

NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES POLICY AND GUIDANCE

EXECUTIVE SUMMARY

This policy provides guidance on the nondiscrimination and equal opportunity procedures for WIOA Title I and MCWDB financially assisted programs or activities. It also issues a standard form that is available for use by MCWDB subrecipients when processing a discrimination complaint.

REFERENCES

Civil Rights Act of 1964 (Public Law 88-352) Titles VI and VII • Education Amendments of 1972 (Public Law 92-318) Title IX • Rehabilitation Act of 1973 (Rehab Act) (Public Law 93-112) Title V, Section 504 • Age Discrimination Act of 1975 (Public Law 94-135) • Americans with Disability Act of 1990 (ADA) (Public Law 101-336) • WIOA (Public Law 113-128) Sections 121(b), 183(c), and 188 • 20 Code of Federal Regulations (CFR) Section 658.400 • 28 CFR Part 35, Subpart A • 29 CFR Parts 31, 32, 34, 38, and 1690-1691 • 41 CFR Part 101-19, Subpart 101-19.6 • 45 CFR Part 90, Subpart D, Section 90.43(c)(3) • Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP) • Fair Employment and Housing Act, Government Code, Section 12900 - 12996 • Dymally-Alatorre Bilingual Services Act (DABSA), Government Code, Section 72907299.8 , and Workforce Services Directive (WSD) 17-01.

BACKGROUND

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medication conditions, transgender status, and gender identity), national origin (including LEP), age, disability, 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.

PROCEDURAL GUIDANCE

The MCWDB ensures nondiscrimination and equal opportunity in admission or access to, opportunity or treatment in, or employment in the administration of or in connection with any program or activity funded with WIOA Title I funds.

The MCWDB and its subrecipients will foster equal opportunity and non-discrimination in administering all aspects of the WIOA and comply with all federal, state, and local provisions of the law. No individual shall be subject to discrimination because of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status and gender identity), national origin (including LEP), age, disability, political affiliation or belief.

No individual will be discharged, intimidated, threatened, coerced, or discriminated because of filing a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the nondiscrimination and equal employment opportunity provisions of the WIOA or Title 29 CFR Part 38.

Definitions:

Beneficiary - An individual or individuals intended by Congress to receive aid, benefits, services, or training from a recipient (29 CFR Section 38.4).

Complaint – An allegation of a violation of the nondiscrimination and equal opportunity provisions.

Recipient – Any entity to which financial assistance under the WIOA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries (participants) of the WIOA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of WIOA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of 29 CFR Part 38, to the extent that they participate in the One-Stop delivery system (29 CFR Section 38.4[zz]).

Small recipient – A recipient who serves a total of fewer than 15 beneficiaries during the entire grant year and employs fewer than 15 employees on any given day during the grant year (29 CFR Section 38.4[hhh]).

TDD/TTY - a Telecommunications Device for the Deaf (TDD), also known as a teletypewriter (TTY).

Provisions of the Nondiscrimination Plan

In order to provide a reasonable guarantee of compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR Part 38, the Governor established and implemented a Nondiscrimination Plan for state programs as outlined in 29 CFR Section 38.54(a)(1). Previously known as the MOA under the WIA, the WIOA Nondiscrimination Plan must, at a minimum, describe how the requirements outlined below have been satisfied. The MCWDB, as a recipient of WIOA Title I funds, must also satisfy these requirements.

Assurances

Contracts, cooperative agreements, job training plans, and policies and procedures must contain the nondiscrimination assurance specified in 29 CFR Section 38.25 and 38.26. The nondiscrimination assurance must state that the grant applicant will “comply fully with the nondiscrimination and equal opportunity provisions of the WIOA” (29 CFR Part 38 Preamble) and acknowledge the government’s right to seek judicial enforcement of the nondiscrimination assurance.

Also, in accordance with 29 CFR Section 38.25, each application for federal financial assistance under WIOA Title I must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or the DOL prior to, and as a condition of, receiving federal financial assistance under WIOA Title I (including both new and continuing assistance).

