DISCRIMINATION COMPLAINT PROCEDURES:

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

These policies and procedures govern discrimination complaint investigations arising under Section 188 of the Workforce Innovation and Opportunity Act (WIOA) at 29 U.S.C. § 3248, as implemented by 29 C.F.R. §§ 38.72-38.73. The policies and procedures are issued in compliance with:

WIOA Section 188, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, as amended, which prohibits discrimination on the bases of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, 29 U.S.C. § 1681 *et seq.*, as amended, which prohibits discrimination on the basis of sex in educational programs.

The Nondiscrimination Complaint Form or its equivalent, along with the “Complainant Consent/Identity Release Form” (hereinafter referred to as “Consent Form”), and the “Notice of Investigatory Uses of Personal Information” (together referred to as the “Discrimination Complaint Package”) must be in writing, signed, and filed with the Equal Opportunity (EO) Officer within 180 days of the date of the alleged adverse action (*see* Appendix A).

All discrimination complaints involving denial of access to, or participation in programs and activities delivered by or through a “recipient” as defined at 29 C.F.R. § 38.4(zz) must be filed with the District of Columbia State-Level EO Officer at the Workforce Investment Council, the Local-Level EO Officer at the District of Columbia Department of Employment Services (DOES), or the U.S. Department of Labor Civil Rights Center. Authority of each Office is as follows:

|  |  |
| --- | --- |
| The following office or officer . . .  | Has authority over a complaint when . . .  |
| U.S. Department of Labor’sCivil Rights Center | 90 calendar days has passed from the date of receipt of a WIOA Section 188 discrimination complaint |
| District of Columbia State-LevelEO Officer, at the District of Columbia Workforce Investment Council | Either upon (1) recusal or unavailability of the first-line EO Officer; or (2) at any time the District of Columbia EO Officer determines it is appropriate to assume jurisdiction of a discrimination complaint investigation. |
| Local-Level EO Officer, at the Department of Employment Services | All complaints (including Unemployment Insurance complaints) alleging discrimination under WIOA Section 188 and arising in the LWDA service area.  |

The Discrimination Complaint Package will be made available in Braille or large print (*i.e.,* 18 point font) on request of a person who is blind or has low vision. Moreover, all complaint notices, procedures, and forms must contain a “Babel” notice pursuant to 29 C.F.R. § 38.9(g)(3), which provides:

Recipients must include a “Babel notice,” indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on Web sites.

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The Discrimination Complaint

Pursuant to 29 C.F.R. § 38.69, any person or the person’s representative who believes the person has been discriminated against in WIOA Title I federally-funded, federally-assisted, and federally-conducted programs and activities has the right to file a complaint alleging discrimination in the access to, participation in, or enjoyment of WIOA Section 188, services, aid, training, or benefits on one or more prohibited bases. This includes providing different, lesser, or segregated services, aid, training, or benefits. Prohibited bases of discrimination under WIOA Section 188, at 29 U.S.C. § 3248, and related laws, are race, color, national origin, gender, age, religion, disability, political affiliation or belief, citizenship, and WIOA participant status. *See* 29 C.F.R. § 38.5. This also includes any person or person’s representative who believes the person has been retaliated against in violation of WIOA Section 188. *See* 29 C.F.R. § 38.19.

The EO Officer shall provide assistance, as needed, to any person filing a discrimination complaint under these procedures, including but not limited to individuals who are limited English proficient, and individuals with disabilities.

An overview of the process set forth in these procedures is as follows:

|  |  |
| --- | --- |
| **Action** | **Completion date from date of receipt of complaint** |
| Acknowledgement of receipt of communication/complaint | As soon as possible, but no later than 5 business days |
| Jurisdiction determination | As soon as possible, but no later than 14 calendar days  |
| Rejection of a complaint (no jurisdiction) | As soon as possible, but no later than 14 calendar days |
| Notice of acceptance (*see* special procedures at p. 25 for complaints alleging age-based discrimination)Appointment of mediator Notice of final action (if no mediation occurs, or is unsuccessful), or EO Officer’s issuance of executed conciliation agreement | As soon as possible, but no later than 30 calendar daysAs soon as possible, but no later than 45 calendar days; conciliation agreement due to EO Officer no later than 65 calendar daysAs soon as possible, but no later than 90 calendar days |

II

Methods of Filing

Before a communication is reviewed to determine whether it meets the jurisdictional requirements for investigation, it must be in writing and signed. Communications that do not meet these basic requirements are not classified as “discrimination complaints” for purposes of this process, and are not included in the “Discrimination Complaint Log” as discussed later in these procedures.

