CAPE FEAR COUNCIL OF GOVERNMENTS

cape fear Workforce Development Consortium
Success Through Partnership

Cape Fear Local Policy No. P-WDB-001-2018

Subject: **CFWDB Nondiscrimination and Equal Opportunity Policy of WIOA Participants**

Purpose: The purpose of this policy is to ensure compliance with 29 CFR Part 38 as it relates to Nondiscrimination and Equal Opportunity for participants of the Workforce Innovation and Opportunity Act (WIOA) programs administered by the Cape Fear Workforce Development Board (CFWDB).

Policy: The CFWDB, as a recipient of Federal financial assistance, will not 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.

Action: To comply with 29 CFR Part 38 and DWS Policy Statement Number PS 05-2015, the Cape Fear Local Area Workforce Development Board shall follow the nine elements listed below and which are included in more detail in the CFWDB's Nondiscrimination Plan (Attached): (1) Designation of Local Equal Opportunity (EO) Officers; (2) Notice and Communication; (3) Assurances, Job Training Plans, Contracts, Policies and Procedures; (4) Affirmative Outreach; (5) Compliance with Section 504; (6) Data Information Collection; (7) Compliance Monitoring; (8) Complaint Processing Procedures; and (9) Corrective Actions/Sanctions

Effective Date: April 20, 2018

Expiration Date: Indefinite

Contact: Cape Fear Development Board Director

Distribution: CFWDB WIOA Providers
CFWDB Staff
NC Division of Workforce Solutions

Attachments: **Attachment A:** PR-WDB-002-2018 CFWDB Nondiscrimination Plan
Attachment B: DWS PS 05-2015

ATTACHMENT

"A"

CAPE FEAR
COUNCIL OF GOVERNMENTS

cape fear
Workforce Development Consortium
Success Through Partnership

CAPE FEAR WORKFORCE DEVELOPMENT BOARD

WORKFORCE INNOVATION

AND

OPPORTUNITY ACT

NON-DISCRIMINATION PLAN

1480 Harbour Drive
Wilmington, NC 28401
Phone (910) 395-4553
Fax (910) 395-2684

ELEMENT ONE
DESIGNATION OF LOCAL
EQUAL OPPORTUNITY (EO) OFFICERS
29 CFR 38.28 to 38.33

Introduction

The Cape Fear Workforce Development Board (CFWDB) oversees the implementation of the nondiscrimination and Equal Opportunity (EO) provisions of the Workforce Innovation and Opportunity Act of 2014 (WIOA).

As instructed in the Nondiscrimination and Equal Opportunity provisions contained in 29 CFR Part 38, CFWDB through Element One has set clear direction on who can serve as the EO Officer as well as defined responsibilities at the local level.

38.28 (b) Designation of EO Officer

Summary of 29 CFR 38.28:

Every recipient (except small recipients and service providers as defined in 29 CFR 38.4), must designate a recipient-level Equal Opportunity 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.

CFWDB Designation:

CFWDB's Fiscal Compliance Officer is designated as the WIOA EO Officer for the Local Area. On WIOA EO issues, the EO Officer will report directly to the Director of Workforce Development and WIOA Programs for the CFWDB. The Director holds the administrative position that oversees the day-to-day operations of the WIOA Title I Programs and reports directly to the Executive Director (ED) at the Cape Fear Council of Governments.

The EO Officer's position provides the oversight responsibility for coordinating, implementing, maintaining and monitoring the nondiscrimination and EO requirements under 29 CFR 38 ensuring state compliance with WIOA EO provisions. The EO Officer may be reached at:

1480 Harbour Drive
Wilmington, NC 28401
(910) 395-4533 (Office)
(910) 395-2684 (FAX)

A staff member within the Workforce Development department will support the EO Officer in ensuring nondiscrimination and compliance of the WIOA mandates.

A current list of contacts for these positions is available in the EO Manual.

38.29 Recipients Obligations Regarding Equal Opportunity Officers

Summary of 29 CFR 38.29:

All recipients have the following obligations related to their EO Officers:

(a) Ensuring that the EO Officer is a senior-level employee reporting directly to the individual in the highest-level position of authority for the entity that is the recipient;

(b) Designating an individual who can fulfill the responsibilities of an EO Officer as described in § 38.31;

(c) Making the EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) public;

(d) Ensuring that the EO Officer's identity and contact information appear on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs;

(e) Assigning sufficient authority, staff, and resources to the EO Officer, and support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part; and

(f) Ensuring that the EO Officer and the EO Officer's staff are afforded the opportunity to receive (at the recipient's expense) the training necessary and appropriate to maintain competency.

CFWDB Designation:

The CFWDB will ensure that each obligation outlined in 29 CFR 38.29 will be met:

(a) The designated EO officer for the CFWDB reports directly to the Director of Workforce Development and WIOA Programs for the CFWDB.

(b) The EO Officer is capable of fulfilling the required responsibilities of this position.

(c) and (d) The CFWDB makes the identity and contact information of the WIOA EO Officer known to any interested member of the public by the following methods -

- Formal notice to State WIOA EO Officer, Local WIOA recipients, and partners;

- Advertisements and internal and external communication regarding nondiscrimination and equal opportunity;
- Placed on Request for Proposal (RFP) packets
- Posting of the notice "Equal Opportunity is the Law" prominently, in reasonable numbers and places in all local offices. The poster notice gives the name, organization name, address, e-mail address, and telephone numbers of the WIOA EO Officer. The notice is posted in English and Spanish;
- Providing a copy of the notice "Equal Opportunity is the Law" to each individual enrolling in WIOA Title I Adult, Dislocated Worker, or Youth program services in the One-Stop system. A notation that the notice was provided to the registrant is placed in their electronic record;
- Publishing the name of the WIOA EO Officer in the equal opportunity policies and procedures applicable to WIOA employees and procedural manuals providing guidelines for handling complaints from customers, employees and third parties;
- Contractors are required to make public the name, position title, and phone numbers of the Local EO Officer;
- Disseminating written notice brochures to any interested member of the public;
- And posting information about the Local EO Officer and information on how to file a complaint on the CFWDB website (www.capefearcog.org).

(e) The EO Officer has been provided sufficient staff support from both the Director of Workforce Development and WIOA programs for the CFWDB and the assigned backup staff of the Workforce department.

(f) The EO Officer is allowed to attend training pertaining to his/her role as the Equal Opportunity Officer.

38.30 Requisite Skill and Authority of the EO Officer

Summary of 29 CFR 38.30:

The EO Officer must be a senior level employee of the recipient who has the knowledge, skills and abilities necessary to fulfill the responsibilities competently as described in this subpart. Depending upon the size of the recipient, the EO Officer may, or may not, be assigned other duties. However, the EO Officer must not have other responsibilities or activities that create a conflict or the appearance of a conflict with the responsibilities of an EO Officer.

CFWDB Designation:

The EO Officer is qualified to serve as the EO Officer for the CFWDB and has the knowledge, skills, and abilities to perform the required job duties. Although the EO Officer does have other responsibilities in addition to his/her role as the EO Officer, none of them create a conflict, or the appearance of a conflict, with his/her role as the EO Officer. Please see the EO Officer's job description for a complete list of his/her responsibilities.

38.31 Equal Opportunity Officer Responsibilities

Summary of 29 CFR 38.31:

An Equal Opportunity Officer is responsible for coordinating a recipient's obligations. Those responsibilities include, but are not limited to -

(a) Serving as a recipient's liaison with the 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 sub recipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I 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 through 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.

CFWDB Designation:

The EO Officer will be required to uphold all of the responsibilities outlined in 29 CFR 38.31.

38.32 Small recipient Equal Opportunity Officer Obligations

Summary of 29 CFR 38.32:

Although small recipients, as defined in § 38.4 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.

CFWDB Designation:

This portion does not apply to the CFWDB as an EO Officer with full responsibilities has been designated.

38.33 Service provider Equal Opportunity Officer Obligations

Summary of 29 CFR 38.33:

Service providers, as defined in § 38.4 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.

CFWDB Designation:

The CFWDB requires each WIOA Contractor to designate an individual who is responsible for processing and publishing complaints and procedures in-house.

The WIOA Contracting Agency must inform the CFWDB of the following –

- The name and address of the "in-house" EO Officer;
- Who the "in-house" EO Officer reports to;
- If the "in-house" EO Officer has any duties that would create a conflict of interest
- How the "in-house" EO Officer's identity is made known
- What staff support the "in-house" EO Officer has (if applicable)

ELEMENT TWO

NOTICE AND COMMUNICATION

29 CFR 38.34 to 38.39

Introduction

Widespread notification and communication of equal opportunity policy ensures CFWDB's commitment to nondiscrimination. Notices and other forms of communication are distributed to any interested member of the public.

Element Two details how the CFWDB complies with 29 CFR parts 38.34 through 38.39 in ensuring individuals are informed of the state's and the recipient's obligation to operate its programs and activities in a nondiscriminatory manner, and to the extent of the rights to file complaints of discrimination.