EO Officers

The MCWDB must designate an EO Officer who is responsible for coordinating its obligation under these regulations. The state requires that MCWDB notify the EDD’s Equal Employment Opportunity (EEO) Office whenever the designation of the EO Officer changes.

The Local Area EO Officer’s responsibilities include the following:

- Serving as the liaison with the EDD EEO Office and the Monterey County Equal Opportunity Office;
- Monitoring the MCWDB’s and its subrecipients’ WIOA Title I funded activities and programs;
- Reviewing the MCWDB’s and its subrecipients’ written policies;
- Developing, publishing, and enforcing the MCWDB’s discrimination complaint procedures;
- Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with 29 CFR Section 38.40, and how an individual may file a complaint consistent with 29 CFR Section 38.69;

- Participating in continuing training and education, and ensuring that assigned staff receives the necessary training and support to maintain competency;
- Informing participants, employees, and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint process works.

Upon receipt of a complaint, the MCWDB EO Officer will refer investigations to the Civil Rights Officer for Monterey County for investigation, processing, and resolution.

The MCWDB will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of the WIOA and 29 CFR Part 38. The MCWDB must submit a copy of its EO Officer's position description and organizational chart showing the relationship of the EO Officer to the Local Area Executive Director. Documents are to be mailed to the following address:

Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P.O. Box 826880
Sacramento, CA 94280-0001

Or, email to EEOMAIL@edd.ca.gov

The EO Officer's contact information such as name, position title, business address, including email address, and telephone number (voice and Telecommunications Device for the Deaf, which is also known as teletypewriter [TTY]), must be publicized at the local level through a variety of means, including posters, handouts, and listings in local directories. It must also be ensured that the EO Officer's identity and contact information appears on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs.

Attending periodic training is recommended for the EO Officer and assigned staff to keep abreast of equal opportunity issues. Training on nondiscrimination and equal opportunity is available through the State EO Officer.

Small Recipients and Service Providers

Small recipients and service providers, as defined in 29 CFR Section 38.4, do not need to designate an EO Officer with the full responsibilities as described above, but must designate an individual who will be responsible for the developing and publishing of complaint procedures and the processing of complaints as required by 29 CFR Section 38.72 through 38.75.

Notice and Communication

The MCWDB must provide initial and continuing notice that it does not discriminate on any prohibited basis. Attachment 1 of this directive contains the notice/poster relating to *Equal Opportunity is the Law* along with language highlighting the right to file a complaint under *What to Do if You Believe You Have Experienced Discrimination*. This notice/poster must meet the following criteria:

- Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's website pages.
- Disseminated in internal memoranda and other written or electronic communications with staff.
- Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available.
- 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. (29 CFR Section 38.36[a]).

The notice must be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, and 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 part of the employee's or participant's file. The notice must be provided in appropriate languages other than English (29 CFR Section 38.36[b])

As it concerns communication, the MCWDB and its subrecipients must indicate that the WIOA Title I-financially assisted program or activity in question is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities." This must be included on recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper to staff, clients, or the public at large, to describe programs financially assisted under WIOA Title I or the requirements for participation by recipients and participants.

Where such materials indicate that the MCWDB or its subrecipients may be reached by voice telephone, the materials must also provide the TTY number or equally effective communications system, such as a videophone, captioned telephone, or a relay service. The California Relay Service can be reached by dialing 711 or 1-800-735-2922.

Published or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted programs or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law) and indicate that auxiliary aids and services are available upon requests to individuals with disabilities.

The MCWDB must not communicate any information that suggests, by text or illustration, that it treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis, except as such treatment is otherwise permitted under federal law or regulation.

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted programs or activity, whether this be in person or over the internet or using other technology, the MCWDB and its subrecipients must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR Part 38, including the right to file a complaint of discrimination with the recipient or the Director of the CRC. This information must be communicated in appropriate languages as required in 29 CFR Section 38.9 and in formats accessible for individuals with disabilities as required in 29 CFR Part 38 and specified in Section 38.15.

