

**Nevada Department of Employment, Training and Rehabilitation**  
**Employment Security Division**  
**Workforce Programs**

**Workforce Innovation and Opportunity Act (WIOA)**  
**State Compliance Policy (SCP)**

**Policy Number: 4.1**

**Originating Office:** Department of Employment, Training and Rehabilitation (DETR); Workforce Programs

**Subject:** Equal Opportunity Provisions of WIOA; Assurances, Equal Opportunity Officer, Notice, Outreach, Monitoring, Data, Compliance, Corrective Actions and Sanctions for Non-Compliance

**Issued:** New; Replacing WIA SCP 4.1; Approved Governor's Workforce Development Board (GWDB) Executive Committee January 15, 2019; Ratified Governor's Workforce Development Board February 02, 2019.

**Purpose:** Update compliance policy to reflect WIOA statute and regulations.

**State Imposed Requirements:** This directive may contain some state-imposed requirements. These requirements are printed in **bold**, *italic* type.

**Authorities/References:** WIOA (P.L. 113-128), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq., as amended, Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Executive Order 13166, 29 CFR §32, 29 CFR §37.4, 29 CFR §38, 29 CFR §1614 - §1615, 1630, 20 CFR §683.285, TEGL 37-14, TEGL 1-15, TEN 20-16, Executive Order 13166, Nevada SCPs

**ACTION REQUIRED:** Upon issuance bring this guidance to the attention of all WIOA service providers, Local Workforce Development Board (LWDB) members and any other concerned parties. Any local boards' policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

**Background:** The purpose of 29 CFR §38 is to implement the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), which are contained in section 188 of WIOA (29 U.S.C. 3248). Section 188 prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, people with limited English proficiency, transgender individuals and individuals who are pregnant, have had a child, or have related medical conditions, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity. This series of policy clarifies the application of the nondiscrimination

and equal opportunity provisions of WIOA and provides uniform procedures for implementing them. Specific to this policy, the requirements for Equal Opportunity Officers, Notices, Assurances, Monitoring, Corrective Actions and Sanctions for Non-Compliance.

WIOA requires sub recipient policy(ies) be amended and/or updated to ensure adherence to Equal Opportunity and Nondiscriminatory policies and practices as defined.

The obligation to comply with the nondiscrimination and equal opportunity provisions of WIOA or this part, [29 CFR §38], are not excused or reduced by any State, local law or private organization rules, or other requirement that, on a prohibited basis, prohibits or limits an individual's eligibility to receive any aid, benefit, service, or training; to participate in any WIOA Title I-financially assisted program or activity; to be employed by any recipient; or to practice any occupation or profession. (29 CFR §38.24)

Reference 29 CFR §38.4 for definitions to this part. Reference Nevada Revised Statutes Chapter 606-615 for State Requirements.

### **Policy and Procedure:**

#### **Written Assurances/Covenants: (29 CFR §38.25, §38.26, §38.27)**

- (a) Grant applicant's obligation to provide a written assurance.
  - (1) Each application for financial assistance, under Title I of WIOA, as defined in §38.4, must include the following assurance:
    - (i) As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:
      - (A) Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 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;
      - (B) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
      - (C) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
      - (D) The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
      - (E) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
    - (ii) The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part §38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

- (2) The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of WIOA is made available, whether it is explicitly incorporated in such document and whether there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated in such grants, cooperative agreements, contracts, or other arrangements by reference.
- (b) Continuing State Programs. Each Strategic Four-Year State Plan submitted by a State to carry out a continuing WIOA financially assisted program or activity must provide the text of the assurance in paragraph (a)(1) of this section, as a condition to the approval of the Four-Year Plan and the extension of any WIOA Title I assistance under the Plan. The State also must certify that it has developed and maintains a Nondiscrimination Plan under §38.54.

**Duration and Scope of Assurances:**

- (a) Where the WIOA Title I financial assistance is intended to provide, or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient, or (in the case of a subsequent transfer) the transferee, for the longer of:
  - (1) The period during which the property is used either:
    - (i) For a purpose for which WIOA Title I financial assistance is extended; or
    - (ii) For another purpose involving the provision of similar services or benefits; or
  - (2) The period during which either:
    - (i) The recipient retains ownership or possession of the property; or
    - (ii) The transferee retains ownership or possession of the property without compensating the Departmental grantmaking agency for the fair market value of that ownership or possession.
- (b) In all other cases, the assurance will obligate the recipient for the period during which WIOA Title I financial assistance is extended.

