportunity Procedures (August 1, 2017)



## DOCUMENTS

- Equal Opportunity Is The Law Notice/Poster
- WANB103 - Equal Opportunity Is The Law Acknowledgement Form
- WANB104 – Discrimination Complaint Form
- WANB105 – Discrimination Complaint Log

## DEFINITIONS

*Complaint* – an allegation of a violation of the nondiscrimination and equal opportunity provisions

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

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

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

---

---

## POLICY

- I. Equal Opportunity Officer - The Workforce Alliance of the North Bay (Alliance) has designated the following individual as the Equal Opportunity (EO) Officer for the four-county area of Napa, Marin, Lake, and Mendocino Counties:

**Tamara Ochoa**

1546 First Street, Napa, CA 94559

T: (707) 699-1950, California Relay Service 711

[EEOMail@workforcealliancenorthbay.org](mailto:EEOMail@workforcealliancenorthbay.org)

- A. The EO Officer’s responsibilities include the following:
  1. Serving as liaison with EDD EEO Office
  2. Investigating and monitoring the Alliance and its service providers’ WIOA Title I funded activities and programs.
  3. Reviewing written policies of the Alliance and its service providers.
  4. Developing, publishing, and enforcing the Alliance’s discrimination complaint procedures.
  5. Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with 29 CFR Section 38.40, and how an individual may file a complaint consistent with 29 CFR 38.69.
  6. Participating in continuing training and education, and ensuring that assigned staff receives the necessary training and support to maintain competency.



7. Informing participants, employees and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint process works.
- B. The EO Officer's identity and contact information shall appear on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs.
- C. The state shall be notified whenever the individual assigned as the EO Officer changes.

## II. Notice and Communication

- A. Initial and continuing notice of nondiscriminatory practices must be provided by Alliance service providers to participants and applicants. Service providers shall use the Alliance notice/poster titled **Equal Opportunity is the Law** that also includes language highlighting the right to file a complaint. Service providers shall use this notice/poster to meet the following criteria:
  1. Post prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the service provider's website pages.
  2. Disseminate in internal memoranda and other written or electronic communications with staff.
  3. Include in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available.
  4. Provide to each participant and employee; the notice must be made part of each employee's and participant's file. It must be part of both paper and electronic files, if both are maintained.
  5. Review with each participant and have them sign the Equal Opportunity is the Law Acknowledgement form. The acknowledgment form must be made part of each participant's file. It must be part of both paper and electronic files, if both are maintained.
- B. The notice shall be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment, employees, and participants with visual impairments. Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and employees with a visual impairment, a record that such notice has been given must be made part of the employee's or participant's file.
- C. The notice must be provided in appropriate languages other than English (29 CFR Section 38.36[b]).
- D. Distributed publications, electronic media and other communications including the homepage of the Alliance and its service providers' websites and broadcasts in news media which promote WIOA programs or activities, shall include language that the WIOA Title I financially assisted program or activity is an "equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities."
- E. Where hard copy or electronic materials indicate that the Alliance or its service providers may be reached by telephone, the telephone number of the California Relay Service (CRS), which can be reached by dialing 711 or 1-800-735-2922, must be indicated.

- F. The Alliance and its service providers shall take reasonable steps to ensure that limited English proficiency (LEP) individuals have meaningful access to programs and activities. Interpretation or translation services shall be provided free of charge, and in a timely manner as to ensure equal access to programs and activities.
- G. During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted programs or activity, whether this be in person or over the internet or using other technology, a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR Part 38 must be included, including the right to file a complaint of discrimination with the Alliance, its service providers, or the Director of the U.S. Department of Labor (DOL) Civil Rights Center (CRC ).

