

**WORKFORCE INVESTMENT NETWORK  
LOCAL WORKFORCE INVESTMENT AREA (LWIA) 13**

<b>DATE:</b>	<b>May 7, 2014</b>
<b>POLICY NUMBER:</b>	<b>2014:04</b>
<b>SUBJECT:</b>	<b>WIN (LWIA 13) EQUAL OPPORTUNITY AND NONDISCRIMINATION COMPLAINT PROCEDURES</b>
<b>PURPOSE:</b>	To provide uniform procedures for filing and resolving complaints alleging violations of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA).
<b>REPLACES</b>	<b>N/A</b>
<b>REVISION NUMBER:</b>	<b>N/A</b>
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**I. BACKGROUND**

Section 188 of the Workforce Investment Act (WIA) prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and status of a lawfully admitted immigrant authorized to work in the United States or for participation in any WIA Title I-financially assisted program or activity. WIN serves as the administrative and fiscal entity for WIA programs for Local Workforce Investment Area 13 (LWIA 13), serving Shelby and Fayette counties in Tennessee. Pursuant to the Code of Federal Regulations (CFR) 29, Part 37, and Tennessee Department of Labor and Workforce Development WIA Number E&T 00-06, all LWIAs and recipients are required to establish and publish procedures for processing complaints alleging violation(s) of the equal opportunity and nondiscrimination provisions of WIA.

WIN/LWIA 13's Equal Opportunity and Nondiscrimination Policy & Complaint Procedures will be made readily and visibly available at each Career Center and on WIN's website. The following discriminatory actions/practices are expressly prohibited by 29 CFR 37.6:

- Denying an individual any aid, benefits, services, or training provided under a WIA Title I-funded program or activity;
- Providing 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 WIA Title I-funded program or activity;

- Subjecting 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 WIA Title I-funded program or activity;
- Restricting 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 WIA Title I--funded program or activity;
- Treating 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 WIA Title I--funded program or activity;
- Denying or limiting an individual with respect to any opportunity to participate in a WIA 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 WIA Title I--funded program or activity;
- Denying an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIA Title I--funded program or activity;
- Otherwise limiting on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIA Title I--financially assisted aid, benefits, services, or training.

## **II. POLICY**

It is the policy of the Workforce Investment Network (WIN)/LWIA 13 to ensure nondiscrimination and equal opportunity in the operation and administration of all programs, services, and activities funded in whole or in part with WIA funds. Any individual covered by WIA who believes he or she, or a specific class of individuals, has been discriminated against has the right to file a formal complaint in accordance with the procedures set forth herein. Recipients of Title I WIA funds must take appropriate steps to ensure that they are providing universal access to their programs and activities without regard to race or ethnicity, gender, age, disability, or other protected classification. In addition, reasonable steps should be taken to overcome language barriers and provide services and information to non-English speaking populations.<sup>1</sup>

## **III. DEFINITIONS**

Definitions of applicable terms used in the implementation of the nondiscrimination and equal opportunity requirements of WIA are specified below. If a conflict exists between a term as it is defined in this policy and 29 CFR Section 37.4, the definition in 29 CFR Part 37.4 is controlling.

1. **Applicant** is an individual who is interested in being considered for WIA Title I-financially assisted aid, benefits, services, or training by a recipient, and who has

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<sup>1</sup> As a division of the City of Memphis, WIN engages the services of the City of Memphis Language Line Solutions for such services.