**Covenants:**

- (a) Where WIOA Title I financial assistance is provided in the form of a transfer of real property, structures, or improvements on real property or structures, or interests in real property or structures, the instrument effecting or recording the transfer must contain a covenant assuring nondiscrimination and equal opportunity for the period described in §38.25(a)(1).
- (b) Where no Federal transfer of real property or interest therein from the Federal Government is involved, but real property or an interest therein is acquired or improved under a program of WIOA Title I financial assistance, the recipient must include the covenant described in paragraph (a) of this section in the instrument effecting or recording any subsequent transfer of such property.
- (c) When the property is obtained from the Federal Government, the covenant described in paragraph (a) of this section also may include a condition coupled with a right of reverter to the Department in the event of a breach of the covenant.

**Designation of Equal Opportunity Officers (EO): (29 CFR §38.28, §38.29, §38.30, §38.31, §38.32 and §38.33)**

Every Governor must designate an individual as a State-level Equal Opportunity Officer (State-level EO Officer), who reports directly to the Governor and is responsible for State Program-wide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA and this part, including but not limited to §38.51, §38.53, §38.54, and §38.55 for State Programs. Every recipient except small recipients and service providers, as defined in §38.4(hhh) and (ggg),

must designate a recipient-level Equal Opportunity Officer (recipient-level EO Officer), who reports directly to the individual in the highest-level position of authority for the entity that is the recipient, such as the Governor, the Administrator of the State Department of Employment Services, the Chair of the Local Workforce Development Board, the Chief Executive Officer, the Chief Operating Officer, or an equivalent official. The recipient-level EO Officer must have staff and resources sufficient to carry out the requirements of this section and §38.31.

Although small recipients, as defined in §38.4(hhh), do not need to designate EO Officers who have the full range of responsibilities listed in §38.31, they must designate an individual who will be responsible for adopting and publishing complaint procedures, and processing complaints, as explained in §38.72 through §38.75. Service providers, as defined in §38.4(ggg), are not required to designate an EO Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part rests with the Governor or LWDA grant recipient, as specified in the State's Nondiscrimination Plan.

**All recipients have the obligations related to their EO Officers listed in 29 CFR §38.29-38.31 including;**

- (a) Serving as a recipient 's liaison with Civil Rights Center (CRC);
- (b) Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I-financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I and this part, which includes monitoring the collection of data required in this part to ensure compliance with the nondiscrimination and equal opportunity requirements of WIOA and this part;
- (c) Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
- (d) Developing and publishing the recipient's procedures for processing discrimination complaints under §38.72-§38.73, including tracking the discrimination complaints filed against the recipient, developing procedures for investigating and resolving discrimination complaints filed against the recipient, making sure that those procedures are followed, and making available to the public, in appropriate languages and formats, the procedures for filing a complaint;
- (e) Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with §38.40 and how an individual may file a complaint consistent with §38.69;
- (f) Undergoing training (at the recipient's expense) to maintain competency of the EO Officer and staff, as required by the Director; and
- (g) If applicable, overseeing the development and implementation of the recipient's Nondiscrimination Plan under §38.54.

**Equal Opportunity Notice: (29 CFR §38.34, §38.35, §38.36, §38.37, §38.38)**

**Recipients Obligation to Disseminate Equal Opportunity Notice:**

- (a) A recipient must provide initial and continuing notice as defined in §38.36 that it does not discriminate on any prohibited basis. This notice must be provided to:
  - (1) Registrants, applicants, and eligible applicants/registrants;
  - (2) Participants;
  - (3) Applicants for employment and employees;
  - (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
  - (5) Subrecipients that receive WIOA Title I financial assistance from the recipient; and

- (6) Members of the public, including those with impaired vision or hearing and those with limited English proficiency (LEP).
- (b) As provided in §38.15, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for LEP individuals as described in §38.9.

### **Equal Opportunity Notice/Poster:**

**The notice and text are dictated by law and must contain the following specific wording:**

**Equal Opportunity Is the Law**

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

### **What to do if You Believe You Have Experienced Discrimination**

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW., Room N-4123, Washington, DC 20210 or electronically as directed on the CRC Web site at [www.dol.gov/crc](http://www.dol.gov/crc).

