**Workforce Investment Act Title I-B
Washington State Policies

SECTION C: General Administration**

*Grantees, subrecipients, and contractors funded under the Workforce Investment Act (WIA), whether in whole or in part, must abide by the Workforce Investment Act of 1998, the WIA Regulations, all applicable Office of Management and Budget (OMB) Circulars, state regulations* *in laws and rules (Revised Code of Washington and Washington Administrative Code), Office of Financial Management (OFM) policies, and the Washington State WIA policies.*

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| **EFFECTIVE DATE:WIA POLICY NUMBER:SUBJECT:** | November 20, 20023450, Revised FinalEqual Opportunity and Discrimination Complaint ProcessingPolicy and Procedures |

[BACKGROUND](http://www.wa.gov/esd/1stop/policies/documents/archive/3450.htm#BACKGROUND) | [POLICY](http://www.wa.gov/esd/1stop/policies/documents/archive/3450.htm#POLICY AND PROCEDURE) | [REFERENCES](http://www.wa.gov/esd/1stop/policies/documents/archive/3450.htm#REFERENCES) | [SUPERSEDES](http://www.wa.gov/esd/1stop/policies/documents/archive/3450.htm#SUPERCEDES) | [WEBSITE](http://www.wa.gov/esd/1stop/policies/documents/archive/3450.htm#WEBSITE) | [INQUIRIES](http://www.wa.gov/esd/1stop/policies/documents/archive/3450.htm#INQUIRIES)

**BACKGROUND**

This policy is intended to ensure that the Workforce Development Councils (WDCs) 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/USDOL), regarding the nondiscrimination/equal opportunity provisions of the Workforce Investment Act (WIA), Title I of 1998 and 29 CFR Part 37.Section 188 ofTitle I of WIA 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 WIA Title I financially assisted program or activity.

Each Workforce Development Area has designated a Local Equal Opportunity Officer (LEOO) who is responsible for adopting and publishing policies and complaint procedures, and ensuring that they are followed. Per 29 CFR Part 37.29, a recipient/program provider must provide initial and continued notice that it does not discriminate on any prohibited ground. A copy of the "Notice of Rights to File a Complaint" 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**

1. Discrimination Complaint and Filing

All grant recipients/program providers under Title I ofWIA 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 WIA Title I, has the right to file a complaint within one hundred and eighty (180) calendar days of the alleged discrimination.
* It is recommended, but not required, that the complaint be filed on the USDOL/CRC Complaint Information Form and Privacy Act Consent Form. (Attached to this policy)
* A written complaint must be filed 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.
* Any individual wishing to file a discrimination complaint must be given the option to file the complaint with a WorkSource Center/affiliate sites/WDC EO Officer, the State EO Officerand/or directly with the Director of the Civil Rights Center, United States Department of Labor (CRC/USDOL):

Director/Civil Rights Center
U.S. Department of Labor            200 Constitution Avenue NW
Washington, D.C. 20210

OR

Kintu Nnambi
Human Resources Division                                               Employment Security Department
P.O. Box 9046, Mailstop 6000
Olympia, WA 98507-9046  Email: knnambi@esd.wa.gov
Telephone: (360) 902-9530

The complaint document must contain the following information*:*

* Complainant’s name and address, or other means by which the complainant may 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:

                a.  recipient’s jurisdiction of the complaint;
                b.  if the complaint was filed timely (within 180 days);
                c.  specific prohibited bases of the alleged discrimination (i.e., race, sex, etc.);
                d.  apparent merit of the complaint;
                e.  complainant’s signature or the signature of his/her authorized representative.

* No individual, organization or agency may discharge or retaliate in any manner against any person because that person has filed a complaint, instituted any proceeding related to the Act, testified, or is about to testify, in any proceeding or investigation, or has provided information or assisted in an investigation.