Prior to concluding that a communication does not meet the jurisdiction requirements, every effort shall be made to provide the Complainant notice and an opportunity to cure any deficiencies (*i.e.,* contact the complainant by phone, email, or regular mail to explain what is required to meet the jurisdiction requirements).

For purposes of these procedures, “business” day is defined as Monday through Friday, excluding weekends and holidays.

“Complainant” is defined as the individual alleging s/he suffered discrimination (*i.e.*, was subjected to an adverse act) in a WIOA-funded program or activity.

“Respondent” is defined as the alleged wrongdoer. More than one Respondent may be named in a complaint.

“Recipient” is defined at 29 C.F.R. § 38.4(zz) and is any entity that, either directly or indirectly, receives WIOA-Title I funding, or is part of the system of delivering WIOA Title I services, aid, benefits, or training.

**A.    Verbal communication; in-person and telephone**

No verbal (*i.e.,* in-person or telephonic) communication may be accepted for processing as a discrimination complaint. In addition, verbal communications are not recorded in the “Discrimination Complaint Log,” as these communications are not in writing and signed.

Rather, any person seeking to lodge a discrimination complaint in-person or over the telephone must be notified that such a complaint must be in writing and signed. On request, the EO Officer shall assist an individual in completing the Discrimination Complaint Package (*see* Appendix A). Any signed Nondiscrimination Complaint Form or equivalent submitted by the Complainant or Complainant’s representative in-person to the EO Officer shall be date-stamped as of the date of in-person delivery for purposes of determining timeliness.

The EO Officer also shall ensure that a signed Consent Form and “Notice of Investigatory Uses of Personal Information” is in the investigative file.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the “Discrimination Complaint Log,” as it is not signed. However, the EO Officer may conduct monitoring of the program or activity at issue, and provide technical assistance to ensure compliance with applicable nondiscrimination and equal opportunity mandates.

**B.    By electronic mail**

 **1. Generally**

If a signed copy of the Nondiscrimination Complaint Form or its equivalent is scanned and **e-mailed** to the EO Officer as an attachment, then the date of filing is the date on which the e-mail is received by the EO Officer. Within five (5) business days, the EO Officer shall notify the individual that the e-mail was received and is being reviewed.

To document the filing date in the investigative file for purposes of timeliness, the EO Officer shall download and print the e-mail along with the attachment and/or upload the email and any attachment to an electronic database. The date of receipt of the email constitutes the filing date for purposes of determining timeliness.

 **2. Unsigned Nondiscrimination Complaint Form, effect of**

If the EO Officer receives an unsigned Nondiscrimination Complaint Form, or equivalent communication, **by e-mail**, then the EO Officer shall download and print the original e-mail along with any attachment. Within five (5) business days, notification of the deficiency shall be made in writing via e-mail to the sender’s address with instructions for the sender to print the communication, sign it, and submit it to the EO Officer within 10 calendar days by:

* Scanning the signed communication and transmitting it by e-mail;
* Sending the signed communication by regular mail; or
* Transmitting the signed communication by facsimile.

If the sender cures the deficiency and submits a signed communication, then the date of receipt of the original, unsigned e-mail shall constitute the date of filing for purposes of timeliness. The signed communication shall be added to the investigative file. This policy ensures that the rights of the individual filing the communication are protected to the maximum extent possible.

 **3. Consent form**

The EO Officer also shall ensure that a signed Consent Form and “Notice of Investigatory Uses of Personal Information” is in the investigative file. Within five (5) business days, notice of any deficiency shall be made in writing via e-mail to the sender’s address with instructions for the sender to print the Consent Form, sign it, and submit it to the EO Officer within 10 calendar days by:

* Scanning the signed communication and transmitting it by e-mail;
* Sending the signed communication by regular mail; or
* Transmitting the signed communication by facsimile.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the “Discrimination Complaint Log,” as it is not signed. However, the EO Officer may conduct monitoring of the program or activity at issue, and provide technical assistance to ensure compliance with applicable nondiscrimination and equal opportunity mandates.