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However,

you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient). If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

**Recipients Obligation to Publish Equal Opportunity Notice:**

- (a) At a minimum, the Equal Opportunity Notice required by §38.34 and §38.35 must be:
  - (1) Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's Web site pages;
  - (2) Disseminated in internal memoranda and other written or electronic communications with staff;
  - (3) Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available; and
  - (4) Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.
- (b) The notice must be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment and 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 a part of the employee's or participant's file.
- (c) The notice must be provided to participants in appropriate languages other than English as required in §38.9.
- (d) The notice required by §38.34 and §38.35 must be initially published and provided within 90 days of January 3, 2017, or of the date this part first applies to the recipient, whichever comes later.

Reference 29 CFR §38.38 and for publication, broadcasts and other communication requirements.

**Notice Requirement for Service Providers:**

The Governor or the LWDB grant recipient(s), as determined by the Governor and as provided in that State's Nondiscrimination Plan, will be responsible for meeting the notice requirement provided in §38.34 and §38.35 with respect to a State's service providers.

**Communication of Notice in Orientations: (29 CFR §38.39)**

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted program or activity, in person or over the internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA and this part, including the right to file a complaint of discrimination with the recipient or the Director. This information must be communicated in appropriate languages as required in §38.9 and in formats accessible for individuals with disabilities as required in this part and specified in §38.15.

**Affirmative Outreach: (29 CFR §38.40)**

Recipients must 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 these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in

different age groups. Such efforts may include, but are not limited to:

- (a) Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- (b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and
- (c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

**Data and Information Collection Maintenance/Confidentiality: (29 CFR §38.41, §38.42, §38.43, §38.44, §38.45)**

- (a) The Director will not require submission of data that can be obtained from existing reporting requirements or sources, including those of other agencies, if the source is known and available to the Director.
- (b)(1) Each recipient must collect such data and maintain such records, in accordance with procedures prescribed by the Director, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA or this part. The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIOA and this part.
- (2) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.
- (3) 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 (for example, through password protection).
- (i) Knowledge of disability status or medical condition and access to information in related files. Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:
  - (A) Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.
  - (B) First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.
  - (C) Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws. See also §38.44.

(ii) Knowledge of disability status or medical condition only. Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

(c) Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with the recipient that allege discrimination on the basis(es) 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. The log must include: The name and address of the complainant; the basis of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

(d) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

(e) A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or LWDA grant recipient, as provided in the State's Nondiscrimination Plan.

**Information to be Provided the the Civil Rights center (CRC) by Grant Applicants and Recipients:**

In addition to the information which must be collected, maintained, and, upon request, submitted to CRC under §38.41:

(a) Each grant applicant and recipient must promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it 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 limited English proficiency), 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. This notification must include:

- (1) The names of the parties to the action or lawsuit;
- (2) The forum in which each case was filed; and
- (3) The relevant case numbers.

(b) Each recipient (as part of a compliance review conducted under §38.63, or monitoring activity carried out under §38.65) must provide the following information:

- (1) The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
- (2) Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include:

- (i) The names of the parties;
- (ii) The forum in which each case was filed; and
- (iii) The relevant case numbers.

(c) At the discretion of the Director, grant applicants and recipients may be required to provide, in a timely manner, any information and data that the Director considers necessary to investigate complaints and conduct compliance reviews on bases prohibited under the nondiscrimination and equal opportunity provisions of WIOA and this part.

(d) At the discretion of the Director, recipients may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part.

(e) At the discretion of the Director, grant applicants may be required to submit, in a timely manner, the particularized information that the Director considers necessary to determine whether or not the grant applicant, if financially assisted, would be able to comply with the nondiscrimination and equal opportunity provisions of WIOA or this part.

(f) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

**Required Maintenance of Records by Recipients:**

(a) Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than *five* years from the close of the applicable program year:

(1) The records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and

(2) Such other records as are required under this part or by the Director.

(b) Where a discrimination complaint has been filed or compliance review initiated, every recipient that possesses or maintains any type of hard-copy or electronic record related to the complaint (including records that have any relevance to the underlying allegations in the complaint, as well as records regarding actions taken on the complaint) or to the subject of the compliance review must preserve all records, regardless whether hard-copy or electronic, that may be relevant to a complaint investigation or compliance review, and maintain those records for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review.

