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Region 1 Workforce Development Board Policy #13

Subject: Equal Opportunity Discrimination Complaint Policy and Procedures

Effective Date: January 31, 2017

GENERAL PROVISIONS

Section 188 of the Workforce Innovation and Opportunity Act (WIOA), and the implementing regulations at 29 CFR Part 37, prohibits discrimination because of race, color, religion, sex, national origin, age, disability or political affiliation or belief, in both participation and employment. The WIOA nondiscrimination regulations prohibit discrimination in all aspects of the administration, management, and operation of WIOA programs and activities. The State of West Virginia has adopted the following procedures for processing complaints alleging violations of the nondiscrimination and equal opportunity provisions in a WIOA Title I-financially assisted program or activity.

DEFINITIONS

Beneficiary – Individual or individuals intended by Congress to receive (and benefit from) aid, benefits, services, or training from a recipient of Federal financial assistance under a program or activity established by Federal statute.

CRC – U.S. Department of Labor / Office of Assistant Secretary for Administration and Management / *Civil Rights Center*.

Complainant – Individual filing discrimination complaint based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, on the basis of either citizenship as a lawfully admitted immigrant authorized to work in the United States, or participation in a WIOA Title I financially assistance program or activity.

Federal Financial Assistance – Refers to more than just dollars and cents. It can include nonmonetary forms of assistance, such as the provision of personnel at the grantmaking/recipient agency's expense, or the grant or donation of property, among other things.

Mediation – A process of alternative dispute resolution whereby negotiation of issues are facilitated by a neutral party. It is a voluntary and confidential process, and can result in a binding agreement.

Recipient – Any entity that receives financial assistance under WIOA Title I, either directly from the US Department of Labor or through the Governor or another recipient. American Job Center Partners are considered recipients to the extent that they participate in the one-stop delivery system.

Respondent – A grant applicant or recipient against whom a complaint has been filed under the nondiscrimination and equal opportunity provisions of WIOA.

BACKGROUND

This policy is intended to ensure that the Workforce Development Boards (WDBs) and other grant recipients/program providers implement complaint policies and procedures in compliance with guidelines provided by the Director, Civil Rights Center, U.S. Department of Labor (CRC), regarding the nondiscrimination/equal opportunity provisions of Title I of the Workforce Innovation and Opportunity Act (WIOA).

Section 188 of Title I of WIOA prohibits discrimination on the basis of: race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, on the basis of either citizenship as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I financially assisted program or activity. Each Workforce Development Area has designated a Local Equal Opportunity Officer who is responsible for adopting and publishing policies and complaint procedures, and ensuring compliance. A recipient/program provider must provide initial and continued notice that it does not discriminate on any prohibited ground. A copy of the "Equal Opportunity is the Law" notice is provided to each participant and made a part of each participant's file per the regulations. If a complaint is filed, a copy of this Equal Opportunity (EO) Discrimination Complaint Processing Policy and Procedures is to be provided to the complainant.

POLICY AND PROCEDURE

Discrimination Complaint and Filing

All grant recipients/program providers under Title I of WIOA are responsible for complying with the discrimination complaint procedures consistent with 29 CFR Part 37, as outlined in this policy: Any person who believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIOA Title I, has the right to file a complaint within one hundred and eighty (180) calendar days of the alleged discrimination. The filing period may be extended for good cause in some limited circumstances. However, only the Director of CRC may extend the filing time.

Receipt of Complaint

A complainant must file a complaint within 180 days of the alleged act(s) of discrimination. If the complainant elects to file with an employee in a WorkForce West Virginia American Job Center, that employee will immediately accept the complaint and forward the complaint to the

WorkForce West Virginia EO Officer. The complainant may file with WorkForce West Virginia or the Department of Labor, Director, Civil Rights Center (Federal). Filing a complaint with WorkForce West Virginia does not affect a complainant's right to file a complaint with the Civil Rights Center if he or she is not satisfied with the resolution provided by WorkForce West Virginia. The WorkForce West Virginia EO Officer is responsible for determining if the complaint is covered by 29 CFR Part 37, and for resolving jurisdictional issues, if any. Complaints may be submitted to:

STATE

Nicholas Allen, Acting EO Officer
 WorkForce West Virginia (Recipient)
 1900 Kanawha Blvd., E.
 Building 3, 3rd Floor, Suite 3113
 Charleston, WV 25305
 Phone: (304) 558-1600
 WV Relay 7-1-1
WorkForceEO@wv.gov

FEDERAL

Naomi M. Berry-Perez, Director
 U.S. Department of Labor
 Civil Rights Center (CRC)
 200 Constitution Avenue, NW
 Room N-4123
 Washington, DC 20210
 Phone: (202) 693-6502
 TTY: (202) 693-6515
www.dol.gov/CRC

Forms Used to File Complaint

State- An individual may file a complaint at the state level by completing and submitting the WorkForce West Virginia Discrimination Complaint Form which may be obtained from any local Workforce Development Board, WorkForce West Virginia American Job Center, or the WorkForce West Virginia Equal Opportunity Officer. The choice whether to use mediation or the customary investigative process rests with the complainant. The Mediation process is outlined in the section, "Mediation", discussed later in this policy. *(EDITOR NOTE: access to form and procedures will be incorporated on the WFWV website that is currently being updated)*

Federal – An individual may file a complaint by completing and submitting the Civil Rights Center's Complaint Information and Privacy Act Consent Forms, which may be obtained from the WorkForce West Virginia Equal Opportunity Office, or from the U.S. Department of Labor's Civil Rights Center website at <http://www.dol.gov/oasam/programs/crc/external-enforcement-complaints.htm>.

The complaint document must contain the following information: Complainant's name and address, or other means by which the complainant can be contacted; Identification of individual(s) or organization(s) responsible for the alleged discrimination; and a description of the complainant's allegations, which must include enough details to determine:

- Recipient's jurisdiction of the complaint.
- If the complaint was filed timely (within 180 days).
- Specific prohibited bases of the alleged discrimination (i.e., race, sex, etc.).

- Apparent merit of the complaint.
- Complainant's or authorized representative's signature.

Right to Representation – Both the complainant and respondent have the right to be represented by an attorney or other individual of their choice. The complainant will be offered the option to participate in mediation, or follow the customary state level complaint process. Any person electing to file at the state level shall allow WorkForce West Virginia 90 days (from the date of receipt) of complaint to process the complaint.

If it is determined that the recipient does not have jurisdiction over a complaint, the complainant will be notified in writing by the EO Officer of WorkForce West Virginia of one or more of the following reasons:

- The basis for the complaint is not covered by the prohibitions set forth by 29 CFR Part 37.
- The complaint was not filed within the prescribed 180 days of the alleged violation.
- The complaint is against an entity that is not a recipient of WIOA Title I financial assistance as defined under 29 CFR Part 37.

If the recipient does have jurisdiction, the WorkForce West Virginia EO Officer will provide written notice to the complainant within 10 working days from the date of receipt of complaint. The written notice will contain the following:

- 1) Acknowledgment that the complaint has been received, and that the Respondent has been notified that a complaint has been filed.
- 2) Notice that complainant has the right to be represented in complaint process.
- 3) A written statement of the issue(s) provided by the complainant, including a statement as to whether the recipient will accept or reject the issues, and the reasons for rejection.
- 4) A period of fact finding or investigation of the circumstances underlying the complaint, which may take about 20 working days.
- 5) A brochure explaining the mediation process will be attached. The option to mediate rests with the complainant. The complainant will be requested to notify the WorkForce West Virginia EO Officer within 5 days of receipt of the written notice if he/she wishes to participate in mediation. If the complainant elects mediation, the process outlined below, captioned "Mediation", shall be followed.