**C.    By Facsimile**

 **1. Generally**

If a signed copy of the Nondiscrimination Complaint Form, or equivalent communication, is transmitted by facsimile to the EO Officer, then the date of filing is the date on which the facsimile is received by the EO Officer. Within five (5) business days, the EO Officer shall notify the individual that the facsimile was received and is being reviewed. The date of receipt of the facsimile constitutes the filing date for purposes of determining timeliness.

**2. Unsigned Nondiscrimination Complaint Form, effect of**

If the EO Officer receives an unsigned Nondiscrimination Complaint Form, or equivalent unsigned communication, by facsimile, then the EO Officer shall place the original, unsigned facsimile in the investigative file. Within five (5) business days, written notification of the deficiency shall be sent to the sender with instructions for the sender to print the communication, sign it, and submit it within 10 calendar days to the EO Officer by:

* Scanning the signed communication and transmitting it by e-mail;
* Sending the signed communication by regular mail; or
* Transmitting the signed communication by facsimile.

If the sender cures the deficiency and submits a signed communication, then the date of receipt of the original, unsigned facsimile shall constitute the date of filing for purposes of timeliness. The signed communication shall be added to the investigative file. This policy ensures that the rights of the individual filing the communication are protected to the maximum extent possible.

 **3. Consent form**

The EO Officer also shall ensure that a signed Consent Form and “Notice of Investigatory Uses of Personal Information” is in the investigative file.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the “Discrimination Complaint Log,” as it fails to meet the technical requirements for a discrimination complaint. However, the EO Officer may conduct monitoring of the program or activity at issue, and provide technical assistance to ensure that it is operating in compliance with the nondiscrimination and equal opportunity requirements of applicable federal civil rights laws.

**D.    By mail**

 **1. Generally**

If a signed copy of the Nondiscrimination Complaint Form is transmitted by mail (regular, express, certified, or registered), then the date of filing is the postmark date. Within five (5) business days, the EO Officer shall notify the individual that the communication was received and is being reviewed.

To document the filing date in the investigative file, the EO Officer shall retain the envelope documenting the postmark date or, if the EO Officer has an official electronic database for complaints, then the EO Officer may scan the front and back of the envelope and upload the document to the electronic complaints database. If the postmark date is illegible, then the date on which the EO Officer date-stamps the communication as being received shall constitute the date of filing for purposes of timeliness.

**2. Unsigned Nondiscrimination Complaint Form, effect of**

If the EO Officer receives an unsigned Nondiscrimination Complaint Form, or other unsigned communication by mail, then the EO Officer shall place the unsigned communication in the investigative file along with the envelope. Within five (5) business days, written notification of the deficiency shall be sent to the individual with instructions to sign the communication, and submit it within 10 calendar days to the EO Officer by:

* Scanning the signed communication and transmitting it by e-mail;
* Sending the signed communication by regular mail; or
* Transmitting the signed communication by facsimile.

If the sender cures the deficiency and timely submits a signed communication, then the postmark date of receipt of the original, unsigned communication shall constitute the date of filing for purposes of timeliness. This policy ensures that the rights of the individual filing the communication are protected to the maximum extent possible.

 **3. Consent form**

The EO Officer also shall ensure that a signed Consent Form and “Notice of Investigatory Uses of Personal Information” is in the investigative file.

Failure or refusal to file a signed Consent Form, after being afforded notice and an opportunity to cure this deficiency, shall result in administrative closure of the matter, and the individual shall be notified in writing. The communication is not recorded in the “Discrimination Complaint Log,” as it is not signed. However, the EO Officer may conduct monitoring of the program or activity at issue and provide technical assistance to ensure that it is operating in compliance with nondiscrimination and equal opportunity requirements of applicable federal civil rights laws.

**E.    Other signed, written communication**

An individual is not required to utilize the Nondiscrimination Complaint Form when filing a discrimination complaint; rather, the EO Officer shall receive any signed, written communication alleging an adverse action on a prohibited basis (*e.g.,* race, color, national origin, disability, religion, gender, age) against a “recipient” as defined at 29 C.F.R. § 38.4(zz).

As with the filing of the Nondiscrimination Complaint Form, the EO Officer must determine whether all jurisdictional requirements are met prior to initiating an investigation (*see* Appendix B). Depending on the method of filing the communication (*e.g.,* e-mail, facsimile, mail), the EO Officer shall follow the same procedures as are applicable to the filing of the Nondiscrimination Complaint Form. And, the individual must sign the accompanying Consent Form and Notice of Investigatory Uses of Personal Information (*see* Appendix A).

