ELEMENT EIGHT
Complaint Processing Procedures

PURPOSE

To communicate the requirement of recipients[1] to adopt and publish procedures providing for the prompt and equitable resolution of complaints alleging violations of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act (WIA) of 1998.

REFERENCES

1) Workforce Investment Act, Section 188(a)(2), (4), and (5).
2) 29 CFR 37.54(d)(1)(vii).

REQUIREMENTS

The South Dakota Department of Labor and Regulation (SD DLR), as the recipient of Workforce Investment Act funding, has developed complaint processing procedures as required under 29 CFR 37.54 and 37.70 through 37.89.29 CFR 37 requires WIA recipients to ensure nondiscrimination and equal opportunity in admission or access to, opportunity or treatment in, or employment, in the administration of or in connection with any program or activity funded in whole or in-part with WIA funds. To that end, all WIA recipients within the state of South Dakota shall designate an Equal Opportunity Officer[2] who will be responsible for adopting and publishing complaint procedures, and ensuring they are followed.

The recipient's complaint process must address who may file, where a complaint may be sent, including electing to file with the recipient or with CRC, time frames, including extensions of filing times, what a complaint should include, and the complainant's right to representation.

Recipients are required to maintain a log of discrimination complaints filed. This log must contain the name and address of complainant, ground of complaint, description of complaint, date filed and disposition of complaint.

Consistent with 29 CFR 37.76 through 37.79, SD DLR maintains compliance with the WIA Discrimination Complaint Policy and Procedure. Accordingly, SD DLR procedures for processing complaints comports with the requirements of 29 CFR 37. The complaint process provides for prompt and equitable resolution of complaints and includes the following elements:

- Initial, written notice;
- An acknowledgement of receipt;
- Notice of right of representation;

[1] Recipients, including sub-recipients and/or prime recipients, are entities or partners receiving WIA funds to conduct activities or provide services allowable by WIA.

[2] Training and service providers are not required to designate an Equal Opportunity Officer. The LWIA EO Officer is responsible for ensuring training provider compliance with the nondiscrimination and equal opportunity requirements of WIA.

- Issues raised in complaint;
- A period for fact-finding;
- A period during which the recipient attempts to resolve the complaint; and
- A written Notice of Final Action.

Each recipient is required to comply with the WIA Discrimination Complaint Process established for resolving complaints in connection with WIA programs operated by recipients. Utilizing this complaint procedure, each WIA recipient provides for local level processing of complaints. Recipients are monitored ensure they comply with this requirement.

To communicate the discrimination complaint policy, "Equal Opportunity Is The Law" posters in English and Spanish shall be placed in prominent locations, which are accessible to applicants, eligible applicants, participants, applicants for employment and employees, applicants for funding and other interested parties. The poster shall contain a nondiscrimination and equal opportunity statement, as well as information about filing a complaint. Recipients shall include in orientations to employees and/or participants a discussion of their rights under the nondiscrimination and equal opportunity provisions of WIA and the right to file a complaint of discrimination with the recipient, State Level EO Officer, or the CRC. Communication of the policy shall be documented on a notification instrument for employees and applicants/participants, and retained in individuals' files. In addition, recipients shall ensure audiotape access to "Equal Opportunity Is the Law" for individuals with visual disabilities, as well as persons who have difficulty reading and/or comprehending written materials. Where a significant portion of the eligible population may need service or information in a language other than English or Spanish, the LWIA shall provide the initial notice and other materials in the needed language to the extent possible.

Any person, who believes he or she has been subjected to discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship, or participation in WIA, has the right to file a complaint within 180 days of the alleged discrimination. The person has the right to file a complaint with the recipient's Equal Opportunity Officer or directly with the **Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4123**, **Washington, D.C. 20210**. If the complainant elects to file a complaint with the recipient, the recipient shall have 90 days to process a complaint and issue a decision. If the recipient does not provide a written decision within 90 days of the filing of the complaint, the complainant need not wait for a decision to be issued, but may file a complaint with CRC within 30 days of the expiration of the 90-day period. If a complainant is not satisfied with the recipient's resolution, the complainant may file a complaint with CRC. Such complaint must be filed within 30 days of the date the complainant received notice of the recipient's proposed resolution.