### III. Data and Information Collection and Maintenance

- A. Nondiscrimination data shall be collected and maintained by the Alliance and its service providers and will be maintained so that the Governor and/or the CRC may conduct statistical or other quantifiable data analyses to verify the compliance with Section 188 of the WIOA and 29 CFR Part 38.
- B. Nondiscrimination data must include, but is not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. The Alliance and its service providers shall record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Such information will be kept for a period of not less than three years from the close of the applicable program year, stored in a manner that ensures confidentiality, and will be used only for the purposes of any of the following:
  - 1. Recordkeeping and reporting.
  - 2. Determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities.
  - 3. Determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner.
  - 4. Other use authorized by law.
- C. Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (e.g., through password protection).

### IV. LEP and Preferred Language Data

- A. As indicated in 29 CFR Section 38.41, "LEP and preferred language" has been added to the list of categories of information that must be recorded about each applicant, registrant, eligible applicant/registrant, participant, and terminee. (LEP data does not need to be collected for employment or employees).

### V. Complaint Log

- A. Service providers shall promptly notify the Alliance, who will notify the state or CRC when any administrative enforcement actions or lawsuits are filed against them alleging

discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity.

B. The Alliance will maintain a log of complaints filed with the Alliance and/or its service providers alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity.

C. The Discrimination Complaint Log will contain the following information:

1. The name and address of the complainant
2. The basis of the complaint
3. A description of the complaint
4. The date the complaint was filed
5. The disposition and date of the disposition of the complaint
6. Other pertinent information

D. The complaint log will be mailed annually to the following address:

Equal Employment Opportunity Office  
Employment Development Department  
800 Capitol Mall, MIC 49  
Sacramento, CA 94280-0001  
Or, Emailed to EEOMAIL@edd.ca.gov

#### VI. Affirmative Outreach

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

1. Advertising the WIOA Title I programs and/or activities in media such as newspapers or radio programs that specifically target various populations.
2. Sending notices about openings in the WIOA Title I programs and/or activities to schools or community service groups that serve various populations.
3. Consulting with appropriate community service groups about ways in which the Alliance and/or its service providers may improve their outreach and service to various populations.

#### VII. Discrimination Prohibited Based on Disability

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

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

#### VIII. Accessibility Requirements

- A. No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities.
- B. All WIOA Title I-financially assisted programs and activities must be programmatically accessible; this includes:
  1. Providing reasonable accommodations for individuals with disabilities;
  2. Making reasonable modifications to policies, practices, and procedures;
  3. Administering programs in the most integrated setting appropriate;
  4. Communicating with persons with disabilities as effectively as with others; and
  5. Providing appropriate auxiliary aids or services.

#### IX. Reasonable Accommodation and Reasonable Modifications for Individuals with Disabilities

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

- B. With regard to any aid, benefit, service, training, and employment, reasonable modifications must be made in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity, which would constitute a fundamental alteration. For more information, see the definition of “fundamental alteration” found in 29 CFR Section 38.4(z).
- C. In circumstances where the Alliance or its service providers believe that a proposed accommodation would cause undue hardship, or proposed modification would fundamentally alter the program, it must be proven that compliance would result in such hardship and alteration.
  - 1. The decision will be made after considering all factors listed in the definitions of undue hardship and fundamental alteration.
  - 2. The decision will be accompanied by a written statement with the reasons the conclusion was made.
  - 3. A copy of the decision will be provided to the individual(s) who requested the accommodation or modification.
- D. If a requested accommodation has been determined to result in undue hardship or a modification would result in a fundamental alteration, the Alliance and/or its service providers must take any other action that would not result in such hardship or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.
- E. The Alliance and its service providers shall utilize A Reasonable Accommodation Policy and Procedure Guide, published by EDD, when processing reasonable accommodation requests. This document contains two sections: (1) general guidance and definitions for use when processing reasonable accommodation requests, and (2) step-by-step instructions on how to process these requests.

#### X. Service Animals

- A. Individuals with disabilities shall be permitted to use service animals for WIOA activities and in facilities providing WIOA services in the Alliance local area.

#### XI. Mobile Aids and Devices

- A. Individuals with mobility disabilities shall be permitted to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.
- B. Reasonable modifications shall be made to policies, practices, and/or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities. An exception would be when it has been demonstrated that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements.