**F. EO Officer unavailable or disqualified, effect of**

If the EO Officer is unavailable (*e.g.,* extended leave), or is disqualified (*e.g.,* actual or apparent conflict of interest) to handle a particular discrimination complaint, the State-Level EO Officer (or official designee) shall appoint an EO Officer or other appropriate official to investigate the discrimination complaint.

If any party requests disqualification of the EO Officer because of a conflict of interest, the State-Level EO Officer (or official designee) shall, in his or her sole discretion, determine whether the EO Officer is disqualified with regard to any particular complaint. Issuance of an adverse decision by the EO Officer will not, standing alone, demonstrate that the EO Officer is disqualified to handle a discrimination complaint.

If it is determined that the EO Officer is disqualified to conduct the investigation of a particular complaint, then the complaint shall be assigned to an EO Officer or other appropriate official to conduct the discrimination complaint investigation pursuant to these procedures. If the State-Level EO Officer (or official designee) determines the assigned EO Officer is qualified to handle a particular discrimination complaint, then the EO Officer shall not be disqualified and shall promptly continue processing the complaint pursuant to these procedures.

The State-Level EO Officer’s (or official designee’s) determination regarding unavailability shall be in writing, copies shall be sent to the parties, and the determination shall be final upon issuance. A copy of the written notification shall be placed in the investigative file.

Likewise, the State-Level EO Officer’s (or official designee’s) determination in response to a party’s request for disqualification of the EO Officer shall be in writing, copies shall be sent to the parties, and the determination shall be final upon issuance. A copy of the written notification shall be placed in the investigative file.

III

Types of Discrimination Complaints

**A.    Individual**

An “individual” discrimination complaint is filed by one person, or the authorized representative of one person. An individual discrimination complaint alleges adverse treatment of the individual on a prohibited basis. For example, a customer alleges he could not complete the unemployment insurance forms because he is limited English proficient, and the forms are available only in English. As another example, the mother of a 17-year-old alleges that her son was not allowed to enroll in an on-the-job training program because of the son’s age. Or, an attorney files a complaint alleging her client, a black man, was referred to a lower paying job than comparably qualified white men.

Individual discrimination complaints may be accepted for investigation provided the jurisdictional requirements are met (*see* Appendix B). These signed, written complaints are recorded in the “Discrimination Complaint Log” (*see* Appendix K).

**B.    Class action**

A “class action” discrimination complaint is filed by more than one person and/or their authorized representative(s). A “class action” complaint alleges a common type of adverse treatment against a group of individuals on a common prohibited basis. For example, a group of women allege they are referred to lower paying jobs than comparably qualified men.

Class action complaints may be accepted for investigation, provided the jurisdictional requirements are met (*see* Appendix B). These signed, written complaints are recorded in the “Discrimination Complaint Log” (*see* Appendix K).

**C.    Third party**

A “third-party” discrimination communication is lodged by an individual (not an authorized representative) or an organization on behalf of a category of similarly-situated persons. The aggrieved person(s) may, or may not, be identified in the communication. For example, the Islamic Association files a communication alleging that persons of the Muslim faith are not afforded the same on-the-job training opportunities as comparably qualified persons who are not of the Muslim faith.

Third-party communications cannot be accepted for investigation unless one or more adversely affected individuals submit a signed discrimination complaint form or its equivalent as well as the accompanying Consent Form and Notice of Investigatory Uses of Personal Information (*see* Appendix A). Third-party communications do not constitute “discrimination complaints,” and such communications are not recorded in the “Discrimination Complaint Log.”  However, the EO Officer shall utilize third-party communications for purposes of monitoring the program or activity at issue and providing technical assistance to ensure compliance with applicable federal nondiscrimination and equal opportunity mandates.

**D.    Anonymous communications**

An anonymous communication, whether verbal or written, shall not be considered a discrimination complaint as it is not signed and there is no name or contact information for the allegedly aggrieved individual. And, anonymous complaints are not recorded in the “Discrimination Complaint Log” (*see* Appendix K). However, the EO Officer may utilize an anonymous complaint to monitor the program or activity at issue and determine corrective actions based on the monitoring to ensure compliance with applicable federal nondiscrimination and equal opportunity mandates.

IV

Determining Jurisdiction

Once a signed, written Nondiscrimination Complaint Package is received, a jurisdiction determination must be made. The EO Officer shall provide the complainant with notice and an opportunity to cure any jurisdictional deficiencies.

