

CORRECTIVE ACTIONS AND SANCTIONS POLICY

Implementing Section 188 of the Workforce Innovation and Opportunity Act of 2014

Purpose

To inform grant recipients of the sanctions that may be imposed for violation of the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), and to outline the procedures to achieve voluntary compliance via corrective action/remedy.

Background

29 C.F.R. § 38.54(c)(2)(vii) requires the Governor (or designee) of each state to establish procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found regarding the nondiscrimination and equal opportunity provisions of WIOA.

Corrective Action

Corrective actions are applied when voluntary efforts in seeking compliance with WIOA Section 188 or 29 CFR Part 38 fail. Violations may result from a monitoring review, a discrimination complaint, or both. There are two kinds of compliance violations: technical violations and discrimination violations.

- *Technical Violations*
 - Include deficiencies that do not include discrimination. Technical violations may include, but are not limited to, failure to:
 - Post the required “Equal Opportunity is the Law” notice
 - Include an “Equal Opportunity is the Law” notice/poster in the WIOA Title I participant’s program file and/or electronic file
 - Include the required tag lines in a communication
 - Technical assistance may be provided to assist with deficiencies or noncompliance that cannot be resolved or corrected voluntarily. For each technical violation, the EO Officer will establish the minimum time frame necessary to correct the violation completely.
- *Discrimination Violations*
 - Include but are not limited to:
 - Discrepancies of disparate treatment (disparate treatment means intentionally treating members of a protected groups differently based on their protected status);
 - Disparate impact (disparate impact means the use of policies or practices that are neutral may or may not appear neutral, but

District of Columbia

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Equal Opportunity Employer/Program.

Auxiliary aids and services are available upon request to individuals with disabilities.

which have a disproportionate impact on members of protected groups, and/or are not job related and consistent with business necessity); and

- Failure to provide reasonable accommodations.
- To correct a discrimination violation, the appropriate corrective action may be to provide "make-whole relief." Make-whole relief is "making the person whole" or bringing the person to the condition he or she would be in, if the discrimination had not occurred. Such relief might involve back pay, front pay, retroactive benefits, training, or any service discriminatorily denied.
- Corrective actions for a discrimination violation should be designed to end discrimination and/or redress the specific violation(s) and must assure discrimination does not recur. Where appropriate, it may also include educating individuals responsible for the violation.

Corrective actions are designed to completely address each violation. Corrective actions must be tailored specifically to each finding. The action taken to correct the violation should be appropriate and reasonable according to the violation that has occurred.

Corrective Action Procedures

1. Letter of Findings:

If the EO Officer finds reasonable cause that a violation of the nondiscrimination and equal opportunity provisions of WIOA has occurred, the EO Officer will issue a Letter of Findings pursuant to 29 C.F.R. § 38.64 containing the following:

- Specific findings and relevant documentation underlying the finding of noncompliance;
- The corrective or remedial action that the EO Officer is proposing;
- The time by which the respondent must complete the corrective or remedial action;
- Whether it is necessary for the recipient to enter into a written assurance or Conciliation Agreement;
- A statement offering the opportunity to engage in voluntary compliance negotiations; and
- The opportunity to engage in voluntary compliance negotiations

See Appendix A (Letter of Findings template); Appendix E (Corrective Actions and Sanctions table). The Letter of Findings must include the specific steps the grant applicant or recipient, as applicable, must take within a stated time period in order to achieve voluntary compliance. Such steps may include:

- Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIOA;

- Make-whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a compliance review), or other monetary relief, hire or reinstatement, retroactive seniority, promotion, benefits or other services discriminatorily denied; and
- Such other remedial or affirmative relief as the EO Officer deems necessary, including, but not limited to, outreach, recruitment and training to ensure equal opportunity.

Monetary relief may not be paid from federal funds.

2. *Written Assurance or Conciliation Agreement:*

A written assurance may be issued when the respondent has, within 15 business days after receipt of the Letter of Findings identifying the noncompliance, taken all corrective actions to remedy the noncompliance. If a respondent disagrees with the findings or proposed corrective or remedial action in the Letter of Findings, the respondent must respond to the Letter of Findings in writing within 30 calendar days explaining in detail its disagreement and/or the items over which it desires to negotiate.

The EO Officer will review the response and contact the respondent to begin negotiation a Conciliation Agreement that resolves the matter on mutually agreeable terms. The total time allotted to secure compliance must not exceed 60 calendar days.

A conciliation agreement must:

- Be in writing;
- Address the legal and contractual obligations of the recipient;
- Address each cited violation; specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
- Provide for periodic reporting on the status of the corrective remedial action;
- State that the violation(s) will not recur;
- State that nothing in the agreement will prohibit State EO Officer from sending the agreement to the complainant, making it available to the public, or posting it on CRC or recipient's website;
- State that, in any proceeding involving an alleged violation of the conciliation agreement, CRC may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement; and
- Provide for enforcement of a breach of the agreement.

See Appendix D (Sample Agreement template).

3. *Notice to Show Cause:*

In the event a "recipient" refuses to provide access to records or documentation for purposes of a discrimination complaint investigation, monitoring event, or compliance

review, the EO Officer shall issue a Notice to Show Cause directing that access be provided by a specified date or time. *See Appendix B (Notice to Show Cause template).* Failure to respond or comply shall result in issuance of a Final Determination.

4. *Final Determination:*

In the event the EO Officer determines that there is no reasonable cause to believe that a violation has taken place; the recipient fails to respond or comply with a Notice to Show Cause; voluntary compliance cannot be secured through steps (1) - (3) above; or if the respondent breaches the agreed-upon Conciliation Agreement, a Final Determination notice to the DC WIC Executive Director shall be issued. The final determination will specify the following:

- A statement of the efforts made to achieve voluntary compliance and a statement that those efforts have been unsuccessful;
- A statement of those matters upon which the respondent and EO Officer continue to disagree;
- The apparent violation(s), relevant EO and Nondiscrimination provision(s) of state policy and 29 CFR Part 38, and conflicts with the state's Nondiscrimination Plan (NDP).
- A list of any modifications to the Letter of Findings;
- A description of the corrective or remedial actions that the respondent must take to come into compliance; and
- The deadlines for remaining corrective actions
- A recipient has the right to appeal a final determination to the Director of the CRC. The appeal must be in writing and made within 30 calendar days after the complaint receives the final determination or 90 calendar days from the date of the filed complaint. Such an appeal, however, will not prevent the initiation of sanctions unless the director of the CRC extends the deadline.

See Appendix C (Sanctions template). Follow-up monitoring will occur as necessary to ensure that commitments to take corrective and remedial actions have been fulfilled.

The Local-Level Equal Opportunity (EO) Officer will notify the State-Level EO Officer of violation(s) discovered, corrective action(s) implemented, and timeframe(s) for completion. The Local-Level EO Officer must also notify the State-Level EO Officer if they are contacted directly by U.S. Department of Labor Civil Rights Center (CRC) regarding an alleged violation.

Sanctions

Sanctions may be necessary when a recipient refuses to implement voluntary corrective action, submit requested data or documentation, or refuses to provide access to premises or records during an EO and Nondiscrimination compliance review. Sanctions will be considered a last resort.

If sanctions are necessary, the precise nature of the sanction will be determined by the deliberateness, seriousness, and frequency of the violation. Sanctions that may be imposed include, but are not limited to, the following:

- Termination of future funding;
- Disallowance of selected costs;
- Restriction from bidding on competitive or discretionary funds; and
- Reduction in funding.

The State EO Officer is responsible for issuing a Notice of Sanctions.