**Confidentiality Responsibilities of Grant Applicants, Recipients and the Department:**

Grant applicants, recipients and the Department must keep confidential to the extent possible, consistent with a fair determination of the issues, the identity of any individual who furnishes information relating to, or assists in, an investigation or a compliance review, including the identity of any individual who files a complaint. An individual whose identity is disclosed must be protected from retaliation (See §38.19).

**Access to Information and Information Sources:**

Each grant applicant and recipient must permit access by the Director or the Director's designee during its hours of operation to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, or monitoring activities associated with a State's development and implementation of a Nondiscrimination Plan, and for inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA or this part. (See 29 CFR §38.44).

**Governor's Oversight and Monitoring Responsibilities for State Programs/Liability/Recordkeeping: (29 CFR §38.51, §38.52, §38.53, §38.54)**

Each Governor must establish and implement a Nondiscrimination Plan for State Programs as defined in §38.4(kkk), §38.54 and §38.55. In those States in which one agency contains both SWA or unemployment insurance [UI] and WIOA Title I-financially assisted programs, the Governor must develop a combined Nondiscrimination Plan. [Nevada contains both SWA and UI]

The Governor is responsible for oversight and monitoring of all WIOA Title I-financially assisted State Programs. This responsibility includes:

(a) Ensuring compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part, and negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found under §38.91(b).

(b) Annually monitoring the compliance of recipients with WIOA section 188 and this part, including a determination as to whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way. At a minimum, each annual monitoring review required by this paragraph must include:

(1) A statistical or other quantifiable analysis of records and data kept by the recipient under §38.41, including analyses by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status;

(2) An investigation of any significant differences identified in paragraph (b)(1) of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and

(3) An assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of WIOA or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the Nondiscrimination Plan.

The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of §38.41 and any procedures prescribed by the Director under §38.41(a).

The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director. (29 CFR §38.53)

#### **Liability:**

(a) The Governor and the recipient are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIOA and this part by the recipient, unless the Governor has:

(1) Established and implemented a Nondiscrimination Plan, under §38.54, designed to give a reasonable guarantee of the recipient's compliance with such provisions;

(2) Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;

(3) Acted with due diligence to monitor the recipient's compliance with these provisions; and

(4) Taken prompt and appropriate corrective action to effect compliance.

(b) If the Director determines that the Governor has demonstrated substantial compliance with the requirements of paragraph (a) of this section, the Director may recommend to the Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient.

#### **Oversight:**

The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of §38.41 and any procedures prescribed by the Director under §38.41(a). The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

#### **Compliance Procedures:**

**Evaluations, Authority/Pre-Approval/Post Approval Reviews/Compliance: (29 CFR §38.60, §38.61, §38.62, §38.63, §38.64, §38.65)**

The Director may conduct pre-approval compliance reviews of grant applicants as well as post

approval of recipients for WIOA financial assistance to determine compliance as detailed in 29 CFR §38.62, §38.63, §38.64 and §38.65.

The Director may also investigate and resolve complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIOA and this part. Section 183(c) of WIOA authorizes the issuance of subpoenas per 29 CFR §38.61.

**Notice to Show Cause Issued to a Recipient: (29 CFR §38.66)**

(a) The Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the recipient's failure or refusal to:

(1) Submit requested information, records, and/or data within the timeframe specified in a Notification Letter issued pursuant to §38.63;

(2) Submit, in a timely manner, information, records, and/or data requested during a compliance review, complaint investigation, or other action to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part; or

(3) Provide CRC access in a timely manner to a recipient's premises, records, or employees during a compliance review or complaint investigation, as required in §38.42(c).

(b) The Director may issue a Notice to Show Cause to a recipient after a Letter of Findings and/or an Initial Determination has been issued, and after a reasonable period of time has passed within which the recipient refuses to negotiate a conciliation agreement with the Director regarding the violation(s).

(c) A Notice to Show Cause must contain:

(1) A description of the violation and a citation to the pertinent nondiscrimination or equal opportunity provision(s) of WIOA and this part;

(2) The corrective action necessary to achieve compliance or, as may be appropriate, the concepts and principles of acceptable corrective or remedial action and the results anticipated; and

(3) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.

(d) A Notice to Show Cause must give the recipient 30 days from receipt of the Notice to show cause why enforcement proceedings under the nondiscrimination and equal opportunity provisions of WIOA or this part should not be instituted.