#### XII. Complaint Processing 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 WIOA may file a written complaint using the Discrimination Complaint Form. A representative may file the complaint on the individual's behalf.

- B. The complaint may be filed with the Alliance EO Officer, or directly with the CRC at DOL, Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210
  - 1. If filing directly with the CRC, a complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Form (DL 1-2014a), which may be obtained either from the Alliance EO Officer or from CRC. However, no specific form or format is required to make a complaint valid.
  - 2. The Alliance EO Officer, or a designated alternate, will be available to assist in the preparation and completion of a complaint.
  - 3. The complainant or their representative will be permitted to file by mail or by delivery in person to the Alliance EO Officer or designated alternate.
- C. A complaint filed pursuant to Title 29 CFR 38 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 Local Area 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 WIOA.
  - 5. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.

### XIII. Complaints filed with Alliance

- A. 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 WIOA 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.
- B. 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
  - PO Box 826880
  - Sacramento, CA 94280-0001

Or, email to [EEOMAIL@edd.ca.gov](mailto:EEOMAIL@edd.ca.gov)

- C. 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:
1. A list of the issues raised in the complaint;
  2. 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;
  3. A period for fact-finding or investigation of the circumstances underlying the complaint; and
  4. A period during which the EO Officer attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution.

XIV. 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 38.69 through 38.72.
- 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:
1. 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.
  2. 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.
- E. 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.
- F. 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.
1. 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.

2. 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.
- G. 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:
1. For each issue raised in the complaint, a statement of either:
    - a) The EO Officer's decision for each issue and an explanation of the reasons underlying the decision, or
    - b) A description of the way the parties resolved the issue; and
  2. Notice that the complainant has the right to file a complaint with CRC, within 30 days of receipt of the Notice of Action, if they are dissatisfied with the EO Officer's final action on the complaint.
- H. 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 their 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 Alliance.
- I. CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 38.81, or for other good cause shown.
- J. The EO Officer shall notify the complainant in writing immediately upon determining that the Alliance does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIOA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with CRC within 30 days of receipt of the Notice.
- K. 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-WIOA cause of action, as well as filing a complaint under WIOA.

## XV. Corrective Actions/Sanctions for Recipients

- A. Overview of Corrective Actions, Sanctions, and Violations:
1. Corrective actions and sanctions are intended to guarantee equal access to programs, activities, and employment opportunities provided by WIOA financially assisted recipients. Corrective actions or sanctions will be applied as necessary when violations of WIOA Title 1, Section 188 or 29 CFR Part 38 are found.
  2. 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.
  3. 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.



B. Corrective Actions:

1. Corrective action is indicated in the following circumstances:
  - a) 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.
  - b) The assessment of the circumstances surrounding a complaint and/or grievance reveals barriers to equal opportunity or access.
  - c) A service provider refuses to implement voluntary corrective action, submit requested data or documentation, or provide access to premises or records during a compliance review.
2. When the local EO Officer identifies the need for corrective action, they will recommend to the service provider voluntary corrective action(s) and a reasonable minimum timeframe to completely correct each situation for which corrective action is recommended.
3. 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 service provider will be notified of the potential problem so that corrective action may be taken on the provider's own volition.

C. Violations:

1. 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.
2. 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.

D. Sanctions:

1. The Alliance'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.
2. Sanctions which may be imposed by the Alliance upon sub-recipients include, but are not limited to:

- a) Reduction in funding.
- b) Restriction from bidding on competitive or discretionary funds.
- c) Disallowance of costs associated with the particular violation or deficiency.
- d) Termination of future funding.