2. Receipt of Complaint

* If the complainant elects to file with an employee in a WorkSource Center or affiliate site*,* that employee will immediately accept the complaint and forward the complaint to the local WDC EO Officer.
* The local WDC EO Officer is responsible for providing local intake services for discrimination complaints to determine if the complaint is covered by 29 CFR Part 37, and for resolving jurisdictional issues, if any.
* Upon receipt of a discrimination complaint, the local WDC EO Officer will log it in, and, if necessary, shall confer with the State EO Officer, prior to determining jurisdiction over the matter.
* If the localWDC EO Officer determines s/he does not have jurisdiction over the complaint, s/he must immediately notify the complainant in writing, including reasons for the determination. This Notice of Lack of Jurisdiction must advise the complainant that s/he has a right to file with the Director of CRC within thirty (30) calendar days of the date of the Notice. If the local WDC EO Officer determines that another entity has jurisdiction, s/hewill promptly refer the complaint to that entity and also promptly notify the complainant of the referral.

3. Initial Letter/Contents and Timeframes for Processing a Complaint

* Within ten (10) working days of receipt of the complaint, the local WDC EO Officer shall issue an initial written notice to the complainant that contains the following information:
	+ Acknowledgement of receipt of the complaint.
	+ Advising the complainant of his/her right to seek representation by an attorney or other individual of his/her choice in the complaint process.
	+ A list of each issue raised in the complaint and, for each issue, a statement that the issue is accepted for investigation or is not accepted. The reason(s) must be provided for rejection.
	+ Advising the complainant of thetimeframes for processing the complaint and providing a determination.
	+ The total time allowed for processing the complaint is ninety (90) calendar days from the date on which the complaint was filed. This process includes sixty (60) days at the local level and thirty (30) days for review at the state level, if warranted.
	+ If the complainant elects to file with both CRC and the WDC, the complainant shall be informed that the WDC has ninety (90) calendar days to process the complaint and that CRC shall not investigate the complaint until the ninety (90) calendar-day period has expired.
	+ The complainant will be given an invitation to participate in mediation. If the complainant elects to participate, s/he or the designated representative must respond to the invitation in writing within ten (10) calendar days of the date of the letter. This written acceptance must also include the relief sought. (See item #4 – Alternative Dispute Resolution Mediation Process below.)

Immediately after issuance of the initial written notice to the complainant, the WDC EO Officer shall either begin the fact-finding or investigation of the complaint, or arrange to have an investigation conducted.

* If the complainant or designated representative has not responded to the invitation within ten (10) calendar days, the complainant will be considered to have waived the right to mediation.
* If the complainant refuses to participate in mediation, and/or mediation is unsuccessful, the local WDC EO Officer continues with the investigation.
* The WDC will issue a Notice of Final Action to the complainant by the end of ninety (90) calendar days from the date on which the complaint was filed. If the WDC fails to issue a Notice of Final Action, the complainant may file a complaint with the Director of CRC.  This must take place within thirty (30) calendar days of the expiration of the ninety (90) calendar-day period.
* The Director of CRC may extend the time limits for good cause shown if:
	1. the complaint has not been filed within one hundred and eighty (180) calendar days of the alleged discrimination;
	2. a complaint has not been filed with CRC within thirty (30) calendar days of receipt of the recipient’s determination; or
	3. the complainant has failed to file a complaint with CRC within thirty (30) calendar days after the expiration of the ninety (90) calendar-day period provided to the local WDC EO Officer for a response.

4. Alternative Dispute Resolution (ADR)/Mediation Process

During the ninety (90) calendar-day period, complainants may elect to participate in mediation. If the complainant selects mediation, it allows disputes to be resolved in a less adversarial manner.The local WDC EO Officer will process the request and then immediately forward it to the State EO Officer.

The State EO Officer will coordinate with the local WDC EO Officer to contract with a preapproved mediator or designate a Human Resources mediator. The individual conducting the mediation must be a neutral and impartial third party who will act as a facilitator. The mediator must be a person who is acceptable to all parties and who will assist the parties in resolving their disputes.

