

CHAPTER EIGHT: Compliance Procedures

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Chapter Two included a discussion of who may file a complaint of discrimination under Section 188. Chapter Four included a discussion of a recipient's affirmative obligation to adopt and publish complaint processing procedures. The present chapter will review these provisions and provide additional information about compliance, EO and nondiscrimination monitoring by the Civil Rights Center of the U.S. Department of Labor, and federal procedures for enforcement.

As the purpose of this guide is to aid recipients in complying with Section 188, this review of compliance enforcement and procedures for processing complaints of discrimination will be more of an overview than topics covered in the previous chapters. The hope is that recipients will have completed the self-assessment and ensured that they are fully in compliance with nondiscrimination regulations, and that they never have to deal with the provisions for processing a complaint. Nonetheless, as complaints are raised from time to time and in the interest of a complete orientation for access teams, it is appropriate to include this overview with the present Guide.

COMPLIANCE PROCEDURES

Ongoing evaluation of recipient compliance is conducted under the Director of the Civil Rights Center [29 CFR §§ 37.12; 37.13]. Procedures include:

- pre-approval compliance reviews of grant applicants;
- post-approval compliance reviews of grant recipients; and
- investigations of complaints alleging violations of nondiscrimination and EO regulations [29 CFR §37.60].

Pre-Approval Compliance Reviews

Under Section 188, the Director may conduct nondiscrimination and EO compliance reviews of WIA Title I financial assistance applicants based on their assurances of nondiscrimination and EO as discussed in Chapter Four, based on information or reports filed by the grant applicant, or based on records on file with the Department of Labor [29 CFR §37.62 (a)]. In situations where the Director determines that an applicant might not comply with nondiscrimination or EO provisions, the Director is

29 CFR §37.12

What Department of Labor office is responsible for administering this part?

The Civil Rights Center (CRC), in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of WIA and this part, and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

29 CFR §37.13

Who is responsible for providing interpretations of this part?

The Director will make any rulings under, or interpretations of, the nondiscrimination and equal opportunity provisions of WIA or this part.

required to notify the departmental grantmaking agency and the Assistant Attorney General of the findings; and issue a Letter of Findings to the grant applicant that gives detail of the preliminary findings and proposes remedial or corrective action, and a time framework for completion of the required action [29 CFR §37.62 (b)].

The Letter of Findings must also extend an opportunity to the applicant to engage in voluntary compliance negotiations; and advise whether the grant applicant will be required to enter into a written Conciliation Agreement [29 CFR §37.62 (b)]. If the applicant agrees to the remedial or corrective action and the time frame, the Department of Labor must ensure that the required actions have been taken or a Conciliation Agreement entered into before further WIA Title I financial assistance can be awarded [29 CFR §37.62 (c)]. If an applicant refuses or fails to take the required action, the Director is required to pursue actions leading to a Final Determination or refer the matter to the Attorney General with recommendations for instituting appropriate civil action [29 CFR §§37.98; 37.99].

Obviously, the above procedures are serious matters. The CRC has the authority to issue subpoenas to secure testimony or documentary evidence [29 CFR §37.61]. The point is not to get into such a situation. Even in a pre-approval compliance review situation where preliminary findings are issued, a recipient has the opportunity to engage in voluntary compliance negotiations. The goal is to reach agreement and compliance; it is not to litigate or create or prolong an adversarial situation.

Post-Approval Compliance Reviews

The CRC Director may conduct a post-approval of any recipient to determine compliance with nondiscrimination and EO provisions, based on the results of routine program monitoring, or the nature or frequency of complaints [29 CFR §37.63 (a)]. Whenever a post-approval review is initiated, the CRC must precede any on-site visits or desk audits with a Notification Letter advising the recipient of the programs and practices to be reviewed, and the information, records, or other data that are to be submitted by the recipient within 30 days [29 CFR §37.63 (b)]. At this notification stage, a recipient is also to be advised of its opportunity, which will continue until its receipt of a Final Determination, to provide documentary or other submissions

that explain, validate, or otherwise address the practices under review [29 CFR §37.63 (b)(4)].

Following a post-approval compliance review, the Director must communicate to the recipient in writing, whether or not there is any finding of noncompliance. Where there is a finding of noncompliance, the Director is required to issue a Letter of Findings that includes the same four elements as in a pre-compliance review:

- the preliminary findings
- proposed remedial or corrective action along with a time frame for completion;
- whether it will be necessary for the recipient to enter into a written assurance and/or Conciliation Agreement; and
- opportunity to engage in voluntary compliance negotiations [29 CFR §37.64].

In the event that a recipient fails to submit to the CRC the information requested in the Notification Letter; information, records, or data requested during a compliance review or complaint investigation; or to provide CRC with timely access to the recipient's premises, employees, or records during a compliance review; the Director may issue a Notice to Show Cause [29 CFR §37.66]. The notice to show cause gives a recipient 30 days to show why enforcement proceedings should not be instituted. A notice to show cause must specify the violation(s) with citation to the specific provision(s) of federal regulations; give detail of a particular corrective action that must be taken or the principles of acceptable action that are necessary; and request written response, including the commitment to corrective action or the presentation of opposing evidence [29 CFR §37.67].

A recipient may show cause why enforcement proceedings should not be instituted by demonstrating that the alleged violation(s) did not occur; correcting the violation(s) or entering into a written assurance or Conciliation Agreement [29 CFR §37.68]. If the a recipient fails to show cause, the Director must follow specified enforcement procedures [29 CFR §§37.69; 99; 100].

29 CFR §37.96

What are the required elements of a written assurance?

A written assurance must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

29 CFR §37.97

What are the required elements of a Conciliation Agreement?