#### XVI. Actions by CRC for Complaints Filed Against the Alliance

- A. CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 38.78. When CRC accepts a complaint for investigation, it shall:
  - 1. Notify the EO Officer and the complainant of the acceptance of the complaint for investigation; and
  - 2. Advise the EO Officer and complainant on the issues over which CRC has accepted jurisdiction.
- B. The EO Officer, the complainant, or a representative may contact CRC for information regarding the complaint filed.
- C. 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 (29 CFR Section 38.79).
- D. CRC, per WIOA 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.
- E. Where CRC lacks jurisdiction over a complaint, CRC shall:
  - 1. Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIOA or Title 29 CFR Part 38; and
  - 2. Refer the complainant to the appropriate federal, state, or local authority, when possible.
- F. CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.
- G. 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).
- H. 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.
- I. Under the America's Job Centers of California (AJCC) delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in an AJCC delivery system, the following procedures apply:
  - 1. If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIOA and by a civil rights law enforced by the federal grant making

agency, CRC and the grant making agency have dual jurisdiction over the complaint. CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.

2. If the complainant alleges discrimination on the basis that is prohibited by Section 188 of WIOA, but not by any civil rights laws enforced by the federal grant making agency, CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to Title 29 CFR Part 38. CRC will advise the complainant and the EO Officer of the referral.
- J. CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:
1. The mediation is voluntary; the parties must consent before the mediation process will proceed.
  2. The mediation will be conducted under the guidance issued by CRC.
  3. 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 38.82 through 38.88.
- K. 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:
1. The specific findings of the investigation;
  2. The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
  3. Whether it will be necessary for the Alliance to enter into a written agreement; and
  4. The opportunity to participate in voluntary compliance negotiations.
- L. 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.

#### XVII. Corrective Actions/Sanctions for the Alliance

- A. A Letter of Findings Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 38.86 or 38.87, 38.88 and 38.89, or 38.90, respectively, must include the steps and the specific time period it will take the Alliance to achieve voluntary compliance. (See Section 38.90 for corrective action steps.)
- B. Monetary corrective action may not be paid from federal funds.
- C. If the Alliance receives a finding of noncompliance, the following sections of Title 29 CFR Part 38 may be referred to for detailed information:
  1. "Final Determinations", Sections 38.96 through 38.97
  2. "Breaches of Conciliation Agreements", Sections 38.98 through 38.100
  3. Subpart E – "Federal Procedures for Effecting Compliance", Sections 38.110 through 38.115

#### XVIII. Intimidation and Retaliation Prohibited

- A. The Alliance and/or its service providers may not 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 WIOA; furnished information to, or assisted or participated in any manner

in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity of WIOA or Title 29 CFR Part 38. The sanctions and penalties contained in these procedures may be imposed against any entity which engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

---

## **POLICY UPDATE HISTORY**

January 11, 2017 – New Policy

September 7, 2017 – Policy revisions include: new policy template, updated Alliance EO officer, and additional enhancements that align with and implement the Employment Development Department Directive (WSD17-01) (August 1, 2017).

## **INQUIRIES**

Questions regarding this policy can be sent to the Alliance EO Officer.

## EQUAL OPPORTUNITY IS THE LAW

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I–financially assisted program or activity.

The recipient must not discriminate in any of the following areas: deciding who will be admitted, or have access, to any WIOA Title I–financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

### WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIOA Title I–financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either: the recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose);

**Tamara Ochoa, Equal Opportunity Officer**  
**Workforce Alliance of the North Bay**  
**1546 First Street, Napa, CA 94559**  
**Telephone: 1-707-699-1950; California Relay**  
**Service: 711 Email:**  
**EEOMail@workforcealliancencorthbay.org**

Or

**Director, Civil Rights Center (CRC), U.S. Department of Labor**  
**200 Constitution Avenue NW, Room N-4123, Washington, DC 20210**  
or electronically as directed on the CRC website at [www.dol.gov/crc](http://www.dol.gov/crc).

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above). If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient). If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

## EQUAL OPPORTUNITY IS THE LAW

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I–financially assisted program or activity.

The recipient must not discriminate in any of the following areas: deciding who will be admitted, or have access, to any WIOA Title I–financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

### WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIOA Title I–financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either: the recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose);

**Tamara Ochoa, Equal Opportunity Officer**  
**Workforce Alliance of the North Bay**  
**1546 First Street, Napa, CA 94559**  
**Telephone: 1-707-699-1950; California Relay**  
**Service: 711 Email:**  
**EEOMail@workforcealliancenorthbay.org**

Or

**Director, Civil Rights Center (CRC), U.S. Department of Labor**  
**200 Constitution Avenue NW, Room N-4123, Washington, DC 20210**  
or electronically as directed on the CRC website at [www.dol.gov/crc](http://www.dol.gov/crc).