- signified that interest by submitting personal information in response to a request by a recipient.
2. **Beneficiary** is the person or persons intended by Congress to receive benefits or services from a recipient.
  3. **Complainant** is the individual or entity who files a complaint of discrimination. See Section V.B.1 of this Policy regarding who may file a complaint.
  4. **CRC** is the Civil Rights Center of the U.S. Department of Labor. The CRC's address: 200 Constitution Avenue, NW, Room N4123, Washington, D.C. 20210.
  5. **DOL** is the U.S. Department of Labor, including its agencies and organizational units.
  6. **Disability** means an individual's physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.
  7. **Eligible applicant/registrant** is an applicant who has been determined eligible to participate in one or more WIA Title I-financially assisted programs or activities.
  8. **Entity** is any person, corporation, partnership, joint venture, unincorporated association, or State or local government, and any agency, instrumentality or subdivision of such a government.
  9. **Equal Opportunity Officer (EO Officer)** is the individual responsible for coordinating a recipient's obligations relating to equal opportunity and nondiscrimination. The EO Officer for LWIA 13 shall be referred to as "EO Officer" in this policy. The EO Officer for the Tennessee Department of Labor and Workforce Development (TDLWD) shall be referred to as the "TDLWD EO Officer" in this policy.
  10. **Local Workforce Investment Area grant recipient** means the entity that receives WIA Title I financial assistance for a Local Workforce Investment Area directly from the state and disburses those funds for workforce investment activities. WIN is the grant recipient for the Local Workforce Investment Area 13, which consists of Shelby and Fayette counties.
  11. **Participant** is an individual who has been determined to be eligible to participate in and who is receiving aid, benefits, services or training under a program authorized by Title I of WIA. Participation will be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized aid, benefits, services, or training provided under Title I of WIA.
  12. **Recipient** is an entity to which financial assistance under WIA Title I is extended, either directly or through the state or through another recipient (including any successor, assignee, or transferee of a recipient) and any mandatory or discretionary partner, but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. Some examples of recipients include LWIA grant recipients, service providers (including eligible training providers) and OJT employers. A small recipient serves a total of fewer than 15 beneficiaries during

the entire grant year and employs fewer than 15 employees on any given day during the entire grant year.

13. **Respondent** is the individual or entity against whom the complaint is filed.
14. **Service Provider** means (1) any operator or provider of aid, benefits, services or training to (a) any WIA Title I funded program or activity that receives financial assistance from or through any State or LWIA grant recipient or (b) any participant through the participant's Individual Training Account (ITA); or (2) any entity that is selected and/or certified as an eligible provider of training services.
15. **TDLWD** is the Tennessee Department of Labor and Workforce Development.

#### **IV. NOTICE OF NONDISCRIMINATION AND DISSEMINATION OF NOTICE**

LWIA 13 and recipients of WIA grant funds will provide initial and continuing notice that it does not discriminate on any prohibited grounds to sub-recipients that receive WIA Title I funds from the recipient, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with recipient.

The notice must contain language specifically prescribed by 29 CFR Section 37.30. The ***Equal Opportunity Is the Law*** notice maintained by Workforce Investment Network complies with this requirement, and is attached hereto.

- A. POSTING NOTICE.** At a minimum, the notice of nondiscrimination must be posted prominently, in reasonable numbers and places; disseminated in internal memoranda and other written or electronic communications; included in handbooks or manuals; and made available to each participant and part of the participant's file. The notice must be provided in appropriate formats to individuals with visual impairments and a record that such notice has been given must be made a part of the participant's file. For individuals with low vision, a magnifying lens is available at WIN to enable reading of the notice.
- B. NOTICE IN BROCHURES AND OTHER MATERIALS.** The notice contained in recruitment brochures and other materials, which are ordinarily distributed to the public in written and/or oral form, electronically and/or on paper to describe programs funded by Title I of WIA or the requirements for participation by recipients and participants, must contain the language prescribed in 29 CFR Section 37.34(a). If these materials indicate that the recipient can be reached by telephone, the materials must state the telephone number of the TDD/TTY or relay service used by the recipient. WIN's Lead Communications Analyst will ensure that the following statement is included in all brochures and other materials:

*The Career Center System is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities.*  
*TTY: 1-(800) 848-0299*

- C. NOTICE IN NEWS MEDIA.** Any information published or broadcast in the news media must ensure that such publications and broadcasts state that the WIA Title I financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in such a program is prohibited by Federal law). In addition, an indication that auxiliary aids and services are available upon requests to individuals with disabilities must be included.
- D. NOTICE IN ORIENTATION PRESENTATIONS.** During orientation presentations for new participants, new employees, and/or the general public regarding the recipient's Title I WIA-financially assisted programs or activities, the recipient will include a discussion of an individual's rights under the nondiscrimination and equal opportunity provisions of WIA and 29 CFR Section 37. They will also be informed of their right to file a complaint of discrimination In accordance with Section V.B below.