38.34 Recipients' Obligations to Disseminate Equal Opportunity Notice

Summary of 29 CFR 38.34:

(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) Sub-recipients 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.

(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.

CFWDB Action:

The CFWDB distributes Equal Opportunity notice to all WIOA Title I Contractors and Career Centers with a directive that the notice is to be displayed in reasonable numbers and in prominent locations. The notice will be distributed to appropriate recruitment sources, displayed in the Local Area's administrative offices, and in all NCWorks Career Centers, Workforce Offices, and their affiliated sites. This information will be –

- Posted prominently, in reasonable numbers and places;
- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks or manuals;
- Made available to each WIOA Title I Adult, Dislocated Worker, and Youth program participant, and made a part of the participant's file;
- Provided in appropriate formats to individuals with visual impairments; and,
- Where notice has been given in an alternative format to a participant with a visual impairment, a record that such notice has been given is to be made a part of the participant's file.

38.35 Equal Opportunity Notice/Poster

Summary of 29 CFR 38.35:

The notice 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. 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.

CFWDB Action:

This "Equal Opportunity is the Law" notice is posted prominently in English and Spanish for the benefit of the public and clients in all of the appropriate locations at the CFWDB Administrative offices as well as NCWorks Career Centers, Workforce Offices, and their affiliated sites within the Local Area. In addition to English and Spanish, an older version of this poster is also available to individuals with disabilities in the following ways –

- Large Print, Braille, and audio versions of the notice are available to persons with visual impairments;
- Where notice has been provided in an alternative format to individuals with a visual impairment, a record is made that such notice has been given and is made part of the participant's file;
- Readers are made available to the visually impaired for use with websites where the notice is electronically posted at NCWorks Career Centers, Workforce Offices, and affiliated sites;
- When requested, sign language interpreters are made available to persons with hearing impairments should they have questions about the notice or the filing process.

38.36 Recipients' obligations to publish equal opportunity notice

Summary of 29 CFR 38.36:

(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.

CFWDB Action:

Please see CFWDB Action under 29 CFR 38.34 and 38.35 to see how the CFWDB fully complies with the publication requirements of 38.36.

38.37 Notice requirement for service providers

Summary of 29 CFR 38.37:

The Governor or the LWDA grant recipient, 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.

CFWDB Action:

The CFWDB is in full compliance with the North Carolina Non-Discrimination Plan as outlined by the State Equal Opportunity Officer through the Department of Commerce.

38.38 Publications, broadcasts, and other communications

Summary of 29 CFR 38.38:

(a) Recipients 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,'' in 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 Title I of WIOA or the requirements for participation by recipients and participants. Where

such materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or equally effective telecommunications system, such as a relay service, videophone, or captioned telephone used by the recipient, as required by § 38.15(b).
(b) Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted program 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 request to individuals with disabilities.
(c) A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis specified in § 38.5, except as such treatment is otherwise permitted under Federal law or this part.

CFWDB Action:

Within the CFWDB Local Area, all distributed materials (whether on paper or electronic) that contain either the CFWDB logo, or the NCWorks Career Center logo, are required to contain the following equal opportunity tagline, "An Equal Opportunity Employer/Program. Auxiliary aids and services available upon request to individuals with disabilities."

All information that is published in newspapers, the internet, or the radio includes our equal opportunity tagline. And any information that is published on behalf of the Board is reviewed by the Director prior to publication to ensure full compliance with Equal Opportunity standards.

Service providers administering the WIOA Programs, must indicate that a TDD/TTY number, or an equally effective means of communicating with individuals with hearing impairments, is noted on its local recruitment and marketing materials whenever a phone number is included.

38.39 Communication of notice in orientations

Summary of 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.

CFWDB Action:

All WIOA contractors and NCWorks Career Centers provide orientations to individuals new to the NCWorks One-Stop Delivery System. During that orientation, participants are informed of their Equal Opportunity and non-discrimination rights, and are informed on the procedures to file a complaint should they feel their rights were violated.

When the CFWDB hires new staff, the agency's EO officer includes a discussion of Equal Opportunity and non-discrimination rights during the employee orientation. When the job advertisings for employment positions are posted for the Local Area, the phrase "the CFWDB is an Equal Opportunity Employer" is always included.

The Local Area contractually obligates all WIOA Title I contractors to comply with all Federal Equal Opportunity and Affirmative Action legislation. The CFWDB's planning procedures and participant tracking systems provide for measurement of the registration of the individuals from various populations, as well as their access to various WIOA Title I services. Using these systems, in addition to on-site reviews, the CFWDB will regularly monitor compliance with the relevant federal laws and Non-Discrimination Plan provisions. Corrective action will be taken and technical assistance will be provided as needed.

In addition, the CFWDB conducts and sponsors training through both internal and external sources, including private organizations, professional associations and other governmental entities. Some of the expected outcomes are to eliminate or abate sexual harassment, improve interpersonal skills in the workplace, and to embrace diversity awareness through the use of demographic analysis; and by vigorously combatting intolerance and bias through the use of quality training and improved policies and procedures.

ELEMENT THREE

ASSURANCES, JOB TRAINING PLANS, CONTRACTS, POLICIES, AND PROCEDURES

29 CFR 38.25

Introduction

Each application from prospective contractors/providers will contain assurances that all recipients of WIOA Title I funds are required to fully comply with the non-discrimination and equal opportunity provisions of the applicable laws.

38.25 A grant applicant's obligation to provide a written assurance

29 CFR 38.25:

(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.

CFWDB Designation:

The CFWDB assures that the language contained in 29 CFR Part 38.25 is included in each application for financial assistance through contractual obligations with this Local Area. WIOA contractors are also required to include the required language in all applications as well.

CFWDB specific Assurances include:

- Veterans will be afforded employment and training activities;
- Compliance with the confidentiality requirements of 29 CFR 38.45;
- That no WIOA funds will be used to assist, promote, or deter union organizing;
- Compliance with all of the nondiscrimination provisions of WIOA Section 188, including the assurance that a Nondiscrimination plan has been developed and implemented under 29 CFR 38.54;
- Proper data collection and maintenance necessary to show compliance with the nondiscrimination provisions of WIOA section 188.

The CFWDB will ensure that contractors are complying and will comply with the requirements regarding the review of job training plans, contracts, and policies and procedures by:

- Ensuring each training provider seeking eligibility includes the equal opportunity assurance in its application for financial assistance under Title I of WIOA;

- By incorporating the EO assurance into each cooperative agreement, contract, or other arrangement whereby federal financial assistance under Title I of WIOA is made available;
- Assuring each approved training provider, contractor, and NCWorks Career Centers and affiliated sites are able to provide programmatic and architectural accessibility as required;
- Ensuring the procedures of job training plans, contract assurances and other similar agreements entered into by contractors are both nondiscriminatory and contain required language regarding nondiscrimination and equal opportunity.
- Reviewing/revising CFWDB WIOA Title I program policies to ensure they are nondiscriminatory in intent or effect.

As part of the monitoring process, samples of job training plans, contracts, and other agreements are reviewed to ensure nondiscrimination and contain the required language regarding nondiscrimination and equal opportunity.

ELEMENT FOUR

AFFIRMATIVE OUTREACH

29 CFR 38.40

Introduction

The Workforce Innovation and Opportunity Act (WIOA) requires that contractors take appropriate steps to ensure that the composition of the pool from those considered for participation in their programs and activities is diverse and representative of the population groups they serve. All contractors will be monitored based on customer demographic characteristics and composition within the Local Area.

38.40 Affirmative Outreach

29 CFR 38.4:

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.

CFWDB Designation:

1. Outreach and Recruitment
    a. Priority of services is determined at the local level based on criteria developed by the board. When considering "priority of service" in Local Area NCWorks Career Centers, Workforce Centers, and other affiliated sites, the CFWDB must consider the scope of the program or activity and the size and concentration of the population that needs services. Based on these considerations, contractors must take reasonable steps to provide information accordingly.
    b. Sample brochures, posters, public-service announcements, computer screens displaying related information, and other publicity materials will be gathered for

inspection at the LA office. Contractors will be required to place such documents in their EO notebooks and have it available for monitoring.