**A. Completed within 14 calendar days**

Within 14 calendar days of the date of receipt of a discrimination complaint, the EO Officer shall (1) determine whether jurisdiction to investigate the complaint exists (*see* Appendix B), and (2) issue a written notice accepting or rejecting the discrimination complaint as discussed further below.

**B. Assign identifier**

Each complaint received by the EO Officer shall be assigned a unique identifier by the EO Officer for purposes of processing and tracking the complaint. The identifier shall be the calendar year in which the discrimination complaint was received, followed-by the designation “WIOA,” and followed-by the sequential number in which the complaint was received. For example, the 11th discrimination complaint received in calendar year 2019 would be designated 2019-WIOA-11.

**C. Elements of jurisdiction**

The complaint must comply with the following basic federal requirements in order for jurisdiction to be present:

* The complaint must be in writing;
* The complaint must be signed by the Complainant (*i.e.,* the aggrieved person), or the Complainant’s authorized representative;
* The complaint must identify a Respondent who is a “recipient” under 29 C.F.R. § 38.4(zz);
* The complaint must contain sufficient contact information for the Complainant (*e.g.,* address, telephone number, e-mail address);
* The complaint must allege a prohibited basis of discrimination (*e.g.,* race, color, national origin, gender, age, disability, political affiliation, religion);
* The complaint must set forth an “issue,” or adverse action;
* The “issue” or adverse action must have occurred within 180 days of the filing of the complaint; and
* The complaint must have “apparent merit”—said differently, does the complaint allege an adverse action taken by Respondent against the Complainant on a prohibited basis?

**D. Recipient, defined**

In determining jurisdiction, the regulations define “recipient” very broadly as follows:

*Recipient* means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). . . .

In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to the Governor under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, for purposes of this part, one-stop partners, as defined in section 121(b) of WIOA, are treated as “recipients,” and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the one-stop delivery system. “Recipient” includes, but is not limited to:

(1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;

(2) State Workforce Agencies;

(3) State and Local Workforce Development Boards;

(4) LWDA grant recipients;

(5) One-stop operators;

(6) Service providers, including eligible training providers;

(7) On-the-Job Training (OJT) employers;

(8) Job Corps contractors and center operators;

(9) Job Corps national training contractors;

(10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;

(11) Placement agencies, including Job Corps contractors that perform these functions;

(12) Other National Program recipients.

Recipients include “one-stop partners” as defined at Section 121(b) of WIOA, but the “ultimate beneficiary” of a WIOA Title I program or activity is not a “recipient.” 29 C.F.R. § 38.4(zz).

**E. Unemployment Insurance (UI) benefits, special considerations**

If a complaint alleges an adverse decision regarding unemployment insurance benefits on a prohibited basis, the EO Officer must determine whether all administrative remedies have been exhausted under the UI adjudication process (*i.e.,* all appeals taken and a final determination issued). If the UI adjudication process is not completed, the complaint is premature and the EO Officer shall not commence an investigation of the complaint unless and until such time as the adverse decision is final, and all other jurisdictional requirements are met.

**F. Opportunity to cure deficiencies**

To give the individual the fullest protection of the law, the EO Officer shall provide notice, and an opportunity to cure, any jurisdictional deficiencies. To the extent possible, the EO Officer shall provide assistance to the individual in addressing any jurisdictional deficiencies. The EO Officer cannot advocate on behalf of, or give advice to, the Complainant. Rather, the EO Officer must offer clarification of what is being asked or requested.

V

Rejecting a Complaint

**A. Notice issued in 14 calendar days**

Within 14 calendar days of receipt of the complaint, the EO Officer shall make a jurisdiction determination.

If the EO Officer determines that a complaint will be rejected for *any jurisdictional defect other than timeliness*, and the Complainant failed to cure the defect after being afforded notice and an opportunity to do so, then written notice shall be sent to the Complainant as soon as possible (*i.e.,* within 14 calendar days of the date of receipt of the complaint when the jurisdiction determination is made), but no later than 30 calendar days of the date on which the complaint was received (*see* Appendix C). The complaint shall be recorded in the “Discrimination Complaint Log” (*see* Appendix K) with a proper notation as to its disposition (*see* Appendix L).