**Methods by which a recipient may show cause why enforcement proceedings should not be instituted: (20 CFR §38.67)**

A recipient may show cause why enforcement proceedings should not be instituted by, among other means:

(a) Correcting the violation(s) that brought about the Notice to Show Cause and entering into a Conciliation Agreement, under §38.91 and §38.93;

(b) Demonstrating that CRC does not have jurisdiction; or

(c) Demonstrating that the violation alleged by CRC did not occur.

**Failing to Show Cause: (29 CFR §38.68)**

If the recipient fails to show cause why enforcement proceedings should not be initiated, the Director may follow the enforcement procedures outlined in §38.95.

## **Post-Violation Procedures: (29 CFR §38.91)**

(a) Violations at the State level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part has occurred at the State level, the Director must notify the Governor of that State through the issuance of a Letter of Findings, Notice to Show Cause, or Initial Determination, as appropriate, under §38.62 or §38.64, §38.66 and §38.67, or §38.87, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part through, among other means, the execution of a written assurance or Conciliation Agreement.

(b) Violations below State level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part has occurred below the State level, the Director must so notify the Governor and the violating recipient(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under §38.62 or §38.64, §38.66 and §38.67, or §38.87, respectively.

(1) Such issuance may:

(i) Direct the Governor to initiate negotiations immediately with the violating recipient(s) to secure compliance by voluntary means.

(ii) Direct the Governor to complete such negotiations within 30 days of the Governor's receipt of the Notice to Show Cause or within 45 days of the Governor's receipt of the Letter of Findings or Initial Determination, as applicable. The Director reserves the right to enter into negotiations with the recipient at any time during the period. For good cause shown, the Director may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance must not exceed 60 days.

(iii) Include a determination as to whether compliance must be achieved by:

(A) Immediate correction of the violation(s) and written assurance that such violations have been corrected, under §38.92; or

(B) Entering into a written Conciliation Agreement under §38.93.

(2) If the Governor determines, at any time during the period described in paragraph (b)(1)(ii) of this section, that a recipient's compliance cannot be achieved by voluntary means, the Governor must so notify the Director.

(3) If the Governor is able to secure voluntary compliance under paragraph (b)(1) of this section, the Governor must submit to the Director for approval, as applicable:

(i) Written assurance that the required action has been taken, as described in §38.92; or

(ii) A copy of the Conciliation Agreement, as described in §38.93.

(4) The Director may disapprove any written assurance or Conciliation Agreement submitted for approval under paragraph (b)(3) of this section that fails to satisfy each of the applicable requirements provided in §38.92 and §38.93.

(c) Violations in National Programs. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part has occurred in a National Program, the Director must notify the Federal grantmaking agency and the recipient by issuing a Letter of Findings, Notice to Show Cause, or Initial Determination, as appropriate, under §38.62 or §38.63, §38.66 and §38.67, or §38.87, respectively. The Director may secure compliance with the nondiscrimination and equal opportunities provisions of WIOA through, among other means, the execution of a written assurance or conciliation agreement under §38.92 or §38.93.

**Written Assurance: (29 CFR §38.92)**

A written assurance is the resolution document that may be used when the Director determines that a recipient has, within 15 business days after receipt of the Letter of Findings or Initial Determination identifying the violations, taken all corrective actions to remedy the violations specified in those documents.

**Conciliation Agreement: (29 CFR §38.93)****A conciliation agreement must:**

- (a) Be in writing;
- (b) Address the legal and contractual obligations of the recipient;
- (c) Address each cited violation;
- (d) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
- (e) Provide for periodic reporting on the status of the corrective and remedial action;
- (f) State that the violation(s) will not recur;
- (g) State that nothing in the agreement will prohibit CRC from sending the agreement to the complainant, making it available to the public, or posting it on the CRC or recipient's Web site;
- (h) 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
- (i) Provide for enforcement for a breach of the agreement.

**When Voluntary Compliance Not Secured/Enforcement: (29 CFR §38.94, §38.95)**

The Director will conclude that compliance cannot be secured by voluntary means under the following circumstances:

- (a) The Governor, grant applicant or recipient fails to or refuses to correct the violation(s) within the time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or
- (b) The Director has not approved an extension of time for agreement on voluntary compliance under §38.91(b)(1)(ii) and the Director either:
  - (1) Has not been notified under §38.91(b)(3) that the Governor, grant applicant, or recipient has agreed to voluntary compliance;
  - (2) Has disapproved a written assurance or Conciliation Agreement, under §38.91(b)(4); or
  - (3) Has received notice from the Governor, under §38.91(b)(2), that the grant applicant or recipient will not comply voluntarily.