2. Communication
    a. Contractors must ensure they take appropriate steps to communicate with individuals with disabilities, and that such communication is as effective as communications with others. In addition, when a significant population of persons to be served are individuals with limited English proficiency, the contractor must provide the same information in languages other than English.
    b. All public materials (brochures, pamphlets, publications, etc.) that describe WIOA programs or activities must include the required language, which the CFWDB refers to as the Equal Opportunity Tagline. The EO Tagline is as follows: "An equal opportunity employer/program. Auxiliary aids and services available upon request to individuals with disabilities."
3. Alternative Formatting
    a. The CFWDB continues to work with the NCWorks Career Center One-Stop system to build upon the current technology in place to ensure access – for those customers with limited English proficiency or who, because of disability, require a form of communication other than spoken English have appropriate communication devices.
    b. NCWorks Career Center Resources of auxiliary aids and services include -
        i. Assistive listening headsets
        ii. Closed and open captioning on videos
        iii. Telecommunication devices for deaf persons
        iv. Computers that allow voice input and output
        v. Readers
        vi. Taped texts
        vii. Video-text imaging displays
        viii. Transcription services
        ix. Access to certified interpreters
        x. Larger screen monitors for the visually impaired
        xi. Vocational Rehabilitation services
        xii. Partnerships with services for the blind
4. Monitoring
    a. Each WIOA contracting office, NCWorks Career Center, and Workforce Office is monitored for being physically and programmatically accessible (including telecommunication and computer accessibility).
    b. Monitoring provides basic steps to ensure that contractors operate in a manner that ensures equal opportunity and non-discrimination in their programs, services, and employment.

c. Element Seven of this Nondiscrimination Plan outlines the CFWDB monitoring and statistical assessment used to ensure that all applicants/registrants/participants are provided with equitable services.

ELEMENT FIVE

COMPLIANCE WITH SECTION 504

29 CFR 38.12 to 38.17

Introduction

The Cape Fear Workforce Development Board (CFWDB) is committed to making all services, training, facilities, auxiliary equipment, and program information accessible for individuals with disabilities. This applies to potential employees, volunteers, contractors/service providers, licensees, clients, and potential clients within the local system.

38.12 Discrimination based on Disability

29 CFR 38.12:

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

(1) 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;

(2) 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;

(3) 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;

(4) 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 Rehabilitation Act as amended by WIOA, including those provisions that prioritize opportunities in competitive integrated employment;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(6) 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.

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, service, or training to registrants, applicants, or participants.

(c) A recipient must not deny a qualified individual with a disability the opportunity to participate in WIOA Title I-financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.
(d) A recipient must administer WIOA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
(e) A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

(1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIOA Title I-financially assisted program or activity with respect to individuals with disabilities; or

(3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same State.

(f) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On the basis of disability:

(i) Excluding qualified individuals from a WIOA Title I-financially assisted program or activity;

(ii) Denying qualified individuals the benefits of such a program or activity; or

(iii) Subjecting qualified individuals to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the disability-related objectives of either:

(i) The WIOA Title I-financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIOA or this part.

(g) A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
(h) A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient are not, themselves, covered by this part.
(i) A recipient must not impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of any aid, benefit, service, training, program, or activity being offered.
(j) Nothing in this part prohibits a recipient from providing any aid, benefit, service, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.

(k) A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I or this part.
(l) A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
(m) The exclusion of an individual without a disability from the benefits of a program limited by federal law to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part.
(n) This part does not require a recipient to provide any of the following to individuals with disabilities:

(1) Personal devices, such as wheelchairs;
(2) Individually prescribed devices, such as prescription eyeglasses or hearing aids;
(3) Readers for personal use or study; or
(4) Services of a personal nature, including assistance in eating, toileting, or dressing.

(o) [Accepting Accommodations]

(1) Nothing in this part requires an individual with a disability to accept any accommodation, aid, benefit, service, training, or opportunity provided under WIOA Title I or this part that such individual chooses not to accept.
(2) Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(p) Claims of no disability. Nothing in this part provides the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted auxiliary aids or services, reasonable modifications, or reasonable accommodations that were denied to an individual without a disability.

CFWDB Action:

The CFWDB will comply with all directives of 29 CFR 38.12. To reinforce this commitment, all contractors and service providers are required to provide written assurance in their agreements, grants, and contracts that they are committed to and will comply with the requirements of the Workforce Innovation and Opportunity Act (WIOA) law and regulations, the American Disability Act (ADA), and the Rehabilitation Act.

The CFWDB works to ensure reasonable accommodations are provided to qualified individuals with disabilities in all aspects of its programs, services, and activities. Accommodations may include, but are not limited to, qualified sign language interpreters, readers, auxiliary aids, and alternate formats. Reasonable modifications in policies, practices, or procedures are made, when necessary, to avoid discrimination based on disability, unless making modifications would

fundamentally alter the nature of the service, program, or activity. The EO Officer provides guidance to staff and contractors with regard to the disability related requirements of applicable federal and state laws and regulations.

38.13 Accessibility Requirements

29 CFR 38.13:

(a) Physical accessibility.

- No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. Recipients that are subject to Title II of the ADA 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 Rehabilitation 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 CRC. As indicated in § 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.

(b) Programmatic accessibility.

- All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which 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.

CFWDB Action:

1. Architectural Accessibility
   a. The CFWDB works with partner agencies to ensure ADA compliance at the physical location and through its lease agreements. Furthermore, routine site visits will be scheduled to ensure a facility remains in compliance.

2. Programmatic Accessibility
    a. Auxiliary aids and services are available upon request to individuals with disabilities in all of our NCWorks Career Centers and WIOA Contractor Offices. Such auxiliary aids include, but are not limited to, sign language interpreters, readers, taped texts, Braille, and large print or other effective methods to communicate with persons with impaired vision or hearing to ensure their receipt of essential information regarding WIOA services, description of programs, or policies and procedures which pertain to their eligibility and appeal rights as well as for employees for job related issues, i.e., training, meetings, and interviews. This information will assist in filling job orders of affirmative action employers listed under provisions of Section 504 of the Rehabilitation Act of 1973, as amended.

38.14 Reasonable accommodations and reasonable modifications for individuals with disabilities

29 CFR 38.14:

(a) With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of ''reasonable accommodation'' and ''undue hardship'' in § 38.4(rrr)(1).

(1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of ''undue hardship'' in § 38.4(rrr)(1). The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

(3) If a requested accommodation would result in undue hardship, the recipient must, after consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient.

(b) With regard to any aid, benefit, service, training, and employment, a recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of ''fundamental alteration'' in § 38.4(z).

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.
(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of ''fundamental alteration'' in § 38.4(z). The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.
(3) If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

CFWDB Action:

Policies and procedures with respect to requiring reasonable accommodations and auxiliary aids and services, effective communications; site selection to assure accessibility, and conducting self-evaluations which include corrective action plans have been developed. Ongoing efforts will continue to be made to ensure program and site access to individuals with disabilities.

38.15 Communications with individuals with disabilities

29 CFR 38.15:

(a) General—
(1) Communications with individuals with disabilities.
(i) A recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others.
(ii) For purposes of this section, ''companion'' means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training, program, or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate.
(2) Auxiliary aids and services.
(i) A recipient must furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including beneficiaries, registrants, applicants, eligible applicants/registrants, participants, members of the public, and companions, an equal opportunity to participate in, and enjoy the benefits of, a WIOA Title I-financially assisted service, program, or activity of a recipient.

(ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a recipient must give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(3) Interpreters.

(i) A recipient must not require an individual with a disability to bring another individual to interpret for him or her.

(ii) A recipient must not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—

(A) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(B) Where the individual with a disability specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(iii) A recipient must not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(4) Video remote interpreting (VRI) services. A recipient that chooses to provide qualified interpreters via VRI services must ensure that it provides—

(i) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(ii) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of the individual's body position;

(iii) A clear, audible transmission of voices; and (iv) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

(5) Electronic and information technology. When developing, procuring, maintaining, or using electronic and information technology, a recipient must utilize electronic and information technologies, applications, or adaptations which:

(i) Incorporate accessibility features for individuals with disabilities;

(ii) Are consistent with modern accessibility standards, such as Section 508 Standards (36 CFR part 1194) and W3C's Web Content Accessibility Guidelines (WCAG) 2.0 AA; and

(iii) Provide individuals with disabilities access to, and use of, information, resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits provided by the electronic and information technologies are provided to individuals with disabilities in an equally effective and equally integrated manner.

(b) Telecommunications.

(1) Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/ registrants, participants, applicants for employment, employees, and/or members of the public, text telephones (TTYs) or equally effective telecommunications systems must be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.

(2) When a recipient uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay systems, including internet-based relay systems.

(3) A recipient must respond to telephone calls from a telecommunications relay service established under title IV of the Americans with Disabilities Act in the same manner that it responds to other telephone calls.

(c) Information and signage.

(1) A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

(2) [Signage]

(i) A recipient must provide signage at the public entrances to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the Standards for Accessible Design under the Americans with Disabilities Act. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information. See 36 CFR part 1191, appendix B, section 103.

(ii) The international symbol for accessibility must be used at each primary entrance of an accessible facility.

(d) Fundamental alteration. This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a WIOA Title I financially assisted service, program, or activity.

(1) In those circumstances where a recipient believes that the proposed action would fundamentally alter the WIOA Title I-financially assisted program, activity, or service, the recipient has the burden of proving that compliance with this section would result in such an alteration.
(2) The decision that compliance would result in such an alteration must be made by the recipient after considering all resources available for use in the funding and operation of the WIOA Title I-financially assisted program, activity, or service, and must be accompanied by a written statement of the recipient's reasons for reaching that conclusion.
(3) If an action required to comply with this section would result in the fundamental alteration described in paragraph (d)(1) of this section, the recipient must take any other action that would not result in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

CFWDB Action:

The CFWDB is in compliance with standards of communications to individuals with disabilities set forth in 29 CFR 38.15. WIOA Contractors and NCWorks Career Centers must ensure they take appropriate steps to communicate with individuals with disabilities, and that such communication is as effective as communications with others.