* The local WDC EO Officeror State EO Officer will contact the parties no later than ten (10)calendar days of receipt of thecomplaint to determine the complainant’swillingness to mediate.
* If the complainant chooses to participate in mediation, s/he or the designee must respond in writing within ten (10) calendar days of the date of the request. This written acceptance must be dated and signed by the complainant and must also include the relief sought.
* A written confirmation identifying the date, time and location of the mediation conference will be sent to allappropriate parties.
* A consent form will be signed by all parties at initiation of the mediation process affirming that the contents of the mediation will be kept confidential.
* If resolution is reached under ADR/mediation, the agreement will be in writing. A copy of the signed agreement will be sent to the State EO Officer.
* If an agreement is reached under ADR/mediation but a party to the agreement believes his/her agreement has been breached, the non-breaching party may file a complaint with the CRC Director.
* If the parties do not reach resolution under ADR/mediation, the complainant will be advised of his/her right to file a complaint with the CRC/USDOL; however, the local WDC EO Officer/State EO Officer will continue with the investigation.
* If at all possible, the mediation process should be completed within thirty (30) calendar days of receipt of the complaint. This will assist in keeping within the ninety (90) calendar-day timeframe of the written Notice of Final Action if the mediation is not successful.

5. Notice of Final Action

A written Notice of Final Action will be provided to the complainant within ninety (90) calendar days of the date the complaint was filed. It will contain:

* A statement regarding the disposition of each issue raised in the complaint and the reason for the determination.
* Description of the way the parties resolved the issue(s). If the complaint was resolved by mediation, a copy of the agreement will be attached to the Notice of Final Action.
* Notice that the complainant has the right to file a complaint with CRC within thirty (30) calendar days after the date the Notice of Final Action is issued, if s/he is dissatisfied with recipient’s final action on the complaint.

The State EO Officer will review complaint data on a routine basis. Should deficiencies be noted in the implementation of these complaint procedures by any local WDC, the State EO Officer will work in conjunction with the local WDC EO Officer to review the information and/or provide technical assistance in the complaint process, alternative dispute resolution, and/or investigation. Complaint data will be available for review by CRC/USDOL upon request.

6. Corrective Action

If discrimination is found through the process of a complaint investigation, the respondent shall be requested to voluntarily comply with corrective action(s) or conciliation agreement to correct the discrimination.

7. Confidentiality

EO Officers are required to keep the following information confidential to the maximum extent possible, consistent with applicable law and fair determination of the complaint:

* The fact that the complaint has been filed;
* The identity of the complainant(s);
* The identity of individual respondents to the allegations; and
* The identity of any person(s) who furnished information relative to, or assisting in, a complaint investigation.

A separate system will be maintained both locally and at the state level for logging, tracking, and reporting on discrimination complaints.

8. Distinguishing Between Program and Discrimination Complaints

A complaint cannot be processed as both a program complaint and as a discrimination complaint. A discrimination complaint includes as a reason for mistreatment one of the prohibited factors: race, color, national origin, sex, religion, age, disability, political affiliation or belief or, for participants, participation in WIA Title I or citizenship.

9. Monitoring

The State EO Officer will review complaint data on a routine basis and during monitoring visits. Should deficiencies be noted in the implementation of these complaint procedures by any local WDC/program provider, the State EO Officer will work in conjunction with the

local WDC EO Officer to review the information and/or provide technical assistance in the complaint process, alternative dispute resolution, and/or investigation. Complaint data will be available for review by CRC/USDOL upon request.

10. Record Keeping

WIA Title I grant recipients/program providersmust maintain a log of complaints filed that allege discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIA Title I financially assisted program or activity. The log must include thename and address of the complainant; basis of complaint; description of complaint; date filed; disposition and date; and any other pertinent information. All records regarding complaints and actions taken on complaints must be maintained for a period of not less than three (3) years from the final date of resolution of the complaint.

**DEFINITIONS**

* Recipient/Program Provider

"Recipient" means any entity to which financial assistance under WIA Title I is extended, either directly from the U.S. Department of Labor or through the Governor or another recipient, excluding the ultimate beneficiaries of WIA Title I funded programs and activities.