## **V. PROCEDURES FOR COMPLAINTS AND INVESTIGATIONS**

### **A. Equal Opportunity Officer Role**

1. All local areas will designate an EO Officer to coordinate its responsibilities in accordance with 29 CFR Section 37.25. Recipients must comply with the procedures for processing complaints and investigations set forth herein and cooperate with the EO Officer.
2. Service providers will follow the procedures set forth in this policy when a complaint of discrimination is received.
3. The EO Officer must not have other responsibilities or activities that create a conflict of interest, or the appearance of a conflict, with the responsibilities of an EO Officer.
4. The designated EO Officer for LWIA 13 is the Deputy Director of Operations.

### **B. Complaints**

1. **Who may file.** Any person who believes that he or she or any specific class of individuals has been or is being subject to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIA or the regulations may personally file a written complaint or through a representative.

2. **Where to file.** The complaint may be filed either with the EO Officer (identified in Section V.A.4 of this policy), the TDLWD EO Officer, or the CRC Director.
3. **Time for filing.** A complaint filed pursuant to this part must be filed within 180 calendar days of the alleged discrimination. The Director of the CRC may extend the filing time for good cause shown.
4. **Contents of complaints.** Each complaint must be filed in writing in a form prescribed by the EO Officer, the TDLWD EO Officer, or the Director of the CRC, and meet the following requirements:
  - a. Be signed by the complainant or his or her authorized representative;
  - b. Contain the complainant's name, address, and telephone number and any other means of contacting him or her;
  - c. Clearly identify the respondent; and
  - d. Describe the complainant's allegations in sufficient detail to allow the EO Officer, the TDLWD EO Officer, or the Director of the CRC to determine whether:
    - i. the EO Officer, the TDLWD EO Officer, or the CRC Director, as applicable, has jurisdiction over the complaint; and
    - ii. the complaint was timely filed; and
    - iii. the complaint has apparent merit (i.e., whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or the regulations.
5. **Complaint Forms.** The Discrimination and Equal Opportunity Complaint Form is attached hereto and can be obtained from any of the Career Centers located in Shelby and Fayette counties or on WIN's website: [www.workforceinvestmentnetwork.com](http://www.workforceinvestmentnetwork.com). A complainant may also file a complaint by completing and submitting TDLWD's Complaint Information Form or CRC's Complaint Information and Privacy Act Consent Forms.
6. **Right to Representation.** Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.
7. **Complaint processing.** All complaints must be date stamped upon receipt and forwarded to the EO Officer for processing. The complaint must be fully processed within ninety (90) days, inclusive of the deliverables and time constraints reflected herein.
8. **Confidentiality of complaint.** The respondent, individual or entity against whom the complaint is filed, will receive a copy of the complaint during the course of the investigation or alternative dispute resolution in order to allow the individual or entity the opportunity to respond to the allegation(s). The name of the complainant will only be released to the

extent necessary to investigate and fairly determine the issues raised in the complaint.

9. **Confidentiality of witnesses.** The identity of any individual who furnishes information relating to, or assisting in, an investigation of a complaint or a compliance review will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint or as otherwise required by law.
10. **Prohibition against intimidation or retaliation.** A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any person because such person has: filed a complaint alleging a violation of WIA or the regulations; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or the regulations; furnished information to, assisted or participated in any manner in, an investigation, review, hearing or any other activity related to administration of, or exercise of authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of WIA or the regulations; or exercised authority under or privileges secured by the nondiscrimination and equal opportunity provisions of WIA or the regulations.
11. **Computation of time.** In computing any time period as prescribed by these rules, the first day shall be excluded and the last included in order to complete the period. In addition, the time periods are counted in calendar days, not work days, unless otherwise specified.

