



## NONDISCRIMINATION AND EQUAL OPPORTUNITY

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### 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. These provisions prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, 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.

### 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)

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

## 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

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## 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:

**Taylor Swain**

1546 First Street, Napa, CA 94559

T: (707) 699-1952, California Relay Service 711

[EEOMail@workforcealliancenorthernbay.org](mailto:EEOMail@workforcealliancenorthernbay.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 materials must also provide a TTY number or equally



effective communication system. The telephone number of the California Relay Service (CRS), which can be reached by dialing 711 or 1-800-735-2922, can 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](mailto: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.

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## **POLICY UPDATE HISTORY**

December 13, 2017 – New Policy

October 11, 2018 – 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.

