

## **Element 9. Corrective Actions/Sanctions**

*Reference: 29 CFR 37.54 (d) (2) (viii)*

*In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.54(d)(2)(vii).*

Narrative:

DLR has established standards for corrective and remedial actions when violations of 29 CFR 37 are found. Corrective and remedial actions so designated are designed to completely correct each violation. For each corrective action, a time frame is established that sets the minimum time necessary to completely correct the violation. In the case of a finding of discrimination, the procedures provide, where appropriate, for retroactive relief (including but not limited to back pay) and prospective relief i.e., training policy development and communication to ensure that the discrimination does not reoccur. Corrective and remedial actions are based on the following:

DLR determines at the conclusion of an investigation of a discrimination complaint or on conclusion of a monitoring review whether there is reasonable cause to believe that a violation of the nondiscrimination and equal opportunity provisions has occurred. A violation may range in seriousness from a technical violation to discrimination:

- A. Technical violations may include: failure to include required language in assurances, failure to post EO notices, etc.
- B. Discrimination violations include findings of disparate treatment, disparate impact, failure to provide a reasonable accommodation, etc.

DLR issues an initial determination or notice of findings that informs the parties or entities involved in writing of:

- A. The specific findings of the investigation or review;
- B. The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed.
- C. Whether it will be necessary for the parties or entities involved to enter into a written agreement; and

D. The opportunity to engage in voluntary compliance negotiations.

Where a no cause determination is made, the complainant and the respondent shall be notified in writing. Such action represents final agency action.

DLR strives to attain voluntary compliance with the nondiscrimination and equal opportunity provisions of the Act. A letter of Findings, Notice to Show Cause, or an initial Determination shall include specific steps that must be taken within a set time period to achieve voluntary compliance. Such steps include but are not limited to:

- A. Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of the Act;
- B. Correcting technical violations where identified include, as appropriate;
  - 1) Ensuring that the violation is corrected, and
  - 2) Educating individuals responsible for implementing the violated requirement.
- C. Make whole relief where discrimination violations have been identified, including, as appropriate:
  - 1) Retroactive relief (e.g. back pay, front pay, retroactive benefits or other services discriminatorily denied, etc.); and
  - 2) Prospective relief (e.g. change of policy, training, development of new policy, training on policy communication, etc.).
- D. Provisions for follow-up monitoring to ensure commitments are fulfilled;
- E. Provisions for reports from the violating recipient regarding the actions to be taken;
- F. Provisions for the execution of a written agreement or assurance to document the correction of the violation; and
- G. Such other remedial or affirmative relief as deemed necessary by DLR.

Note: Monetary relief may not be paid from Federal funds.

Where a compliance review or complaint investigation results in a finding of noncompliance the DLR may require written assurances or conciliation agreements to bring compliance with the nondiscrimination and equal opportunity provisions of the Act.

A written assurance certifies that the deficiency has been corrected. The assurance should include:

- A. Listing of the deficiency and the corrective actions required;
- B. Description of the corrective actions taken and the dates the action was taken
- C. Statement that steps have been taken and will continue to be taken to assure that the deficiency does not recur; and
- D. Must be signed by appropriate officials.

A conciliation agreement is a more formal document between the state and the service provider found in violation of the nondiscrimination and equal opportunity provisions of the Act. The conciliation agreement shall include:

- A. Introduction describing the parties to the agreement;
- B. Event that brought about the agreement;
- C. Legal authority for the investigation and call for corrective action;
- D. Section that describes the deficiency and the action required for correction;
- E. Enforcement section that identifies the individual responsible to ensure that the terms of the agreement are fulfilled;
- F. Required reports; and
- G. Description of the consequences of a breach of the agreement.

In conclusion based upon the above information, the violating recipient is required to submit regular reports during the corrective action period to ensure compliance. The EO Officer shall determine the required reports to be submitted.

The EO Officer will submit a monthly report to the Secretary of the DLR outlining and describing the corrective and remedial actions mandated per each violation for DLR grantees, including the status of implementation of the corrective and remedial actions to ensure compliance with established guidelines.

The EO Officer will submit a monthly report to the Governor of South Dakota outlining and describing the corrective and remedial actions mandated per each violation for DLR grantees, including the status of implementation of the corrective and remedial actions. The EO Officer shall follow-up on the mandated corrective and remedial actions to ensure compliance within established guidelines.

A sanction is an official action implemented to penalized or censure a non-complying recipient/grantee. The ultimate sanction available to the Governor is to revoke approval of all or part of the recipient's funding. However, no sanction shall be applied against a recipient until the following conditions have been met:

- A. The EO Officer has determined that compliance will not be achieved voluntarily;
- B. The EO Officer approves the proposed imposition of such sanctions; and
- C. The recipient has been officially advised of its noncompliance and the sanctions to be imposed.

The recipient shall be advised of the right to request a hearing pursuant to 29 CFR Part 37. Should the recipient fail to request a hearing or fail to submit additional information for the record, imposed sanctions will be implemented.

Sanctions that may be imposed include:

- A. Disallowance of selected costs;
- B. Partial funding;
- C. Termination of funding;
- D. Temporary suspension of financial assistance until compliance is achieved;
- E. Offsets; and/or

F. Administrative probation.

Documentation:

See attachments.