The CFWDB continues to work with the NCWorks Career Center One-Stop system to build upon the current technology in place to ensure access – for those customers with limited English proficiency or who, because of disability, require a form of communication other than spoken English have appropriate communication devices. NCWorks Career Center Resources of auxiliary aids and services include -

- Assistive listening headsets
- Closed and open captioning on videos
- Telecommunication devices for deaf persons
- Computers that allow voice input and output
- Readers
- Taped texts
- Video-text imaging displays
- Transcription services
- Access to certified interpreters
- Larger screen monitors for the visually impaired
- Vocational Rehabilitation services
- Partnerships with services for the blind

38.16 Service Animals

29 CFR 38.16:

(a) General. Generally, a recipient shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
(b) Exceptions. A recipient may ask an individual with a disability to remove a service animal from the premises if—

(1) The animal is out of control and the animal's handler does not take effective action to control it; or
(2) The animal is not housebroken.

(c) If an animal is properly excluded. If a recipient properly excludes a service animal under paragraph (b) of this section, the recipient must give the individual with a disability the opportunity to participate in the WIOA Title I-financially assisted service, program, or activity without having the service animal on the premises.
(d) Animal under handler's control. A service animal must be under the control of its handler. A service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).
(e) Care or supervision. A recipient is not responsible for the care or supervision of a service animal.
(f) Inquiries. A recipient must not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A recipient may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A recipient must not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a recipient may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
(g) Access to areas of a recipient's facilities.

(1) In general. Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of a recipient's facilities where members of the public, participants in services, programs or activities, beneficiaries, registrants, applicants, eligible applicants/registrants, applicants for employment and employees, or invitees, as relevant, are allowed to go.
(2) Use of service animals in food preparation areas. An employee, applicant or beneficiary with a disability who needs to use a service animal in a food preparation area must be allowed to do so unless the employer recipient, after an individualized assessment, can

demonstrate, that the presence of the service animal presents a direct threat to health or safety that cannot be eliminated or reduced by a reasonable accommodation to the employee, applicant or beneficiary.

(h) Surcharges. A recipient must not ask or require an individual with a disability to pay a surcharge because of the individual's service animal, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a recipient normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by the individual's service animal.

CFWDB Action:

The CFWDB is in compliance with the standards involving service animals set forth in 29 CFR 38.16 and will ensure WIOA Contractors and NCWorks Career Centers are made aware of standards concerning service animals through policy/directive.

38.17 Mobility Aids and Devices

29 CFR 38.17:

(a) Use of wheelchairs and manually powered mobility aids. A recipient must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

(b) Use of other power-driven mobility devices.

(1) A recipient must make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the recipient has adopted.

(2) Assessment factors. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a recipient must consider—

(i) The type, size, weight, dimensions, and speed of the device;

(ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The facility's design and operational characteristics (e.g., whether its WIOA Title I-financially assisted service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and

(v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws.

CFWDB Action:

The CFWDB is in compliance with the standards involving mobility aids and devices set forth in 29 CFR 38.17 and will ensure WIOA Contractors and NCWorks Career Centers are made aware of standards concerning mobility aids and devices through policy/directive.

ELEMENT SIX

DATA INFORMATION COLLECTION

29 CFR 38.42 to 38.43

Introduction

The CFWDB ensures that policies and procedures for data collected by job seekers, employers, and agency employees are established and maintained for all WIOA Title I financially assisted state programs. Data is collected and maintained at the contractor's office by case managers through the use of the state MIS system called NCWorks Online. NCWorks Online is used to provide programmatic and demographic data collection pertaining to WIOA programs.

38.41 Collection and maintenance of equal opportunity data and other information

29 CFR 38.41:

(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) [Record Data]

(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.

CFWDB Action

The CFWDB is in compliance with the standards of data collection and maintenance set forth in 29 CFR 38.41. As mandated by the state of North Carolina, the data collection system, NCWorks Online, collects and stores the required equal opportunity statistical data for each individual registered in the one-stop system.

Policies and procedures safeguard collected information pertaining to specific job seekers, program participants, enrollees, benefit claimants, employers, and agency/partnership employees. They are reviewed and modified, if necessary, on an annual basis. Data is accessible only to program managers, program monitors, case managers, and a limited number of other "authorized" personnel needing access to the systems providing direct services. As the CFWDB stores all files electronically (in accordance with policy set forth by the NC Department of Commerce), WIOA Title I Case Mangers and Career Center personnel are instructed to make redactions to all medical and disability information. Knowledge of a participant's medical or disability information is only knowledgeable to applicable personnel.

The CFWDB EO Officer, through the monitoring process, ensures WIOA contractors and NCWorks Career Centers maintain the confidentiality of medical information provided by applicants and registrants. Some items reviewed by the EO Officer include:

- That the contractor has developed a written confidentiality policy that specifically addresses medical information, and staff has been trained/apprised of the policy.
- Medical information is maintained on a separate locked container.
- Medical information is kept confidential, except from:
    - Employing or training approval officials, after a conditional offer has been made to the applicant;
    - Supervisors and managers where there are work restrictions or where reasonable accommodations have been made;
    - First aid and safety personnel if the condition might require emergency treatment; and,
    - Government officials investigating compliance with Section 504.

NCWorks Online collects demographic information as required by the Civil Rights Center. The data collected reflects the composition of the Local Area's workforce by race, national origin, sex, disability and any other category that the CFWDB may require. This information is confidential and is used for record keeping and reporting, and determining program compliance with nondiscrimination requirements.

At the local level, each contractor is required to provide a copy of its procedures, demonstrating data collection, access, and maintenance to records meeting the requirements in 29 CFR 38.41. In addition, the contractor's provide the participants with copies of policy issuances discussing the confidentiality of demographic information regarding individuals; reports regarding and containing the above demographic information, and the complaint log format and instructions. Any complaints filed at the local level are documented and stored in accordance with 29 CFR 38.41.

38.42 Information to be provided to the Civil Rights Center (CRC) by grant applicants and recipients.

29 CFR 38.42:

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.

CFWDB Action

The CFWDB is in compliance with the standards of information to be provided to the Civil Rights Center set forth in 29 CFR 38.42.

38.43 Required Maintenance of Records by Recipients

29 CFR 38.43:

(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 three 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.

CFWDB Action

The CFWDB is in compliance with the standards of requirements of maintenance records of recipients set forth in 29 CFR 38.43. Records will be retained for a period of not less than three years from the close of the applicable program year. These records will include those of applicants, registrants, eligible applicants/registrants, participants, employees, and applicants for employment as well as other required records. Records regarding complaints and actions taken on the complaints will be maintained for a period of not less than three years from the date of resolution of the complaint.

ELEMENT SEVEN

COMPLIANCE MONITORING

29 CFR 38.51

Introduction

The CFWDB is responsible for monitoring all WIOA financially assisted programs for compliance with the nondiscrimination and equal opportunity provisions. The visitation plan is comprehensive, and will involve the Local Area EO Officer, WIOA contracting agencies Case Managers and Supervisors, and NCWorks Career Center Managers. The Local Area EO Officer will visit each site annually (more visits may be scheduled if the situation warrants visiting a site more than once to affect corrective measures). In turn, WIOA contractors and Career Center Managers will review their sites for EO compliance annually and provide us with their findings and corrective actions.

Monitoring objectives will ensure that WIOA Title I financially assisted programs and activities operate in a non-discriminatory manner. State and Local monitors use similar monitoring tools and processes described in this element to identify problem areas, operational weaknesses, and to develop a plan for corrective actions where deficiencies are found. When necessary, follow-up visits will be scheduled to ensure that the appropriate actions have been taken.

38.51 Governor's Oversight and Monitoring Responsibilities for State Programs

29 CFR 38.51:

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.