* State Equal Opportunity (EO) Officer

The State EO Officer is the individual designated at the state level with the oversight responsibility for coordinating, implementing, maintaining and monitoring the nondiscrimination and equal opportunity requirements.

* WDC Equal Opportunity (EO) Officer

The WDC EO Officer is the WDC’s designated staff person responsible for administration of the Area’s and its subrecipients’ and service providers’ discrimination complaint processing as outlined in this policy and procedures. This person is also known as the Local Equal Opportunity Officer (LEOO).

* Civil Rights Center (CRC)

The CRC is the federal enforcement agency with the United States Department of Labor (USDOL) located in Washington D.C., with jurisdiction over discrimination complaints alleging violations of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Workforce Investment Act of 1998.

* Office of Civil Rights (OCR/DOE)

OCR/DOE is the federal enforcement agency within the Department of Health and Human Services located in Washington D.C., with jurisdiction over discrimination complaints alleging violations of the Title IV of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Title V of the Older Americans Act.

* Title VI Discrimination Complaints

Complaints alleging discrimination on the basis of race, color, or national origin in a federally assisted program. CRC is responsible for enforcement.

* Section 504 – Disability Complaints

Complaints alleging discrimination based on the presence of any sensory, mental, or physical disability, in violation of Section 504 of the Rehabilitation Act of 1973. CRC is responsible for enforcement.

* Americans with Disabilities Act

Complaints alleging discrimination on the basis of disability in employment, public accommodation and services, transportation, state and local government operations and communication are covered under the Americans with Disabilities Act of 1990. The U.S. Equal Employment Opportunity Commission (EEOC) as well as CRC is responsible for enforcement.

* Title VII Discrimination Complaints

Complaints alleging employment discrimination on the basis of race, color, national origin, sex, religion, age or disability. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcement. In complaints of violations of Title VI and VII, Title VI takes precedence over Title VII, thus affording CRC jurisdiction.

* Title IX Discrimination Complaints

Complaints alleging sex discrimination in education or education-related employment. The Office of Civil Rights (OCR) U.S. Department of Education is responsible for enforcement.

* Alternative Dispute Resolution (ADR) Mediation Process

Mediation is a form of alternative dispute resolution (ADR) attempted in a conference between the parties to the complaint (Complainant and Respondent) that is facilitated by a disinterested third party. Both parties must agree to participate; it is on a voluntary basis. The intended outcome is an agreement between the parties that resolves the issues raised in the complaint. The agreement will be reduced to writing, signed by all parties, and thereby becomes an enforceable contract designed to resolve identified issues and preserve the rights of a complainant.

**ATTACHMENTS**

* U.S. Department of Labor Complaint Information Form and the attached Privacy Act Consent Form
* Notice of Discrimination Complaint Filing Rights

**REFERENCES**

* Workforce Investment Act - Interim Final Rule effective: May 17, 1999
* Workforce Investment Act - Final Rules effective: September 11, 2000
* 29 CFR Part 37 – Implementation of the Nondiscrimination and Equal Opportunity
* Provisions of the Workforce Investment Act of 1998 – Final Rule November 12, 1999
* Title VI & VII of the Civil Rights Act of 1964, as amended; Section 503 and 504 of Rehabilitation Act of 1973, as amended;
* The Age Discrimination Act of 1975, as amended;
* Age Discrimination in Employment Act of 1967, as amended;
* Titles I, II, and III of the Americans with Disabilities Act of 1990;
* Vietnam Era Veterans’ Readjustment Assistant Act of 1974
* Equal Pay Act of 1963
* Title IX of Education Amendments of 1972
* Immigration & Nationality Act
* Title I of the Workforce Investment Act of 1998
* President’s Executive Order 11246
* Chapter 49.60 Revised Code of Washington

**WEBSITE:** <http://www.wa.gov/esd/>

**SUPERSEDES:**Policy 3450 in the Methods of Administration document approved in October, 2001.

 **DIRECT** **INQUIRIES TO:**

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