A Conciliation Agreement must:

- (a) Be in writing;
- (b) Address each cited violation;
- (c) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
- (d) Provide for periodic reporting on the status of the corrective and remedial action;
- (e) Provide that the violation(s) will not recur; and
- (f) Provide for enforcement for a breach of the agreement.

Federal Enforcement Procedures

Federal enforcement procedures begin with the Director making a formal conclusion that compliance cannot be secured by voluntary means [29 CFR §37.98]. In such an event, the Director must either refer the matter to the Attorney General, with recommendation to initiate appropriate civil action; issue a Final Determination; or take such other action as may be provided by law [29 CFR §37.99]. A Final Determination must include the following elements:

- a statement of the efforts made to achieve voluntary compliance, and that those efforts have failed;
- a statement of the matters about which there remains disagreement between the recipient and the CRC;
- a list of any modifications to the findings and conclusions that were outlined in the Initial Determination, Notice to Show Cause, or Letter of Findings;
- a statement of the extent of the recipient's (or applicant's) liability;
- a description of the corrective or remedial actions that the recipient (or applicant) must take to come into compliance;
- a notice that if the recipient (or applicant) fails to come into compliance within 10 days of receipt of the Final Determination, one or more consequences may result: following the recipient's or applicant's opportunity for a hearing, its WIA Title I funds may be withheld or discontinued or its application denied; the Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the recipient or applicant; the Secretary may take any other action against the recipient or applicant as is allowed by law [29 CFR §37.100].

COMPLAINT PROCEDURES

As was discussed in Chapter Two, any person who believes that he or she, or any group of individuals, has been subjected to one of the forms of illegal discrimination, may file a written complaint by him or herself, or through a representative such as legal counsel [29 CFR §37.70]. A complaint may be filed with the recipient who has conducted the alleged discriminatory action and/or with the CRC [29 CFR §37.71]. Ordinarily complaints must be filed within 180 days of the alleged discrimination; they should be accompanied by

29 CFR §37.100 (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 WIA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds 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;

29 CFR §37.70

Who may file a complaint concerning discrimination connected with WIA Title I?

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or this part may file a written complaint, either by him/herself or through a representative.

CRC's Complaint Information and Privacy Act Consent form; and must include specified information, including the complainant's (or their representative's) signature and contact information, the alleged agent(s) and acts of discrimination; and sufficient detail of the allegations to enable the CRC to respond [29 CFR §§37.72-74].

A recipient's complaint processing procedures were discussed in Chapter Four. Briefly, they call for:

- an initial written notice, acknowledging receipt of the complaint and alerting complainants to their right to representation in the complaint process;
- a written statement of the issues raised by the complainant along with a response indicating whether the recipient will accept or reject each issue for investigation;
- an appropriate period for fact-finding;
- a period for the recipient to attempt resolution;
- offering the complainant the option of entering into alternative dispute resolution (ADR); and
- a written Notice of Final Action within 90 days, including the disposition of the issues and notice of the complainant's right to file a complaint with the CRC within 30 days if dissatisfied with the outcomes [29 CFR §37.76].

In some instances a complaint may be received by a recipient that believes it does not have jurisdiction over the complaint. In such a situation, the recipient must notify the complainant immediately in writing with the reasons for its determination and also advising the complainant of his or her right to file a complaint with the CRC within 30 days of receiving the Notice of Lack of Jurisdiction [29 CFR §37.78].

In other instances, a complainant may be dissatisfied with a recipient's Notice of Final Action or a recipient may fail to issue such notice within the required 90 days. In either case, the complainant or his/her representative has the right to file a complaint with the CRC – within 30 days of either the receipt of the unsatisfactory Notice of Final Action or the expiration of the 90 day response period [29 CFR §§37.79-80].

Whenever the CRC accepts a complaint for resolution, the Director must notify the complainant, the respondent, and the grantmaking agency [29 CFR §37.87]. Following investigation of the complaint, the Director must again notify the complainant,

the respondent, and the grantmaking agency of the determination whether there is reasonable cause to believe that a nondiscrimination violation has occurred [29 CFR §37.90]. In those cases where the Director finds reasonable cause to believe that the recipient has violated nondiscrimination regulations, he or she must issue an Initial Determination, much like the Letter of Findings in a compliance review, that includes

- the preliminary findings
- proposed remedial or corrective action along with a time frame for completion;
- whether it will be necessary for the recipient to enter into a written agreement; and
- opportunity to engage in voluntary compliance negotiations [29 CFR §37.64].

Where the Director finds that there is not reasonable cause to believe that a violation has occurred, he or she must issue a Final Determination, as described above in the section on Federal Enforcement Procedures [29 CFR §37.92].

The regulations in 29 CFR §37 include additional procedures regarding hearings [§37.111], sanctions [§37.110], the breach of conciliation agreements [§§37.102-105], and other legal matters. As was mentioned above, a nondiscrimination violation or a complaint investigation are very serious matters. The overall purpose of the regulations in this regard is to ensure due process for all parties -- complainants as well as respondents, recipients, or applicants. Each step in the resolution process includes opportunity for the party alleging violation to clearly specify its case and for the responding party to correct the situation or to explain why it is not a violation. Time windows of 30 and 90 days are intended to bring swift resolution to a dispute; and alternative dispute resolution (ADR) is offered to bring resolution without judicial proceedings. These experiences where there is a complaint or a violation are unfortunate and often unpleasant. However, experience has shown that the detailed specification of procedures beforehand, and guarantees of due process built into the system help to ensure that all parties are treated fairly and that disputes are resolved in as uncomplicated a manner as possible.

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