CFWDB Designation

1. Local Monitoring Overview
    a. Equal Opportunity Monitoring for the CFWDB, at a minimum, will address compliance with the nine elements of the Nondiscrimination Plan and WIOA non-discriminatory requirements under Section 188, Section 504 of the Rehabilitation Act of 1973, the State's Accessibility Code Checklist, reasonable accommodations, sexual harassment policies, and strategic plans. The EO Officer will review demographic data from NCWorks Online and compare it to recent Census data in the various counties to ensure that all populations are included in the WIOA services plans and programs.
    b. The local EO Officer monitors the activities of the NCWorks Career Centers and WIOA Contractor Offices to ensure EO Compliance. The EO Officer will use the same monitoring process developed at the state level for monitoring contractor's compliance with the WIOA final rules and federal regulations.
    c. Other areas monitored include:
        i. Applicant files (usually conducted via an electronic desk review) to ensure that medical and other confidential data are properly protected and stored (see applicable policies for specific requirements).
        ii. NCWorks Career Centers and WIOA contractor offices to ensure that they have assistive technology support for people with disabilities, that their bulletin boards have the proper posters and policy statements posted, and that their internal practices are non-discriminatory.
2. State Monitoring – The State EO Officer will perform monitoring of the CFWDB Local Area. Some aspects of the Local Area Monitoring will be performed by the State Monitor. The State EO Officer will also conduct On-Site Reviews, put together a report on the Local Area's compliance, and conduct the appropriate follow-up.
    a. On-Site Reviews
        i. On-site reviews provide the opportunities to ensure that the program operation is in accordance with the local area Nondiscrimination Plan. The primary contact for this phase of the review is the CFWDB EO Officer. The site review consists of the following:
            1. An entrance conference
            2. Policy and Procedures Review

3. Staff/Customer Interviews
4. Facility Accessibility review and assessment;
5. Review of customer information materials, to include materials in alternative formats and languages other than English;
6. Review of community contact programs;
7. Compliant-file review;
8. Discussion of program intake and assessment processes, to include provisions to serve individuals with disabilities or who are non-English speaking; and,
9. An exit conference, to include discussion of preliminary findings, if any.

ii. Contracts, assurances and other similar agreements are reviewed to ensure that they are both nondiscriminatory and contain the prescribed language regarding nondiscrimination and equal opportunity. Training dates for the Local EO Officer are also reviewed.

iii. If time permits, technical assistance on program-related matters may be provided during the site visit of scheduled for a future date.

iv. Monitoring Tools used for the on-site review include:
1. Nondiscrimination Plan Checklist
2. Accessibility checklist
3. Site Review Questionnaire

b. Report Preparation

i. Report preparation and compliance monitoring concludes the review process. Following the on-site visit, a cover letter sent with the report will include a request that a plan be submitted to the Local Area WIOA EO Officer regarding identified deficiencies and how they have been corrected. In the instance that a deficiency cannot be corrected within 60 days, an estimated completion date must be provided.

ii. Once received the plan will be reviewed by the Local Area. Upon acceptance, a letter will be sent to the Local Area. The letter will include one of two determinations: compliance or noncompliance.

iii. A determination of "compliance" means that corrective action has been taken since the report was issued. A finding of "noncompliance" means that EO program related problem(s) remain.

iv. Element Nine will outline corrective action in more detail.

c. Conducting Follow-Up

i. Once the Local Area EO Officer responds in writing to the recommendations, a copy is included in the report. If the on-site follow-up monitoring determines the cause for the initial finding is not appropriately accounted for, technical assistance is offered and corrective actions are determined.

ELEMENT EIGHT

COMPLAINT PROCESSING PROCEDURES

29 CFR 38.69 to 38.72; 38.85 to 38.88

Introduction

The CFWDB'S complaint processing procedure is to advise Local Area WIOA Title I customers and employees of their right to file a complaint. The WIOA partners must maintain compliance with the WIOA requirements regarding processing of discrimination complaints. Ideally, complaints and other issues will be resolved at the local level where they are received, thus, every attempt will be made to resolve complaints or issues at the local level. This process may include an Alternative Dispute Resolution (ADR).

38.69 Complaint Filing

29 CFR 38.69:

(a) Any person or the person's representative who believes that any of the following circumstances exist may file a written complaint:

(1) A person, or any specific class of individuals, has been or is being discriminated against 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, political affiliation or belief, citizenship status, or participation in any WIOA Title I financially assisted program or activity as prohibited by WIOA or this part.

(2) Either the person, or any specific class of individuals, has been or is being retaliated against as described in § 38.19.

(b) A person or the person's representative may file a complaint with either the recipient's EO Officer (or the person the recipient has designated for this purpose) or the Director. Complaints filed with the Director should be sent to the address listed in the notice or filed electronically as described in the notice in § 38.35.

(c) Generally, a complaint must be filed within 180 days of the alleged discrimination or retaliation. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

CFWDB Action

The CFWDB distributes Equal Opportunity notice and Complaint Procedures to all WIOA Title I Contractors and Career Centers with a directive that the notice is to be displayed in reasonable numbers and in prominent locations. The notice will be distributed to appropriate recruitment

sources, displayed in the Local Area's administrative offices, and in all NCWorks Career Centers, Workforce Offices, and their affiliated sites. This information will be –

- Posted prominently, in reasonable numbers and places;
- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks or manuals;
- Made available to each WIOA Title I Adult, Dislocated Worker, and Youth program participant, and made a part of the participant's file;
- Provided in appropriate formats to individuals with visual impairments; and,
- Where notice has been given in an alternative format to a participant with a visual impairment, a record that such notice has been given is to be made a part of the participant's file.

When a complaint is filed at the local level, unless a conflict or interest exists, the CFWDB will work closely with the EO Officer on complaints filed at the local or state level. When a conflict of interest is determined at the local level, the senior level employee may reassign to another staff, person, work with another EO Officer of a neighboring Local Area, or ask the State WIOA EO Officer for assistance.

38.70 Required Contents of Complaint

29 CFR 38.70:

Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

(a) The complainant's name, mailing address, and, if available, email address (or another means of contacting the complainant).

(b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination).

(c) A description of the complainant's allegations. This description must include enough detail to allow the Director or the recipient, as applicable, to decide whether:

(1) CRC or the recipient, as applicable, has jurisdiction over the complaint;

(2) The complaint was filed in time; and

(3) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA or this part.

(d) The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

(e) A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the recipient's EO Officer or from CRC. The forms are available electronically on CRC's Web

site, and in hard copy via postal mail upon request. The latter requests may be sent to CRC at the address listed in the notice contained in § 38.35.

CFWDB Action

The CFWDB is in compliance with the directives of 29 CFR 38.70 Required Contents of Complaint. The Local Area requires that any Local Area complaint be filed in writing within 180 days of the alleged incident, and must contain the standard information specified in 29 CFR 38.70 (see above). This is enforced through the CFWDB Notice of Civil Rights and Grievance and Complaints Procedures Policy.
The Local Area EO Officer will keep a log for tracking and reporting discrimination complaints. WIOA Contractors and NCWorks Career Center Managers will be responsible for maintain a log of filed complaints on the office/service provider level. Such records shall be in a secure area and made available only to those with authorization. The complaint and any information gathered during the investigation may not be discussed or revealed to anyone not legitimately entitled to access. Complaint records will be maintained for a period of at least three years from the date of resolution.

38.71 Right to Representation

29 CFR 38.71:

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.

CFWDB Action

The CFWDB is in compliance with the directive set forth in 29 CFR 38.71 and informs all WIOA Title I program participants of their rights to representation in the event of a filed complaint through the CFWDB Notice of Civil Rights and Grievance and Complaint Procedures Policy.

38.72 Required elements of a recipient's complaint processing procedures.

29 CFR 38.72:

(a) The procedures that a recipient adopts and publishes for processing complaints permitted under this part and WIOA Section 188 must state that the recipient will issue a written Notice of Final Action on complaints within 90 days of the date on which the complaint is filed.
(b) At a minimum, the procedures must include the following elements:
(1) Initial, written notice to the complainant that contains the following information:
(i) An acknowledgment that the recipient has received the complaint; and

(ii) Notice that the complainant has the right to be represented in the complaint process;

(iii) Notice of rights contained in § 38.35; and

(iv) Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in §§ 38.4(h) and (i), 38.34, and 38.36.

(2) A written statement of the issue(s), provided to the complainant, that includes the following information:

(i) A list of the issues raised in the complaint; and

(ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.

(3) A period for fact-finding or investigation of the circumstances underlying the complaint.

(4) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section.

(5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

(i) For each issue raised in the complaint, a statement of either:

(A) The recipient's decision on the issue and an explanation of the reasons underlying the decision; or

(B) A description of the way the parties resolved the issue; and

(ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

(c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:

(1) The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.

(2) The choice whether to use ADR or the customary process rests with the complainant.

(3) A party to any agreement reached under ADR may notify the Director in the event the agreement is breached. In such circumstances, the following rules will apply:

(i) The non-breaching party may notify with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach; and

(ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

(4) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in §§ 38.69 through 38.71.

CFWDB Action

The CFWDB is in full compliance with all elements discussed in 29 CFR 38.72, required elements of a recipient's complaint processing procedures. The CFWDB Notice of Civil Rights and Grievance and Complaint Procedures Policy ensures that each required element of the complaint processing procedures is enforced for all WIOA Title I financially assisted participants and employees.
Within 90 days of the receipt of the complaint, a written Notice of Final Action will be provided to the complainant. The Notice will contain the following statement for each issue raised in the complaint:

- The recipient's decision on the issue and an explanation of the reasons underlying the decision, or
- A description of the way the parties resolved the issue; and
- Notice that the complainant has a right to file a complaint with USDOL CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

38.85 Alternative Dispute Resolution

29 CFR 38.85:

The Director may offer the option of alternative dispute resolution (ADR) of the complaint filed with CRC. In such circumstances, the following rules apply: (a) ADR is voluntary; consent must be given by the complainant and respondent before the ADR process will proceed. (b) The ADR will be conducted under the guidance of the Director. (c) ADR may take place at any time after a complaint has been filed under § 38.69, as deemed appropriate by the Director. (d) CRC will not suspend its investigation and complaint processes during ADR.