In California, the Dymally-Alatorre Bilingual Services Act (DABSA) requires that when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services in their clients' language. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

Data and Information Collection and Maintenance

The MCWDB must collect and maintain nondiscrimination data. The system and format in which the records and data are kept must be designed to allow the Governor and the CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of the WIOA and 29 CFR Part 38.

Nondiscrimination data must include, but is not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. The MCWDB must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Such information must be kept for a period of not less than three years from the close of the applicable program year, stored in a manner that ensures confidentiality, and must be used only for the purposes of any of the following:

- 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.

- Other use authorized by law.

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 (e.g., through password protection).

LEP and Preferred Language Data

As indicated in 29 CFR Section 38.41, "LEP and preferred language" has been added to the list of categories of information that each recipient must record about each applicant, registrant, eligible applicant/registrant, participant, and terminnee. It should be noted that this data collection obligation would not apply to applicants for employment and employees because the obligation as to LEP individuals in 29 CFR Section 38.9 does not apply to those categories of individuals. A recipients' collection of information relates directly to serving (not employing) LEP individuals. For the MCWDB's guidance on serving LEP individuals see WDB Policy 2018_03.

Local Area Complaint Log

The MCWDB must promptly notify the state or CRC 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 LEP), 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.

The MCWDB must maintain a log of complaints filed with the recipient that allege discrimination on the basis 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 following:

- 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
- Other pertinent information

Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

The EDD EEO Office requires a copy of the MCWDB's complaint log annually (each calendar year). The complaint log is to be mailed to the following address:

Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001

Or, email to EEOMAIL@edd.ca.gov

Affirmative Outreach

The guidelines found in 29 CFR Section 38.40 require the MCWDB to 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 29 CFR Part 38 including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, LEP individuals, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to, the following:

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

Discrimination Prohibited Based on Disability

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, whether directly or through contractual, licensing, or other arrangements, on the basis of disability, the MCWDB must **not** do any of the following:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings.
- Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others.
- Provide a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.
- Provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirements of the Rehab Act as amended by the WIOA, including those provisions that prioritize opportunities in competitive integrated employment.
- Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards.
- Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.

Accessibility Requirements

No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a MCWDB's service, program, or activity or be subjected to discrimination by the MCWDB because its facilities are inaccessible or unusable by individuals with disabilities. Recipients that are subject to Title II of ADA of 1990 must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, comply with the applicable federal accessible design standards, such as the ADA Standards for Accessible Design (1991 or 2010) or the Uniform Federal Accessibility Standards. In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the Rehab Act and the implementing regulations at 29 CFR Part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA that is not enforced by the CRC. As indicated in Section 38.3(d) (10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

All WIOA Title I-financially assisted programs and activities must be programmatically accessible. This includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity. Guidance on both reasonable accommodation may be found in the WDB Policy 18-02 - *Reasonable Accommodation*.

Complaint Processing Procedures

The MCWDB's EO Officer must do the following:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations for noncompliance with applicable nondiscrimination and equal opportunity provisions.

- Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures. (Please note, although the MCWDB does not have the same contractual jurisdiction with vendors as with service providers, the MCWDB shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the MCWDB should continue to utilize the services of the vendor.)
- Establish a logging system to record discrimination complaints.

The MCWDB's complaint processing procedures must specify the following:

- Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIOA may file a written complaint by using the MCWDB Discrimination Complaint Form – (Attachment 2). This form must be used to in an effort to provide more consistent information when processing discrimination complaints from participants of WIOA and Wagner-Peyser funded programs and activities. A representative may also file a complaint on behalf of a person who believes that they have been subjected to discrimination.
 - The complaint may be filed either with the MCWDB's EO Officer, Elizabeth Kaylor, at 1441 Schilling Place, Salinas, CA 93901 or kaylorea@co.monterey.ca.us, or directly with the CRC at DOL, 200 Constitution Avenue N.W., Room N 4123, Washington, D.C. 20210. Per the Equal Opportunity and Civil Rights Policies of Monterey County policy, complaints filed with the MCWDB's EO Officer will be immediately referred to the Monterey County Civil Rights Officer for processing and resolution.
 - A complaint filed, pursuant to 29 CFR Section 38.69, must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.
 - Complaints must be filed in writing by completing the *Discrimination Complaint Form* (Attachment 2). All complaints must include the following information:
 - Contain the complainant's name, address, or other means of contacting him or her.
 - Identity of the respondent.
 - A description of the complainant's allegation(s) in sufficient detail to allow the CRC or MCWDB's EO Officer, as applicable, to determine whether (1) the CRC or the MCWDB has jurisdiction over the complaint, (2) the complaint was filed timely, and (3) the complaint has apparent merit (i.e., whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA).
 - The signature of the complainant or his or her authorized representative.
- Both complainant and respondent have the right to be represented by an attorney or other individual of his or her choice.
- An Alternative Dispute Resolution (ADR). The complainant must be offered ADR immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant. The preferred form of ADR is mediation. Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), their concerns, and comes to an agreement about how to resolve a dispute. The mediator does not make decisions, rule as to who is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as

described in 29 CFR Sections 38.69 through 38.72.

A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

- The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
- The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint.

Complaints filed with the MCWDB

The EO Officer shall issue a written acknowledgement of receipt by the MCWDB of a complaint alleging discrimination by a WIOA Title I recipient and immediately refer the complaint to the Monterey County Civil Rights Officer who shall include a notice of the complainant's right to representation in the complaint process. The EDD EEO Office requires the EO Officer to forward one copy of the alleged complaint and one copy of the issued Notice of Final Action to the following address:

Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001

Or, email to EEOMAIL@edd.ca.gov

If the complainant elects not to participate in the ADR process, the Monterey County Civil Rights Officer shall investigate the circumstances underlying the alleged complaint.

Conciliation

At any point in the investigation of the complaint, the complainant, respondent, or the Monterey County Civil Rights Officer may request that the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.

Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.

If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legal binding contract and falls under contract law.

The MCWDB shall be allowed 90 days to issue a Notice of Final Action from the date on which the complaint was filed. If, during the 90-day period, the Monterey County issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.

If the 90 days expire and the complainant does not receive a Notice of Final Action from Monterey County, or Monterey County failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the CRC within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the CRC within 120 days of the date on which the complaint was filed with the MCWDB.

The CRC may extend the 30-day time limit if the complainant is not notified, as provided in 29 CFR Section 38.77, or for other good cause shown. The MCWDB and Monterey County Equal Opportunity Office shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of the WIOA. The Notice of Lack

of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.

During the resolution process, the Monterey County Civil Rights Officer shall assure that all parties involved are given due process. These due process elements include the following:

- A notice to all parties of the specific charges
- A notice to all parties of the responses to the allegations
- The right of both parties to representation
- The right of each party to present evidence, and to question others who present evidence
- A decision made strictly on the evidence on the record

Actions by the CRC

The CRC determines acceptance of a complaint filed pursuant to 29 CFR Section 38.78. When the CRC accepts a complaint for investigation, it shall do the following:

- Notify the MCWDB and the complainant of the acceptance of the complaint for investigation.
- Advise the MCWDB and complainant on the issues over which the CRC has accepted jurisdiction.

The MCWDB, the complainant, or a representative may contact the CRC for information regarding the complaint filed. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address (29 CFR Section 38.79).

In accordance with WIOA Section 183(c), the CRC may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the U.S., at any designated time and place.

Where the CRC lacks jurisdiction over a complaint, the CRC shall do the following:

- Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of the WIOA or 29 CFR Part 38.
- Refer the complainant to the appropriate federal, state, or local authority, when possible.

The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.

The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in 45 CFR Section 90.43(c)(3).

If the complainant alleges more than one kind of complaint, "joint complaint" (e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc.), the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the MCWDB of the referral.

Under the AJCC delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in the AJCC delivery system, the following procedures apply:

- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of the WIOA and by a civil rights law enforced by the federal grant making agency, the CRC and the grant making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.
- If the complainant alleges discrimination on the basis that is prohibited by Section 188 of the WIOA, but not by any civil rights laws enforced by the federal grant making agency, the CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to 29 CFR Part 38. The CRC will advise

the complainant and the MCWDB of the referral.