**C. Notification to the Complainant**

1. **Acknowledgment.** Within five (5) days of receipt of the complaint, the EO Officer must provide an Acknowledgement of Discrimination and Equal Opportunity Complaint. The acknowledgment should also include notice that the complainant has the right to be represented by an attorney or other individual in the complaint process.
2. **Notification of no jurisdiction.** The EO Officer will notify the complainant within 15 days of receipt of the complaint in writing if he or she determines that LWIA 13 does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA or the regulations. The notification will also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the Director of the CRC within 30 days of the receipt of the notification. This notice will be sent to the complainant and respondent by certified mail and a copy of the notice will be sent to the TDLWD EO Officer.
3. **Statement of issues.** If the EO Officer determines that LWIA 13 has jurisdiction, he or she will issue a written statement notifying the

complainant and respondent within fifteen (15) days of the date of receipt of the complaint in writing. The letter shall advise the parties of the list of issues raised in the complaint and indicate which issues will be accepted for investigation and the reason for each issue not accepted. This statement of issues will be sent to the complainant and respondent by certified mail, with a copy of the notice sent to the TDLWD EO Officer.

4. **Informal meeting/Resolution.** The EO Officer may meet with the complainant informally to discuss and clarify the issues. During this process, the EO Officer may, in appropriate cases, offer a resolution of the matter – if the complainant accepts the resolution, the EO Officer must still file a Notice of Final Action in accordance with Section V.E.2 herein. If the complainant is not satisfied with the informal resolution, the complainant may proceed with a full investigation or request alternative dispute resolution.

**D. Resolution of Complaints**

1. **Options.** The complainant has the option of resolving his or her complaint through a full fact-finding/investigation process or alternative dispute resolution (ADR). If the complainant chooses the alternative dispute resolution option, he or she must notify the EO Officer within 10 days of receipt of the Statement of Issues.
2. **Fact-Finding/Investigation Process.** If the complainant chooses the full fact-finding/investigation process, the entity that receives the complaint will conduct a full review of the matter, including giving the complainant and the respondent the opportunity to respond to all the evidence presented. Within thirty (30) days of receipt of the complaint, the investigation and/or fact finding should be completed. The 30-day period can only be extended if the complainant agrees to the extension in writing. If the complainant is not agreeable to the extension, the EO Officer must proceed with their findings made within the 30-day period. The request for additional time should still be documented, however.
3. **Alternative Dispute Resolution Process.** If the complainant chooses the ADR method, the EO Officer will refer the matter to an impartial mediator approved by the EO Officer. The complainant will be advised that mediation is voluntary. Both parties will be advised that they must participate in the mediation in good faith but will not be required to reach an agreement.
  - a. **Notice of Mediation Conference.** Written confirmation of the mediation conference will be sent to each party within 10 days of the date of mediation. The notice will include the date, time and location of the mediation conference and a statement of the issues to be mediated. If complainant and respondent are



represented, they are responsible for providing that person with notice of the mediation.

- b. **Confidentiality.** Mediation sessions will be closed to any individual other than the parties and their representatives, except by consent of the parties and the mediator. Communication and information disclosed during the mediation is privileged and confidential and shall not be disclosed to a third party, except for purposes of implementation or enforcement, or by written agreement of both parties. During the mediation process, notes may be taken. However, once the final settlement agreement has been reached or the parties are unable to reach an agreement, all notes must be turned over to the mediator for disposal.
- c. **Final Agreement.** The mediator will provide a copy of the Final Agreement or notice of failure to reach an agreement to the complainant, respondent and the EO Officer within 60 days from the date of the complainant's election to participate in ADR.
- d. **Failure to reach agreement.** If the parties fail to reach an agreement, the EO Officer will submit a Notice of Final Action to the parties within 5 days of receipt of the notification. The Notice of Final Action shall provide a copy of the proposed agreement and indicate that the parties failed to reach an agreement on some or all of the issues, as applicable. The Notice shall also advise the complainant of his or her right to file a complaint with the Director of the CRC within 30 days.
- e. **Breach of Agreement.** A party to any agreement reached under ADR may file a complaint with the Director of CRC in the event the agreement is breached. The non-breaching party may file a complaint with the Director of CRC within 30 days from the date on which the non-breaching party learns of the breach. The Director of CRC must evaluate the circumstances to determine whether the agreement has been breached. If it is determined that the agreement has been breached, the complainant may file a complaint with CRC based upon his or her original allegation(s) and the Director will waive the time deadline for filing the complaint.
- f. **Mediation Files.** The EO Officer is responsible for maintaining a record of the cases submitted for mediation and a copy of each mediation agreement.