CFWDB Action

The CFWDB is in compliance with the directives of 29 CFR 38.85. The complainant will be offered Alternative Dispute Resolution (ADR) within five days of the Local Area receiving the complaint. The choice whether to use the ADR rests with the complainant; the CFWDB preferred form of ADR is mediation. If ADR fails, the complaint will be processed through the standard complaint resolution process.

Mediation is offered as an alternate means of resolving the discrimination complaint. The Local Area EO Officer will utilize a neutral third party trained in dispute resolution to listen to both the complainant and respondent and then encourage them to reach a voluntary, negotiated settlement of the charge of discrimination. Mediation gives the parties a chance to discuss the issues raised in

the complaint, clear up misunderstandings, find areas of agreement, and incorporate those areas of agreement into solutions. Mediation is voluntary on the part of the complainant.

38.86 – 38.88 Complaint Determinations

29 CFR 38.86 to 38.88:

1. § 38.86 Notice at conclusion of complaint investigation.
    a. At the conclusion of the investigation of the complaint, the Director must take the following actions:
        i. (a) Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or this part; and
        ii. (b) Notify the complainant, the respondent, and the grant making agency, in writing, of that determination as provided in §§ 38.87 and 38.88.
2. § 38.87 Director's Initial Determination that reasonable cause exists to believe that a violation has taken place.
    a. If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or this part the Director must issue an Initial Determination. The Initial Determination must include:
        i. (a) The specific findings of the investigation;
        ii. (b) The corrective or remedial action that the Department proposes to the respondent, under § 38.90;
        iii. (c) The time by which the respondent must complete the corrective or remedial action;
        iv. (d) Whether it will be necessary for the respondent to enter into a written agreement under §§ 38.91 through 38.93; and
        v. (e) The opportunity to engage in voluntary compliance negotiations.
3. § 38.88 Director's Final Determination that no reasonable cause exists to believe that a violation has taken place.
    a. If the Director determines that there is no reasonable cause to believe that a violation has taken place, the Director must issue a Final Determination under § 38.96. The Final Determination represents the Department's final agency action on the complaint.

CFWDB Action

The CFWDB is in compliance with the directives of 29 CFR 38.86-38.88.

1. Informal Resolution – whenever possible, the Local Area EO Officer will attempt to informally resolve the complaint. This contact should be made within ten days from the date of receipt of the written complaint, to conduct a preliminary investigation, and to

discuss circumstances underlying the allegations. If the complaint cannot be resolved informally, the complaint process will continue to the next step.

2. Resolution – Resolution means that legitimate complaints are resolved to the satisfaction of the complainant. Should the complaint be determined not to have merit, the complainant will be notified.
    a. Resolution may include such actions as:
        i. Disciplinary action against the party found responsible for discriminatory action(s);
        ii. Corrective actions required by the contractor; and
        iii. Any sanctions taken against the contractor/office/agency.
3. Determinations –
    a. At the conclusion of the investigation of the complaint, the investigating authority must take the following actions:
        i. Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38; and,
        ii. Notify the complainant and respondent, in writing, of that determination.
    b. If the investigating authority finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38, an Initial Determination must be issued. An Initial Determination must include:
        i. The specific findings of the investigation;
        ii. The corrective action or remedial action proposed under Element Nine of this Nondiscrimination plan;
        iii. The time by which the respondent must complete the corrective or remedial action;
        iv. Whether it will be necessary for the respondent to enter into a written agreement under Element Nine of this Nondiscrimination plan; and
        v. The opportunity to engage in voluntary compliance negotiations.
    c. If the investigating authority determines that there is no reasonable cause to believe that a violation has taken place, a Final Determination must be issued. The Final Determination represents the Executive Director's final action on the complaint. The Final Determination must:
        i. Be issued with the 90-day complaint resolution period;
        ii. Give the investigating authority's decision on the issue and an explanation of the reasons underlying the decision; and
        iii. Give notice that the complainant has the right to file the complaint with the Director of the Civil Rights Center.

ELEMENT NINE

CORRECTIVE ACTIONS/SANCTIONS

29 CFR 38.90 and 38.96

Introduction

CFWDB WIOA Contractors and NCWorks Career Centers determined to be in violation of the nondiscrimination portions of WIOA as a result of a discrimination complaint, monitoring reviews, or both, are required to take prompt corrective and/or remedial action.

A violation may range in seriousness from a technical violation to a discrimination violation. Technical violations may take the form of failure to include required language in assurances, failure to post the required EO notices, etc. The more serious discrimination violations include finding of: disparate treatment, disparate impact, and/or failure to provide reasonable accommodations. Sanctions may be imposed where voluntary compliance cannot be accomplished.

The CFWDB will seek corrective action for a Contractor and/or an NCWorks Career Center if a violation is identified in the following circumstances:

- Monitoring identifies a technical deficiency, and a failure to follow through on written assurances or a barrier to affirmative outreach causing a disparate impact in programs or services.
- Assessment of the circumstances surrounding a complaint and/or grievance, and/or the use of desk audits, on-site reviews, investigation or other fact-finding tools in conjunction with the assessment process, reveals barriers to equal opportunity or access to NCWorks Career Center or WIOA services.
- They refuse to implement voluntary corrective action, submit requested data or documentation, or provide access to premises or records during a compliance review.

38.90 Corrective or remedial action that may be imposed

29 CFR 38.90:

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued under § 38.62 or § 38.64, §§ 38.66 and 38.67, or § 38.87, respectively, must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.
(b) Such steps may include:

(1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIOA or this part;
(2) Make-whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a compliance review), or other monetary relief; hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and
(3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to outreach, recruitment and training designed to ensure equal opportunity.

(c) Monetary relief may not be paid from Federal funds.

CFWDB Action

The CFWDB is in compliance with the directives of 29 CFR 38.90. Any monetary relief may not be paid from Federal funds.

1. Initial Determination
    a. WIOA Contractors and/or NCWorks Career Centers will be notified in writing of any finding of discrimination and/or noncompliance. This document will specifically list any findings and will also spell out the steps the WIOA contractor and/or NCWorks Career Center must take to accomplish voluntary compliance in a corrective-action plan. The contractor and/or NCWorks Career Center may agree to the terms of the corrective-action plan as proposed by the CFWDB, or they may propose alternatives and informally negotiate the terms of any plan until the plan is acceptable to both parties.
    b. For each corrective action, a time period must be established to completely correct the violation. In the case of a finding of discrimination, the Corrective Action Plan must provide, where appropriate, for retroactive and prospective relief. The CFWDB EO Officer will propose recommendations to the Executive Director for approval.
        i. CFWDB Corrective Action Plan
            1. When the need for corrective action is identified by the Local Area EO Officer, voluntary corrective action(s) and a reasonable minimum timeframe to completely correct each finding must be recommended.
            2. The State WIOA EO Officer must be notified of the corrective action taken and the set timeframe for the completion of each.
            3. Corrective Action Plan records will be maintained for a period of not less than three years from the date of resolution of the complaint.

ii. Sanctions
    1. As a last resort, sanctions may be imposed when a recipient fails to take voluntary corrective action. The ultimate sanction available is to revoke approval of part or the entire local plan, and cut off funding to the recipient.
    2. The list of sanctions below should not be considered conclusive or absolute, since the unique circumstances surrounding a civil rights or equal opportunity issue may vary. Sanctions may include –
        a. Deferral of action on the recipient's applications for new WIOA financial assistance;
        b. Referral to the Department of Commerce or the USDOL Civil Rights Center for appropriate legal action;
        c. Disallowance of selected costs;
        d. Partial funding;
        e. Temporary suspension of financial assistance until compliance is achieved;
        f. Offsets;
        g. Legal action under state contract law, based upon the recipient's assurance of compliance with WIOA, Federal regulations, state law, and governor's directives; and
        h. Any other actions as may be provided by law.

2. Monitoring for Follow-up
    a. Where a Corrective Action Plan is established, the contractor will report, in writing, to the CFWDB every 30 days regarding its progress on the plan until all commitments made in the plan are fulfilled. Each 30-day progress report should indicate the status of each item in the Corrective Action Plan, what actions the recipient has taken during the previous 30 days toward achievement of the plan, what remains to be done, and a schedule listing the dates when each remaining action is to be completed.

38.96 Contents of a Final Determination of a 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 through 37.115; and
(h) A determination of the Governor's liability, if any, under § 38.52.