**Enforcement:**

If the Director concludes that compliance cannot be secured by voluntary means, the Director must either:

- (a) Issue a Final Determination;
- (b) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or
- (c) Take such other action as may be provided by law.

**Final Determination of Violation: (29 CFR §38.96)**

A Final Determination must contain the following information:

- (a) A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;

- (b) A statement of those matters upon which the grant applicant or recipient and CRC continue to disagree;
- (c) A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;
- (d) A statement of the grant applicant's or recipient's liability, and, if appropriate, the extent of that liability;
- (e) A description of the corrective or remedial actions that the grant applicant or recipient must take to come into compliance;
- (f) A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
  - (1) After the grant applicant or recipient is given the opportunity for a hearing, its WIOA Title I financial assistance may be terminated, discontinued, or withheld in whole or in part, or its application for such financial assistance may be denied, as appropriate;
  - (2) The Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the grant applicant or recipient; or
  - (3) The Secretary may take any other action against the grant applicant or recipient that is provided by law;
- (g) A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in §38.112-§37.115; and
- (h) A determination of the Governor's liability, if any, under §38.52.

**Notification of Finding of Noncompliance: (29 CFR §38.97)**

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director must notify:

- (a) The grant applicant or recipient;
- (b) The grantmaking agency; and
- (c) The Assistant Attorney General.

**Notification of Breach of Conciliation Agreement/ Content of Notification of Enforcement: (29 CFR §38.98, §38.99, §38.100)**

- (a) When it becomes known to the Director that a Conciliation Agreement has been breached, the Director may issue a Notification of Breach of Conciliation Agreement.
- (b) The Director must send a Notification of Breach of Conciliation Agreement to the Governor, the grantmaking agency, and/or other party(ies) to the Conciliation Agreement, as applicable.

**Content:**

A Notification of Breach of Conciliation Agreement must:

- (a) Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;
- (b) Identify the specific provisions of the Conciliation Agreement violated;
- (c) Determine liability for the violation and the extent of the liability;
- (d) Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request from the Department to file suit;
- (e) Advise the violating party of the right to request a hearing, and reference the applicable procedures in §38.111; and

(f) Include a determination as to the Governor's liability, if any, in accordance with the provisions of §38.52.

**Notification of Enforcement:**

In such circumstances, the Director must notify:

- (a) The grantmaking agency; and
- (b) The Governor, recipient or grant applicant, as applicable.

**Federal Enforcement Procedures: (29 CFR §38.110, §38.111, §38.112, §38.113, §38.114, §38.115)**

**Enforcement:**

(a) Sanctions; judicial enforcement. If compliance has not been achieved after issuance of a Final Determination under §38.95 and §38.96, or a Notification of Breach of Conciliation Agreement under §38.98-§38.100, the Secretary may:

- (1) After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA Title I financial assistance, in whole or in part;
- (2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or
- (3) Take such action as may be provided by law, which may include seeking injunctive relief.

(b) Deferral of new grants. When proceedings under §38.111 have been initiated against a particular recipient, the Department may defer action on that recipient's applications for new WIOA Title I financial assistance until a Final Decision under §38.112 has been rendered. Deferral is not appropriate when WIOA Title I financial assistance is due and payable under a previously approved application.

(1) New WIOA Title I financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New WIOA Title I financial assistance does not include assistance approved before the beginning of proceedings under §38.111, or increases in funding as a result of changed computations of formula awards.

**Hearing Procedures:**

(a) Notice of opportunity for hearing. As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director must include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) Complaint; request for hearing; answer. (1) In the case of noncompliance that cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement is considered the Department's formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges, 800 K Street NW., Suite 400, Washington, DC 20001.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer must specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement will have the effect of a denial. Findings of fact not denied are considered admitted.

The answer must separately state and identify matters alleged as affirmative defenses, and must

also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights and Labor-Management Division, Room N-2474, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

(4)(i) The failure of a grant applicant or recipient to request a hearing under this paragraph (b), or to appear at a hearing for which a date has been set, waives the right to a hearing; and

(ii) Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement are considered admitted, and the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing.