**E. Notice of Final Action**

1. Within ninety (90) days of the initial complaint filing, the EO Officer must provide the complainant a Notice of Final Action ("NOFA"), which

contains the following: (1) the EO Officer's decision on each issue raised in the complaint, including an explanation or a description of how the parties resolved the issue(s) and (2) notice that the complainant has thirty (30) days from the NOFA date to file a complaint with the CRC if dissatisfied with the final action. The decision will be mailed to the complainant and respondent by certified mail.

2. If the complainant has not received a Notice of Final Action within ninety (90) days of filing the complaint, the complainant or his or her representative may, within 30 days of the expiration of the 90-day period, file a complaint with the Director of the CRC provided, however, that the complaint must be filed with the Director of CRC within 120 days of the date on which the initial complaint was filed with EO Officer.

## **VI. DATA AND INFORMATION COLLECTION**

- A. Pursuant to 29 CFR 37.37, each recipient shall collect such data and maintain such records, in accordance with procedures prescribed by the Director of the CRC, as the Director of the CRC finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA or the regulations.
- B. Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment.
- C. Each recipient must record the race/ethnicity, sex, age, and where known, disability status of every applicant, registrant, eligible applicant/registant, participant, terminee, applicant for employment and employee.
- D. Such information will be stored in such a manner that ensures confidentiality and must be used only for the purposes of record keeping and reporting; determining eligibility, where appropriate, for WIA-financially assisted programs or activities; determining the extent to which the recipient is operating its WIA-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

## **VII. NOTIFICATION OF COMPLAINTS/LAWSUITS**

- A. Each grant applicant and recipient will promptly notify the WIA EO Officer and the Director of the CRC of any administrative enforcement actions or lawsuits filed against it alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIA Title I-financially assisted program or activity. The requirements for the notice are set forth in 29 CFR Section 37.38.
- B. The EO Officer will maintain a log of discrimination complaints filed pursuant to this policy. The log will include: the name and address of the complainant; the ground 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, to the greatest extent possible.

**VIII. RETENTION OF RECORDS**

- A.** Each recipient will collect and maintain, for a period of not less than three (3) years from the close of the applicable program year, the following records: applicant, registrant, eligible applicant/registant, participant, terminnee, employee and applicant for employment records; and such other records as are required by the regulations or the WIA EO Officer.
- B.** Each recipient will maintain records regarding complaints and actions taken thereunder for a period of not less than three (3) years from the date of resolution of the complaint.

**IX. CONTRACT REQUIREMENTS.** Every grant, cooperative agreement or contract for financial assistance for funding under Title I of WIA must contain the following assurance:

*As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, 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 Investment Act of 1998 (WIA) 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 WIA 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 WIA Title I - financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA 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.*

**X. EFFECTIVE DATE:** This Policy shall be effective upon the date stated above and remain in effect until further notice.

**XI. INQUIRIES:** Please contact the WIN Deputy Director of Operations with inquiries regarding this Policy.

**Exhibits (incorporated by reference):**

Equal Opportunity is the Law

Discrimination and Equal Opportunity Complaint Form

*The Career Center System is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. TTY: 1-(800) 848-0299*