If the EO Officer determines that a complaint is untimely (*i.e.,* it was not filed within 180 days of the date on which the alleged discriminatory conduct occurred), then written notice shall be sent to the Complainant as soon as possible (*i.e.,* within 14 calendar days of the date of receipt of the complaint when the jurisdiction determination is made), but no later than within 30 calendar days of the date on which the complaint was received (*see* Appendix D). The complaint shall be recorded in the “Discrimination Complaint Log” (*see* Appendix K), with a proper notation as to its disposition (*see* Appendix L).

**B. Rude and unprofessional conduct**

Complaints alleging rude or unprofessional customer service must be referred to the recipient within 14 calendar days of the date on which the complaint is received, and the Complainant must receive written notice of the referral. The recipient must contact the Complainant and, if appropriate, direct refresher training to staff members involved on successful engagements with customers and treating all customers with respect and dignity.

VI

Accepting a Complaint for Investigation

**A. Notice issued in 30 calendar days**

Within 30 calendar days of the date of receipt of a Nondiscrimination Complaint Package, if all jurisdictional requirements are met, the EO Officer shall notify the Complainant and named Respondent(s) that the complaint has been accepted for investigation (*see*Appendix E). The complaint shall be recorded in the “Discrimination Complaint Log” (*see* Appendix K).

**B. Alternative dispute resolution, mediation**

The EO Officer shall make every effort to expeditiously resolve the complaint without the need for an investigation. Informal mediation of the complaint occurs between the EO Officer and parties to a complaint. This form of mediation is particularly useful with regard to denial of access to apply for or to participate in a program or activity.

Formal mediation occurs between a third-party neutral (not the EO Officer conducting the investigation), and the parties to the complaint. The EO Officer does not participate in, or attend, the mediation. Formal mediation, in the discretion of the EO Officer, may be used for class action complaints or complicated individual complaints involving multiple issues and/or bases. However, the parties must agree to formal mediation voluntarily, and they must execute a “Consent to Mediate” form (*see* Appendix F).

No party shall be charged any fee for formal or informal mediation services.

If the EO Officer determines that a complaint is appropriate for formal mediation, and all parties to the complaint voluntarily agree to participate in this mediation, the EO Officer shall assign a third-party neutral no later than 45 calendar days from the date of receipt of the complaint (list provided at Appendix G). Within 20 calendar days of the date on which a third-party neutral is assigned to conduct the mediation, or upon submission of a settlement agreement, *whichever occurs first*, the EO Officer shall: (1) either initiate an investigation, or (2) close the complaint due to resolution of all issues.

**C. Conciliation agreements**

Resolution of a complaint through formal or informal mediation shall be recorded in a written agreement, which is signed by the parties (*see* Appendix H). The written agreement shall be maintained with the record of the complaint for a period of not less than three (3) years from the date of final action related to resolution of the complaint or compliance review. 29 C.F.R. § 38.43. The conciliation agreement shall be finalized in writing within 90 days of the receipt of a complaint, if the parties resolve the matter through mediation or other alternative dispute resolution.

**D.    Age discrimination, special procedures**

With few exceptions, the Age Discrimination Act of 1975 at 42 U.S.C.
§ 6101 *et seq.* prohibits discrimination on the basis of *any* age in federally-funded, federally-assisted, and federally-conducted programs and activities. This means a recipient/provider may not exclude, deny, or provide different or lesser services to beneficiaries or potential beneficiaries on the basis of age—*any* age. However, the statute does not prohibit the consideration of age for purposes of determining eligibility in certain “targeted” programs (*e.g.,* youth training programs, employment programs for older Americans).

The U.S. Department of Health and Human Services (HHS) has oversight and coordination responsibility for the Age Discrimination Act. Forty-five C.F.R. Part 90 requires that all complaints filed *with Federal departments and agencies* under the Age Discrimination Act be forwarded to the Federal Mediation and Conciliation Services (FMCS). FMCS has 60 days to attempt to resolve the complaint through mediation (s*ee* 45 C.F.R.
§ 90.43(c)(3).

Therefore, if a complaint alleges discrimination on the basis of age, the EO Officer shall inform the Complainant that, if the complaint is filed with the U.S. Department of Labor’s Civil Rights Center, it will be referred to the FMCS for attempted mediation. If the Complainant elects to have the complaint investigated by the EO Officer, s/he will have the opportunity to engage in informal or formal mediation as discussed below in these procedures. This complaint is recorded in the “Discrimination Complaint Log” (*see* Appendix K).