CFWDB Action

The CFWDB is in compliance with the directives of 29 CFR 38.96. When a WIOA Contractor and/or NCWorks Career Center does not accept the terms of a Corrective Action Plan as proposed by the CFWDB, and is unable through informal negotiations to achieve a plan it finds acceptable, a Final Determination will be issued. The Final Determination shall include:

- The specific act(s) that constitute(s) the violation;
- A copy of the proposed conciliation agreement;
- A chronology of the conciliation efforts;
- A description of proposed sanctions(s)

A copy of the Final Determination shall be approved by the Executive Director prior to sending and will be disseminated to the Triangle South Workforce Development Board.

A WIOA Contractor and/or NCWorks Career Center may appeal the Final Determination by requesting a hearing to be conducted by the Executive Director (or designee). If a hearing is not requested in writing within 30 days after receiving the Final Determination, the decision will become final and any sanctions listed may be imposed.

Except in emergency situations, no sanction shall be imposed against a WIOA Contractor and/or NCWorks Career Center until the following conditions have been met:

- A good-faith effort to resolve the matter through informal means and a determination that compliance will not be achieved voluntarily was made and;
- The Final Determination listing the proposed sanctions has either not been exercised or has exhausted its appeal rights.

ATTACHMENT

"B"

	NORTH CAROLINA DEPARTMENT OF COMMERCE DIVISION OF WORKFORCE SOLUTIONS
	DWS POLICY STATEMENT NUMBER: PS 05-2015
	Date: July 8, 2015
	Subject: Workforce Innovation and Opportunity Act (WIOA) Nondiscrimination/Equal Opportunity Standards and Complaint Procedures
	From: William H. Collins, Jr., Assistant Secretary of Workforce Solutions

Purpose: To provide Local Workforce Development Areas and other subrecipients minimum standards and procedures designed to ensure that all WIOA programs will be conducted in accordance with applicable equal opportunity and nondiscrimination requirements. This Policy Statement provides current contact information and rescinds DWS Policy Statement Number PS 08-2014.

Background: Programs and activities receiving federal financial assistance are prohibited from discriminating on the basis discussed in this Policy Statement. The attached procedures are designed pursuant to: all of Section 3.7 of the Grant Administration Agreement; Section .0412 of Title 15, Chapter 17 North Carolina Administrative Code; the Workforce Innovation and Opportunity Act of 2014 (WIOA), including the Non-traditional Employment for Women Act of 1991; Section 403(a)(5)(J) and 408(d) of Title IV of the Social Security Act, as amended September 1997; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended, Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 37.

Action: This Policy Statement supersedes prior Policy Statements and Issuances regarding nondiscrimination or equal opportunity standards and complaint procedures. Local Areas and other subrecipients are required to establish and maintain policies and guidelines that incorporate these minimum standards.

Effective Date: Immediately

Expiration: Indefinite

Contact: Mose Dorsey, Administrative Officer III; (919) 814-0419; 1-800-735-2962 (TTY), 1-800-735-8200 (Voice)

N.C. WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA) NONDISCRIMINATION/EQUAL OPPORTUNITY STANDARDS AND COMPLAINT PROCEDURES

I. Nondiscrimination and Equal Employment Opportunity Standards

A. Subrecipients shall not discriminate against applicants, registrants, eligible applicants/registrants, participants, terminees, applicants for employment, employees, and members of the public because of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIOA Title I-financially assisted program or activity. This applies to all programs, projects or activities funded in whole or in part with Federal employment and training funds received directly or indirectly through the Division of Workforce Solutions (hereinafter "Division").

Subrecipients shall not, directly or through contractual, licensing, or other arrangements, on a prohibited ground: 1) deny an individual any aid, benefits, services, or training provided under a WIOA Title I-funded program or activity; 2) provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIOA Title I-funded program or activity; 3) subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIOA Title I-funded program or activity; 4) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIOA Title I-funded program or activity; 5) treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIOA Title I-funded program or activity; 6) deny or limit an individual with respect to any opportunity to participate in a WIOA Title I-funded program or activity, or afford him or her an opportunity to do so that is different from the opportunity afforded others under a WIOA Title I-funded program or activity; 7) deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIOA Title I-funded program or activity; 8) aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground in providing any services, aid, benefit, or training to applicants, registrants or participants in WIOA Title I-funded program or activity; 9) refuse to accommodate a person's religious practices or beliefs, unless to do so would result in undue hardship; or 10) otherwise limit on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIOA Title I-funded aid, benefits, services, or training.

In providing any aid, benefits, services or training under a WIOA Title I-financially assisted program or activity, a subrecipient shall not, directly or through contractual, licensing, or other arrangements, on the grounds of disability: 1) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service or training; 2) afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, service or training that is not equal to that afforded others; 3) provide a qualified individual with a disability with an 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; 4) provide different, segregated, or separate aid, benefits, services, 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 aid, benefits, services or training that are as effective as those provided to others; 5) aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants; 6) deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; 7) 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.

Subrecipients will comply with applicable provisions of Federal law and regulations regarding equal opportunity, will make such reports as may be required by the United States Department of Labor or the State, and shall make periodic assurances of compliance in applications, plans, and on request of the State.

B. Each subrecipient is responsible for designating an equal opportunity officer, who shall be responsible for assuring that discrimination does not occur in its programs or projects. All staff and participants shall be notified of this designation. The equal opportunity officer for a subrecipient is also responsible for the development of a complaint procedure. The equal opportunity officer is responsible for disseminating information to employees and participants concerning the subrecipient's nondiscrimination policy, and the complaint procedure.

Subrecipients shall provide the Division with the name, position, title, telephone number, supervisor, and job duties of their equal opportunity officer(s). Subrecipients shall describe the means by which the equal opportunity officer(s), name, position title and telephone number is made public. Subrecipients shall also describe any staff and resources available to the equal opportunity officer(s). The Division shall provide

group and individual training to subrecipient equal opportunity officer(s) and staff.

C. Subrecipients shall provide initial and continuing notice that it does not discriminate on any prohibited ground to applicants, registrants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public including those with impaired vision or hearing, unions or professional organizations holding collective bargaining or professional agreements with the subrecipient and contractor that receive WIOA Title I funds from the subrecipients. The subrecipient shall describe the methods and frequency of dissemination of the notice including initial dissemination. Subrecipients shall describe means by which notice is made available to individuals with hearing or visual impairments, as well as for persons of limited or non-English speaking ability. This communication with individuals with disabilities shall be as effective as communications with others. Subrecipients and their service providers shall, in regards to the notice, 1) post prominently, in reasonable numbers and places; 2) disseminate in internal memoranda and other written or electronic communications; 3) include in handbooks or manuals; and 4) make available to each participant and make a part of the participant's file or where files are maintained electronically. In regards to participants, the participant and the individual providing the notice shall sign the notice. Publications including recruitment brochures, broadcasts, and other materials routinely made available to the public shall include the statement "equal opportunity employer/program," and "auxiliary aids and services are available upon request to individuals with disabilities," and, where a telephone number is included on these materials, they shall indicate a TDD/TTY number or provide for an equally effective means of communication. North Carolina's current relay numbers are 1-800-735-2962 (TTY) and 1-800-735-8200 (Voice). Orientation to participants and new employees shall include equal opportunity rights under WIOA Title I-funded programs or activities. Information in language other than English shall be developed in areas where that language represents a five-percent (5%) or more share of the spoken language.

D. Subrecipients shall make efforts to provide employment and training opportunities and services on an equitable basis throughout all WIOA Title I-funded programs or activities. Such efforts shall include but not be limited to outreach efforts to broaden the composition of the pool of those considered for participation or employment, to include members of both sexes, the various race/ethnicity and age groups, and individuals with disabilities. Subrecipients must maintain sufficient records to document that programs, operators, and participants are selected equitably. All programs, to the maximum extent possible, shall contribute to the elimination of sex stereotyping, architectural barriers, and artificial barriers to employment and training. All Job Training

Plans and applications will be evaluated for compliance with these requirements and for any adverse effects on equal opportunity.

Outreach efforts may include, but are not limited to: 1) advertising the programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations; 2) sending notices about openings in programs and/or activities to schools or community service groups that serve various populations; and 3) consulting with appropriate community service groups about ways to improve outreach and service to various populations.

E. Subrecipients must ensure that every application, contract document, agreement, or arrangement to carry out the WIOA Title I-funded program or activity include specific language related to compliance with the nondiscrimination requirements of WIOA in the following form:

> *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 will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:*
>
> *Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I-financially assisted program or activity;*
>
> *Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;*
>
> *Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;*
>
> *The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and*
>
> *Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.*

The grant applicant also assures that it will comply with 29 CFR Part 37 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.

F. The Equal Opportunity Officer will collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. The race/ethnicity, sex, age, and where known, the disability status of each applicant, registrant, eligible applicant/registrant, participant, terminee, employee, and applicant for employment will be recorded. Records shall be maintained for a period of not less than three years from the close of the applicable program year.