INTIMIDATION AND RETALIATION PROHIBITED

Consistent with 29 CFR 37.11, intimidation and retaliation against individuals for filing a complaint; opposing a prohibited practice; furnishing information; assisting or participating in any manner in an investigation, review, hearing or any other activity related to administration of, exercise or authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of WIA is prohibited. In accordance with

29 CFR 37.11, complaints may be filed alleging intimidation and retaliation.

FILING A DISCRIMINATION COMPLAINT AT THE RECIPIENT LEVEL

A complaint of discrimination may be filed with the respective LWIA EO Officer or the State WIA EO Officer. Complaints filed with the State WIA EO Officer against an LWIA may be referred back to the LWIA EO officer where there is not a conflict of interest.[3] Complaints must be filed within 180 days of the alleged discrimination. Complaints may be filed by the individual or on behalf of the individual by an authorized representative. Complaints must be filed in writing and signed by the complainant or by his or her authorized representative. It is recommended (but not required) that complaints be filed on the USDOL Complaint Information Form.

The complaint document must contain the following information:

- Complainant's name and address, or other means by which the complainant may be contacted;
- Identification of individual(s) and /or organization(s) responsible for the alleged discrimination;
- Descriptions of the complainant's allegations to (1) determine recipient's jurisdiction of the complaint, (2) timelines of the complaint, (3) specific prohibited basis or bases of the alleged discrimination (i.e., race, sex, etc.) and (4) apparent merit of the complaint.

Each local level EO Officer is responsible for ensuring publication of the name, title, address, telephone number and TDD number of the EO Officer's or other individuals responsible for receiving complaints.

TIME FRAMES

- If the complainant elects to file with the recipient, the recipient shall have 90 days to process the complaint and provide a determination. South Dakota's discrimination complaint process includes 60 days for recipient to investigate and 30 days for a review at the State level, if warranted.
- If the complainant elects to file with both CRC and the recipient, the complainant shall be informed that the recipient has 90 days to process the complaint and that CRC shall not investigate the complaint until the 90-day period has expired.
- If by the end of 90 days from the date on which the complaint was filed the recipient fails to issue a Notice of Final Action, the complainant may file a complaint with the Director of the CRC within 30 days of the expiration of the 90- day period.
- Immediately upon determining that it does not have jurisdiction, the recipient's EO Officer shall notify the complainant in writing that he or she does not have jurisdiction over the complaint, including reasons for the determination and the complainant's right to file with the Director of CRC within 30 days of the notice.
- The complainant shall be notified that if the complaint is not filed within 180 days of the alleged discrimination or a complaint has not been filed with CRC within 30 days of

[3] In instances where the LWIB is named in a complaint, and the LWIB executive also serves as the EO Officer, the complaint will be handled by the State Level EO Officer or referred to CRC

the receipt of the recipient's determination or expiration of the 90-day period, the Director of CRC may extend the time limits for good cause shown.

PROCESSING A DISCRIMINATION COMPLAINT

It is the responsibility of the LWIA EO Officer to determine which entity has jurisdiction over the complaint. Upon determining that a partner entity has jurisdiction, the complaint shall be recorded in the complaint log and referred to the appropriate partner entity for resolution in accordance with that partner's complaint processing procedures.[4] If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include: (a) a statement of the reason for that determination, and (b) notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice. Where the LWIA EO Officer has jurisdiction for a complaint, he or she shall notify complainants, in writing, of the specific timeframes for processing a discrimination complaint.

If the complainant elects to file with the recipient, the recipient shall have 90 days to process the complaint and provide a determination.

All complaints shall be investigated in accordance with the LWIA's complaint processing procedures. Service providers must also follow the LWIA's complaint processing procedures. Such complaint procedures shall include the following elements:

- Initial, written notice to the complainant, and a notice that the complainant has the right to be represented in the complaint process;
- A written statement provided to the complainant that contains a list of the issues raised in the complaint and, for each issue, a statement whether the recipient will accept or reject the issue, and the reasons for each rejection;
- A period for fact-finding or investigation of the issues;
- A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution[5]; and
- A written Notice of Final Action provided to the complainant within 90 days of the date on which the complaint was filed, that contains the recipient's determination.