VII

The Investigation and Final Action Notice

**A. Completed in 90 calendar days**

Within 90 calendar days of the date on which the Nondiscrimination Complaint Package is filed, if the complaint is not resolved through informal or formal mediation, the EO Officer shall develop a complaint investigation plan (*see*Appendix I), conduct an investigation, and issue a written notice of final action to the parties resolving the complaint (*see* Appendix J). 29 C.F.R. § 38.76.

At any time, the District of Columbia State-Level EO Officer may take jurisdiction of the investigation by providing written notice to the assigned EO Officer. In such cases, the assigned EO Officer shall fully cooperate with any and all requests for documents, information, and electronic or paper records inspections. The State EO Officer shall retain sole jurisdiction over investigation of the matter, and shall issue the written notice of final action to the parties if the matter is not resolved through mediation.

**B. Conducting the investigation**

When conducting the investigation, the EO Officer first shall interview the Complainant. Then, any named Respondent(s) shall be interviewed. First-hand witnesses may be interviewed in the EO Officer’s discretion to resolve one or more particular factual disputes.

Documents necessary to make a determination on the discrimination complaint shall be collected from the parties and, if needed, any witnesses. It is within the EO Officer’s discretion to determine whether in-person interviews and/or inspections are needed, or whether a desk audit and telephone interviews may be conducted.

After interviews of the named Respondent(s) and witness(es) are conducted, the EO Officer shall interview the Complainant in order to afford the Complainant every opportunity to establish the elements of proof in support of his or her discrimination complaint.

Whether conducted in person, or by telephone, the EO Officer shall take notes during the interviews. For each interviewee having knowledge of material and relevant facts, the EO Officer shall prepare a written statement of the interview, and shall require that the interviewee sign and date the statement after the interviewee has the opportunity to make any changes or modifications to the statement. Statements of interviewees shall be used by the EO Officer to render factual findings in the notice of final action.

**C. Issuing the notice of final action**

Not later than 90 calendar days from the date of filing of the complaint, the EO Officer shall issue a notice of final action (*see*Appendix J) setting forth all relevant findings of fact, as well as any sanctions and required corrective actions. With regard to sanctions and corrective actions, the EO Officer shall set forth deadlines for the completion of sanctions and corrective actions along with the procedures that will be followed for Respondent(s)’ failure to comply.

If the EO Officer determines that prohibited discrimination was not proven, the EO Officer shall issue a notice of final action setting forth all relevant findings of fact, and the reasons discrimination was not established.

The notice of final action shall be issued to the Complainant, named Respondent(s), and their representatives (if any). This disposition shall be recorded in the “Discrimination Complaint Log.”

**D. Withdrawal of the discrimination complaint**

At any time prior to issuance of a notice of final action, the Complainant may request withdrawal of the discrimination complaint. The request must be in writing. If the EO Officer determines that the request is made voluntarily, and is not the result of intimidation or threat of retaliation, the EO Officer shall issue a written notice to all parties stating that the complaint has been withdrawn and the matter is closed. The disposition of this complaint is recorded in the “Discrimination Complaint Log” as “withdrawn.”

**E. Death of the complainant**

If the Complainant dies during pendency of the investigation of his or her complaint, then the EO Officer shall proceed to complete the investigation to the extent practicable, and issue a notice of final action. This is designed to ensure that the program or activity at issue is operating in compliance with WIOA’s nondiscrimination and equal opportunity mandates. This disposition shall be recorded in the “Discrimination Complaint Log.”

VIII

The Discrimination Complaint Log

**A.    Generally**

The EO Officer shall maintain a “Discrimination Complaint Log” (*see* Appendix K). Every discrimination complaint shall be recorded in the log regardless of the nature of disposition of the complaint (*i.e.* withdrawal, settlement, dismissal, rejection for lack of jurisdiction, determination on the merits). Instructions for the “Discrimination Complaint Log” are located at Appendix L.

With regard to each discrimination complaint, the EO Officer shall maintain records pertaining to the complaint, and all actions taken on the complaint (including recording disposition of the complaint in the “Discrimination Complaint Log”), for a period of not less than three (3) years from the date of resolution of the complaint.

On request of the Civil Rights Center Director, the District of Columbia Equal Opportunity Officer shall provide a log of complaints filed with the District under WIOA Section 188. The Civil Rights Center shall have access to all program and discrimination complaint records, as needed for monitoring and compliance purposes.