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above). If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient). If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

# EQUAL OPPORTUNITY IS THE LAW

## Acknowledgement Form

Please read the notice "Equal Opportunity Is The Law." If you have any questions or need further explanation to better understand your rights, please contact your service provider.

A copy of the notice "Equal Opportunity Is The Law" will be provided to you.

Please sign the portion below and return it to your service provider.

My service provider is: \_\_\_\_\_

---

---

By my signature below, I hereby confirm I have read the notice "Equal Opportunity Is The Law." Any questions or concerns have been addressed with the service provider. I have been provided with a copy of the notice "Equal Opportunity Is The Law" and understand I have the right to file a complaint if I think I have been subjected to discrimination by a WIOA Title I financially assisted program or activity. If I think I need assistance filing a complaint, I understand I can request assistance.

Name (Printed): \_\_\_\_\_

Name (Signature): \_\_\_\_\_

Date: \_\_\_\_\_

---

---

### For Office Use

I have reviewed the notice "Equal Opportunity Is The Law" with the above client, addressed any questions and concerns they had, and provided a copy of the notice to them.

Staff Name (Signature): \_\_\_\_\_

Date: \_\_\_\_\_





#### 4. Tell us about the incident(s):

- Explain briefly what happened and how you were discriminated against.
- Provide the date(s) when the incidents(s) occurred.
- Indicate who discriminated against you. 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 may help us better understand your complaint.

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

Name	Address	Phone

**6. Basis for the discrimination:**

- Check the type of discrimination you experienced, such as age, race, color, national origin, disability, etc.
- If you believe more than one basis was involved, you may check more than one box:

<input type="checkbox"/> Age – <i>Date of birth</i> :	<input type="checkbox"/> Citizenship or status as alien U.S. worker
<input type="checkbox"/> Color	<input type="checkbox"/> Disability
<input type="checkbox"/> National origin (including limited English proficiency)	<input type="checkbox"/> Political affiliation or belief
<input type="checkbox"/> Retaliation	<input type="checkbox"/> Religion
<input type="checkbox"/> Race – <i>Indicate race</i> :	<input type="checkbox"/> Sexual harassment
<input type="checkbox"/> Sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity/expression)	<input type="checkbox"/> Sexual orientation
	<input type="checkbox"/> Other ( <i>Specify</i> ):

**7. Have you previously filed a complaint against this person(s)/entity?**☐ Yes ☐ NoIf **YES**, answer the questions below.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: State: ZIP Code:

Phone number: 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.

**8. Choosing a personal representative:**

- You may choose to have someone else represent you in dealing with this complaint. It may be a relative, friend, union representative, 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 ☐ NoIf **YES**, complete the section below. If **NO**, go to Section 9.**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 Code:

Phone: Fax:

E-mail:

## 9. Alternate Dispute Resolution (ADR) also known as mediation.

**Notice:** You must indicate if you wish to mediate your case. The Workforce Alliance of the North Bay cannot begin to process your complaint until you have made a selection. Please check **YES** or **NO** in the spaces 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 omission of guilt by the person(s)/entity that you claim discriminated against you.
  - Mediation is conducted by a trained, qualified, and impartial mediator.
  - Your (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 claim discriminated against you.**
  - **Agreement are legally binding on both parties.**
  - 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?**  
(Please check only one box)

☐ **YES**, I want to mediate.

☐ **NO**, please investigate.

## 10. Complainant's Signature:

Your signature on this form will initiate the processing of this complaint. By signing this form, you are declaring under penalty of perjury that the information included is true and correct to the best of your knowledge or belief.

**Signature:**

**Date:**

Workforce Alliance of the North Bay is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.