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[4] Complaints filed against a partner entity on a basis covered by WIA, but not covered by that partner shall be referred to CRC.

[5] Pursuant to 29 CFR 37.76(c), the procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that: (1) The choice of whether to use ADR or the customary process rests with the complainant. (2) A party to any agreement reached under ADR may file a complaint with the Director of CRC (Director) in the event the agreement is breached. In such circumstances, the following rules will apply: (i) the non-breaching party may file a complaint with the Director within 30 days of the date of which the non-breaching party learns of the alleged breach; (ii) the Director must evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint. (3) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director.

DISCRIMINATION COMPLAINT INVESTIGATION PROCEDURE

Within 90 days of the date a discrimination complaint is filed, an investigation shall be conducted by the respective recipient's EO officer or by a designee under the direction of the EO Officer consistent with the Discrimination Complaint Investigation Procedure. This procedure shall be used for any discrimination complaint for which a written and signed complaint has been received.

All activities and records related to an investigation shall ensure the confidentiality of the complaint and any resulting actions. The investigation must be managed in a manner that does not have an adverse effect on the complainant or any other party related to the complaint.

RESPONDING TO A DISCRIMINATION COMPLAINT

The recipient's EO Officer shall sign the investigation, including determination and recommendation. The recipient (LWIA) shall provide a written determination (Notice of Final Action) of the complaint and offer resolution within 90 days of the date the complaint was filed. The determination for each issue filed should include: 1) the recipient's decision on the issue and an explanation of the reasons underlying the decision; 2) description of the way the parties resolved the issue; and 3) notice that the complainant has a right to file a complaint with the Director of CRC within 30 days of the Notice of Final Action if he or she is dissatisfied with the recipient's final action on the complaint.

Determinations: The LWIA EO Officer shall determine at the conclusion of the investigation of a complaint whether there is reasonable cause to believe that a violation occurred. If an investigation results in a reasonable cause finding, the LWIA EO Officer shall submit the signed investigative report including determination and recommendation to the State EO Officer for review within 60 days of the filing date.

Based on review of the determination, the State EO Officer will determine if further review by the Attorney General's Office and SD DLR is warranted. If SD DLR concurs with the determination, the LWIA EO Officer shall issue a written determination. The determination shall notify the complainant of the specific findings; the proposed remedial or corrective action and the time in which corrective action must be completed.

Where a no cause finding is made, the complainant shall be notified in writing. Such a determination represents the final action of the LWIA EO Officer. The LWIA EO Officer shall notify the complainant of his or her right to file a complaint (not an appeal) with the CRC, if he or she believes the LWIA resolution is unsatisfactory. The complainant shall be informed that this right must be exercised within 30 days.

CORRECTIVE ACTION

If discrimination is found through the process of a complaint investigation, the respondent (recipient) shall be requested to voluntarily comply with corrective action(s) or conciliation agreement to correct the discriminatory actions or conditions.
Actions to correct discrimination deficiencies may include any of the following:

- back pay, or other monetary relief (Federal funds shall not be used to provide monetary relief);
- hire or reinstatement;
- promotion;
- benefits or other services denied; and
- any other remedial or affirmative relief such as outreach, recruitment and training to ensure equal opportunity.

RECORDKEEPING

Recipients shall maintain an automated or manual log of discrimination complaints to include, name and address of complainant; the basis of the complaint (i.e., race, sex, age, etc.); a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Records pertaining to discrimination complaints, investigations or any other such actions shall be retained for a minimum of three (3) years from the date of resolution. Information pertaining to the identity of any persons providing information related to, or assisting in, an investigation or a compliance review shall be maintained in a confidential manner to the extent possible. In the event that it is necessary that a person's identity be disclosed, the person(s) shall be protected from retaliation.