- 6) Respondent will be notified that a complaint alleging discrimination has been filed and is being processed. A summary of the complaint and a notice that retaliation is against the law will be provided to respondent. The respondent will be also be notified if mediation has been chosen by the complainant as a means of resolution.
- 7) If, at the end of the 90 days, WorkForce West Virginia has not completed its fact finding or investigation, or failed to issue a Notice of Final Action, the complainant or his/her representative may, within 30 days of the expiration of the 90 days period, file a complaint with the Civil Rights Center.
- 8) Notice that if the Notice of Final Action is issued during the 90-day period, and the complainant is dissatisfied with the decision, the complainant has a right to file a complaint with the Civil Rights Center, within 30 days of the date on which the complainant receives the Notice of Final Action.

Mediation

The choice whether to use mediation or the customary investigative process rests with the complainant. If the complainant chooses mediation the respondent will be notified. WorkForce West Virginia mediation procedures are as follows:

- 1) If mediation is elected, the WorkForce West Virginia EO Officer will notify the mediator within 2 days of the receipt of the Mediation Election Form. The session will begin no later than 15 calendar days after the mediator is notified.
- 2) Parties will receive notice of where and when the mediation will be conducted.
- 3) Two (2) calendar days will be allowed for the mediation session to achieve a resolution. If the parties do not reach an agreement within the two-day mediation session, a notice will be issued within 15 calendar days from the end of the two-day mediation session, outlining the facts or circumstances relevant to the attempt to settle the issues. Notice will be given that the complaint has been referred for investigation.
- 4) If mediation was used successfully, a description of the resolution will be provided. A copy of the Settlement Agreement will be provided to the complainant and respondent within 15 days from the conclusion of the mediation session and the agreement will contain the following:

Signatures of mediator, complainant and respondent.

Description of the settlement of the issues.

Future responsibilities of both parties.

Notice of rights, to both complainant and respondent, that if either party to the agreement breaches the agreement, then the non-breaching party may file a complaint with the CRC within 30 days of the learning the agreement was breached.

- 5) If the parties do not reach an agreement under mediation, the complaint will be referred for investigation.

Breach of Settlement Agreement

A party to any agreement reached under mediation may file a complaint with the Civil Rights Center in the event the agreement is breached.

The non-breaching party may file a complaint with the Civil Rights Center within 30 days of the date on which the non-breaching party learns of the alleged breach.

If the Civil Rights Center determines that the respondent has breached the agreement, the complainant may file a complaint with the Civil Rights Center based upon his or her original allegations and the Civil Rights Center will waive the time deadline for filing such a complaint.

Notice of Final Action

The complainant shall allow WorkForce West Virginia 90 days from the date the complaint was received to process the complaint and issue a written Notice of Final Action. The complainant and respondent will be notified of the decision. The following will be covered in the notice:

- 1) An explanation of each issue that was accepted for investigation and the resolution.
- 2) The respondent will be notified if action needs to be taken, what that action is, and when that action needs to be completed.
- 3) If the Notice of Final Action is issued during the 90-day period, and the complainant is dissatisfied with the decision, the complainant, or his or her representative, has a right to file a complaint with the Civil Rights Center within 30 days of the date on which the complainant receives the Notice of Final Action. Only the Director of the Civil Rights Center may extend the 30-day time limit for good cause shown. The complainant has the burden of proving, to the Director, Civil Rights Center, that the time limit should be extended.
- 3) If, at the end of the 90 days, WorkForce West Virginia has not completed its processing of the complaint or failed to issue a Notice of Final Action, WorkForce West Virginia will notify the complainant, or his or her representative, that the processing of their complaint is not completed. WorkForce West Virginia will advise the complainant of their right to file with the CRC within 30 days of the expiration of the 90-day period. In other words the complaint must be filed with the Civil Rights Center within 120 days of the date on which WorkForce West Virginia received the complaint.

Action: All Workforce West Virginia centers located within Region 1, and R1WDB staff will be made aware of this policy

Expiration Date: This policy shall be in effect until revised or canceled by the Region 1 Workforce Development Board

Approved:

May 4, 2017

May 18, 2017

May 18, 2017

Executive Committee

Region 1 Workforce Development Board of Directors

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