Each EO Officer must produce his or her complete “Discrimination Complaint Log” to the State EO Officer at eo@dc.gov on or before each of the following dates:

* March 31
* June 30
* September 30
* December 31

**B.    What is *not*included**

The following types of communications shall not be recorded by the EO Officer in the “Discrimination Complaint Log”:

* Anonymous communications;
* Communications that are not signed and/or are not in writing;
* Third-party communications (*i.e.,* no written, signed complaint(s) have been filed by the aggrieved individual(s));
* Program complaints;
* Grievances;
* Customer service complaints; or
* A complaint alleging discrimination by an individual or entity that is not a “recipient” as defined at 29 C.F.R. § 38.4(zz).

On receipt of a third-party communication, where no aggrieved person has signed a discrimination complaint form, or similar document, the EO Officer (1) *shall not* accept or process the communication as a discrimination complaint under these procedures, but (2) *shall* conduct monitoring of the program or activity at issue, and *shall* provide technical assistance to ensure compliance with applicable nondiscrimination and equal opportunity mandates.

Further instructions regarding use of the “Discrimination Complaint Log” are found at Appendix L.

All complaints not recorded on the “Discrimination Complaint Log,” shall be recorded on the “Communications Log” (Appendix M). Each EO Officer must produce his or her complete “Communications Log” to the State EO Officer at eo@dc.gov before each of the following dates:

* March 31
* June 30
* September 30
* December 31

 **C.    Bases of complaints, special considerations**

When recording the “prohibited basis” of a complaint in the “Discrimination Complaint Log,” the EO Officer shall follow these guidelines:

* Complaints alleging discrimination on the basis of limited English proficiency (LEP) shall be recorded as national origin-based complaints.
* Gender-based complaints include allegations of discrimination based on gender, sexual orientation, pregnancy, familial status, transgender, and transsexual status.
* Harassment and hostile environment. *Quid pro quo* harassment and hostile environment constitute forms of prohibited discrimination when based on protected class characteristics. For example, an allegation of hostile environment based on race constitutes race-based discrimination, and this complaint would be recorded as such in the “Discrimination Complaint Log.”  Similarly, *quid pro quo* sexual harassment would be recorded as a gender-based discrimination complaint.
* Retaliation. WIOA’s nondiscrimination provisions prohibit retaliation on the bases of (1) filing a complaint alleging a violation of Section 188 of the WIOA, (2) furnishing information to, or assisting or participating in any manner, in an investigation, review, hearing, or other activity related to:
* Administering the WIOA’s nondiscrimination provisions;
* Exercising authority under these provisions;
* Exercising a privilege secured by the provisions; or
* Otherwise exercising any rights and privileges under the nondiscrimination an equal opportunity provisions of the WIOA.

Retaliation constitutes a form of discrimination, and is recorded in the “Discrimination Complaint Log.”  The basis of this type of complaint shall be recorded as “retaliation.”

* If a complaint alleges discrimination on more than one basis, then all asserted bases shall be recorded in the “Discrimination Complaint Log.”

All items (electronic or paper) related to the discrimination complaint investigation, including discrimination complaint log entries, must be preserved for a period of not less than three (3) years from the date of final action related to resolution of the complaint. 29 C.F.R. § 38.43(b).

IX

Confidentiality and

Security of the Investigative File

The investigative file (including the discrimination complaint, investigative notes, witness statements, advisory memoranda pertaining to the complaint, and any other related documents) shall be kept in a locked filing cabinet, or, if maintained electronically, in an encrypted or password protected database. The only persons with access to the investigative file shall be:

* The EO Officer conducting the investigation;
* The District of Columbia EO Officer; and
* The U.S. Department of Labor’s Civil Rights Center.

Any and all medical information gathered in the course of a discrimination complaint investigation shall be kept confidential, and stored separately from the investigative file in compliance with 29 C.F.R. § 38.41(b)(3).

Any party, witness, or non-party to a complaint seeking copies of any one or more documents in the investigative file must follow the procedures set forth in the District of Columbia Freedom of Information Act, or FOIA, DC Code §§ 2-531-539. Any request for documentation in the investigative file shall be submitted to <https://foia-dc.gov/App/Index.aspx>.

Certain exemptions to disclosure may apply. It is the policy of the EO Officer to maintain the highest possible level of confidentiality in conducting an investigation of a discrimination complaint. Therefore, information from an investigative file will be released only if an exemption cannot be invoked for that particular piece of information.