The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

- Because mediation is voluntary, both parties must consent before the mediation process proceeds.
- The mediation will be conducted under the guidance issued by the CRC.
- If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under 29 CFR Sections 38.82 through 38.88.

After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the MCWDB, in writing, of the following:

- The specific findings of the investigation
- The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed
- Whether it will be necessary for the MCWDB to enter into a written agreement
- The opportunity to participate in voluntary compliance negotiations

Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the MCWDB. The Final Determination represents the DOL's final agency action on the complaint.

Complaint Determinations

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to 29 CFR Sections 38.86 or 38.87, 38.88 and 38.89, or 38.90, respectively, must include the steps and the specific time period it will take the MCWDB to achieve voluntary compliance. See Section 38.90 for corrective action steps. Monetary corrective action may not be paid from federal funds.

If the MCWDB receives a finding of noncompliance, the following sections of 29 CFR Part 38 may be referred to for detailed information:

- "Final Determinations," Sections 38.96 through 38.97
- "Breaches of Conciliation Agreements," Sections 38.98 through 38.100
- Subpart E – "Federal Procedures for Effecting Compliance," Sections 38.110 through 38.115

Intimidation and Retaliation are Prohibited

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following:

- A violation of the WIOA.
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA.
- Furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

Governor's Oversight and Monitoring Responsibilities for State Programs

The EDD is responsible for the oversight and monitoring of all WIOA Title I-financially assisted state programs. Consequently, the EDD EEO Office will conduct ANNUAL onsite monitoring reviews of Local Areas. The annual onsite monitoring reviews will ensure that the Local Areas are in compliance with the nondiscrimination and equal opportunity provisions of the WIOA. The EDD EEO Office will determine whether each recipient is conducting its WIOA Title I financially assisted program or activity in a nondiscriminatory way.

Additional Components of the Nondiscrimination Plan

The Nondiscrimination Plan must also include the following:

- A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of the WIOA, is likely to conduct its Title I-financially assisted

programs or activities in a nondiscriminatory way, and to comply with the regulations in 29 CFR Part 38.

- A review of recipient policy issuances to ensure they are nondiscriminatory.
- A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.
- Procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of 29 CFR Section 38.5 regarding race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, political affiliation or belief, citizenship, or participation in any WIOA Title I-financially assisted program or activity.
- Procedures for ensuring that recipients comply with the requirements of applicable federal disability nondiscrimination law, including Section 504; Title II of the ADA of 1990, as amended, if applicable; WIOA Section 188, with regard to individuals with disabilities.
- A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of the WIOA or 29 CFR Part 38 are aware of and can effectively carry out these responsibilities.
- Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.
- Supporting documentation to show that the commitments made in the Nondiscrimination Plan have been and/or are being carried out. This supporting documentation includes, but is not limited to, the following:
 - o Policy and procedural issuances concerning required elements of the Nondiscrimination Plan.
 - o Copies of monitoring instruments and instructions.
 - o Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by 29 CFR Part 38.
 - o Information reflecting the extent to which equal opportunity training, including training called for by 29 CFR Section 38.29(f) and 38.31(f), is planned and/or has been carried out.
 - o Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions.
 - o Copies of any notices made under 29 CFR Section 38.34 through 38.40.

ATTACHMENTS:

- 1a. Equal Opportunity is the Law/What to do if You Believe You Have Experienced Discrimination (English)
- 1b. Equal Opportunity is the Law/What to do if You Believe You Have Experienced Discrimination (Spanish)
2. Discrimination Complaint Form
- 3a. Notice for WIOA Program Participant File (English)
- 3b. Notice for WIOA Program Participant File (Spanish)

INQUIRIES

If you have questions please contact staff at (831) 796-6434. This policy is posted on the WDB website located at: www.montereycountywdb.org/policies/

CHRIS DONNELLY, Executive Director
Monterey County Workforce Development Board