Subrecipients must establish procedures for a regular review of WIOA programs to ensure that they promote equal opportunity and nondiscrimination. Such reviews should include a review of funding applications to assess their equal opportunity implications and their regulatory compliance; conducting on-site reviews to ensure that programs have been implemented in compliance with the regulations, to see that complaint procedures are in place, and to determine that services are being provided equitably to all eligible clients; and requiring corrective action, providing technical assistance and conducting follow-up where necessary. All monitoring activities, findings, and responses must be documented.

The Equal Opportunity Officer, on an annual basis, shall coordinate the monitoring of every subrecipient for compliance with administrative obligations under WIOA Section 188 and 29 CFR Part 37. Monitoring shall involve, at a minimum: 1) analysis of the data and records collected regarding the race/ethnicity, sex, age, and where known, disability status of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee and 2) where significant differences are found, follow-up investigations to determine, through records review, interviews, and other appropriate investigative techniques, whether the differences are due to discrimination.

The monitoring review shall: 1) evaluate the extent to which subrecipients are complying with assurances requirement of 29 CFR 37.20 through 37.22; 2) ensure that equal opportunity officers are complying 29 CFR 37.23 through 37.28; 3) ensure that initial and continuing notice that discrimination on any prohibited ground will not be tolerated; 4) take appropriate steps to ensure that universal access is available to all WIOA Title I-financially assisted programs and activities; 5) ensure that complaint processing procedures are followed; and 6) ensure that all aspects of the State's methods of administration are being followed. Written reports of each monitoring review shall be

prepared and made available to the subrecipient.

G. In accordance with regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, all subrecipients must operate each program activity so that the program or activity, when viewed in its entirety is readily accessible to qualified persons with disabilities. This does not mean that each existing facility (or every part of an existing facility) must be accessible to and usable by persons with disabilities. It does mean that when all aspects of a program or activity are analyzed, equal opportunities for participation must exist for persons with disabilities.

All subrecipients shall periodically analyze, with the assistance of persons with disabilities or other representatives, their current programs, policies, and practices to determine the level of accessibility and compliance with Section 504 of the Rehabilitation Act of 1973, as amended. Evidence of such analysis should be available for review.

The Americans with Disabilities Act (ADA) mandates State and local governments give civil rights protection to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. The law also guarantees equal opportunity for individuals with disabilities in employment, public accommodation, transportation, State and local government services and telecommunications.

As outlined in ADA, the subrecipient will adhere to the following provisions:

Make reasonable accommodations for qualified applicants or employees;

Protect qualified persons with disabilities who can perform the essential functions of the job with or without reasonable accommodation;

Protect individuals with a history of disabilities and those assumed to have a disability; and

Prohibit discrimination against people with disabilities in all employment practices including recruitment, hiring, training, job assignment, pay, layoffs, firing, promotions, leave, benefits, and all other employment-related activities.

The subrecipient shall ensure that all its buildings, programs and activities are physically and programmatically accessible to individuals with disabilities in the most integrated setting possible. The subrecipient shall further ensure that: 1) pre-employment/employment medical inquiries are limited to those permitted by and in accordance with laws and regulations, 2) the confidentiality of medical information provided

by registrants, applicants, eligible applicants or registrants, participants, employees, and applicants for employment, 3) communications with persons with disabilities are as effective as with others, and 4) that reasonable modification of policies, practices and procedures will be provided.

H. All subrecipients will be subject to periodic review for compliance with these standards and procedures. The Division of Workforce Solutions will make the review. Division staff may recommend corrective measures to assure nondiscrimination, and, in the event of failure to correct deficiencies, the Division may impose such sanctions as are available under the contract or grant administration agreement for failure to comply with a term of the contract or grant administration agreement.

II. Equal Opportunity/Nondiscrimination Complaint Procedure

Any person who believes that either he or she or any specific class of individuals has been or is being 1) excluded from participation in, 2) denied the benefits of, 3) subjected to discrimination under, or 4) denied employment in the administration of or in connection with any WIOA Title I-funded program or activity, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in the Workforce Innovation and Opportunity Act (WIOA) may file a written complaint. The person or a representative may file the complaint. The complaint may be filed either with the subrecipient or with the Director of the Civil Rights Center (CRC), US Department of Labor (USDOL). Complaints filed with the Director should be sent to the address listed below. Any person who elects to file his or her complaint with the subrecipient must allow the subrecipient 40 days to process the complaint and allow 50 days for the Division to receive and review the complaint, if applicable. A complaint filed based on the above grounds must be filed within 180 days of the alleged discrimination, unless extended by the Director of CRC for good cause shown. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.

1. All complaints must be filed in writing, signed by the complainant or authorized representative, and include the following information:

    a. The full name, address, and telephone/TTY number of the complainant (or specify another means of contacting him or her);
    b. The full name and address of the person or agency against which the complaint is made;
    c. A clear, concise statement of the act or acts considered to be a violation;
    d. In regards to disability, a statement or supporting evidence that the complainant is disabled;

e. Other information that will help explain and resolve the complaint.

2. Hearings on any complaint filed must be conducted within 30 days of filing.

3. Complaint hearing procedures should include the following provisions:

   a. Reasonable notice to all parties by registered or certified mail;
   b. A statement of the date, time and place of hearing;
   c. A statement of the authority and jurisdiction under which the hearing is to be held;
   d. A reference to the particular section of the Act, regulations, grant or other agreements under the Act involved;
   e. Notice to the parties of the specific charges involved;
   f. The right of both parties to be represented by legal counsel or other individuals of his or her own choice;
   g. The right of each party to present evidence, both written and through witnesses;
   h. The right of each party to cross examination;
   i. The right of an impartial decision maker who has not been directly involved in the events from which the complaint arose; and
   j. A written decision made strictly on the recorded evidence must be rendered within the prescribed time frame.

4. Complete records and documentation should be kept in each contested case, including minutes of testimony, data submitted, findings, appeals, and final decisions.

5. Decisions must be made not later than 40 days of filing the complaint. If a complainant does not receive a decision at the local level within 40 days of the filing of the complaint or receives an unsatisfactory decision, the complainant has a right to request a review of the complaint by the Division. Requests for such review should be submitted to:

   Assistant Secretary of Workforce Solutions
   Division of Workforce Solutions
   313 Chapanoke Road, Suite 120
   4316 Mail Service Center
   Raleigh, North Carolina 27699-4316
   ATTENTION: Mose Dorsey

   Such requests must be filed within 10 days of receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision, whichever is earlier. The Division will conduct a review of the complaint and issue a decision within 40 days from the date of receiving the review request. The Assistant Secretary of Commerce - Workforce Solutions may extend the 10 days if: 1) the

subrecipient does not notify the complainant of his or her right to request a review by the Division, or 2) for other good cause shown. Under no circumstances shall the time limit be extended for more than 30 days. However, if an extension is not granted, the complainant may follow the procedures listed in number 6 below. The complainant has the burden of proving to the Division that the time limit should be extended.

6. Should the Division provide a decision unsatisfactory to the complainant or fails to provide one, the complainant may file a complaint with the Director of the Civil Rights Center of the U. S. Department of Labor. Such requests must be submitted within 30 days of the Division's decision or 120 days from the date the complaint was initially filed at the local level, whichever is earlier.

7. Complaints filed with the Director of the Civil Rights Center shall be mailed to:

   Director of the Civil Rights Center (CRC)
   U. S. Department of Labor
   200 Constitution Avenue, N.W., Room N-4123
   Washington, DC 20210

   Each subrecipient shall maintain a log of complaints filed. The log shall include: 1) the name and address of the complainant; 2) the grounds of the complaint; 3) a description of the complaint; 4) the date the complaint was filed; 5) the disposition and date of disposition of the complaint; and 6) other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint shall be kept confidential. Records regarding complaints and actions taken thereunder shall be maintained for a period of not less than three years from the date of resolution of the complaint and made available to the Director of the Civil Rights Center (CRC) or the State upon request. Information concerning all complaints shall be kept confidential.

8. The complaint processing procedures shall provide for alternative dispute resolution (ADR). The complainant shall have the choice of pursuing the customary investigation process or using the alternative dispute resolution process. If the parties do not reach an agreement under alternative dispute resolution at the subrecipient or State level, the complainant may file a complaint with the Director of the Center for Civil Rights (CRC) at the address listed in number 7 above. The Division of Workforce Solutions has selected the mediation process as its alternative dispute resolution. See North Carolina Department of Commerce, Division of Workforce Solutions, Alternative Dispute Resolution Mediation Guidelines for additional information.

9. Corrective and remedial actions must be designed to completely correct each violation. For each corrective action, a time frame must be established and a minimum of time must be allowed for compliance. The procedures must provide, where appropriate, for retroactive relief (including, but not limited to, back pay) and prospective relief (e.g., training, policy development and communication) to ensure that the discrimination does not recur. The subrecipient shall develop procedures for follow-up monitoring to ensure that commitments to take corrective action and remedial action are fulfilled. The subrecipient shall describe reports required from the violating agency regarding actions to correct the violation(s). Sanction procedures to be followed where voluntary compliance cannot be achieved shall be developed.