(c) Time and place of hearing. Hearings will be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard must be given to the convenience of the parties, their counsel, and witnesses, if any.

(d) Judicial process; evidence-(1) Judicial process. The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents authorized by Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

(2) Evidence. In any hearing or administrative review conducted under this part, evidentiary matters will be governed by the standards and principles set forth in the Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, 29 CFR part 18.

#### **Initial and Final Decision Procedures:**

(a) Initial decision. After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties by certified mail, return receipt requested.

(b) Exceptions; Final Decision-(1) Final Decision after a hearing. The initial decision and order becomes the Final Decision and Order of the Department unless exceptions are filed by a party or, in the absence of exceptions, the Administrative Review Board serves notice that it will review the decision.

(i) Exceptions. A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Administrative Review Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof.

(ii) Transmittal of record and initial decision by Administrative Law Judge. Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Administrative Review Board within three days of such receipt.

(iii) Specificity required when filing exceptions. A party filing exception must specifically identify the finding or conclusion to which exception is taken.

(iv) Reply. Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions. Requests for extensions for the filing of exceptions or replies must be received by the Administrative Review Board no later than 3 days before the exceptions or replies are due.

(vi) Review by Administrative Review Board on its own motion. If no exceptions are filed, the Administrative Review Board may, within 30 days of the expiration of the time for filing exceptions, on its own motion serve notice on the parties that it will review the decision.

(vii) Final Decision and Order without review by Administrative Review Board. (A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge

becomes the Final Decision and Order unless the Administrative Review Board, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order unless the Administrative Review Board has served notice on the parties that it will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) Final Decision and Order after review by Administrative Review Board. Any case reviewed by the Administrative Review Board under this paragraph must be decided within 180 days of the notification of such review. If the Administrative Review Board fails to issue a Final Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order.

(2) Final Decision where a hearing is waived. (i) If, after issuance of a Final Determination under §38.95 or Notification of Breach of Conciliation Agreement under §38.98, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in §38.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision, the Administrative Review Board may, within 45 days, issue an order terminating or denying the grant or continuation of assistance; or imposing other appropriate sanctions for the grant applicant's, Governor's, or recipient's failure to comply with the required corrective and/or remedial actions, or the Secretary may refer the matter to the Attorney General for further enforcement action.

(3) Final agency action. A Final Decision and Order issued under paragraph (b) of this section constitutes final agency action.

#### **Suspensions, Termination, Withholding, Denial, or Discontinuation of Financial Assistance:**

Any action to suspend, terminate, deny or discontinue WIOA Title I financial assistance must be limited to the particular political entity, or part thereof, or other recipient (or grant applicant) as to which the finding has been made, and must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIOA Title I financial assistance will become effective until:

(a) The Director has issued a Final Determination under §38.95 or Notification of Breach of Conciliation Agreement under §38.98;

(b) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or under the nondiscrimination and equal opportunity provisions of WIOA or this part;

(c) A Final Decision has been issued by the Administrative Review Board, the Administrative Law Judge's decision and order has become the Final Agency Decision, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Agency Decision, under §38.112(b); and

(d) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

#### **Distribution of WIOA Title I to an Alternate Recipient:**

When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

- (a) The ability to comply with these regulations; and
- (b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIOA.

**Post-Termination Proceedings:**

- (a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §38.112(b) will be restored, where appropriate, to full eligibility to receive WIOA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part.
- (b) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §38.112(b) may at any time petition the Director to restore its eligibility to receive WIOA Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, sanctions imposed by the Final Decision and Order under §38.112(b)(1) and (2) must remain in effect.
- (c) The Director must issue a written decision on the petition for restoration.
  - (1) If the Director determines that the grant applicant or recipient has not brought itself into compliance, the Director must issue a decision denying the petition.
  - (2) Within 30 days of its receipt of the Director's decision, the recipient or grant applicant may file a petition for review of the decision by the Administrative Review Board, setting forth the grounds for its objection to the Director's decision.
  - (3) The petition must be served on the Director and on the Office of the Solicitor, Civil Rights and Labor-Management Division.
  - (4) The Director may file a response to the petition within 14 days.
  - (5) The Administrative Review Board must issue the final agency decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

Reference Section 4 of State Compliance Policies for other Equal Opportunity requirements.