

Date: August 26, 2010

To: Pacific Gateway Workforce Investment Network
WIA Youth Subcontractors

From: Bryan S. Rogers
Executive Director

Subject: **POLICY MEMORANDUM: WDB-05**
RENEWAL OF EQUAL OPPORTUNITY / NONDISCRIMINATION
OBLIGATIONS AND ASSURANCES UNDER WAGNER-PEYSER
(WP) AND WIA TITLE I - FINANCIALLY ASSISTED FUNDED
PROGRAMS

EFFECTIVE DATE

This policy is effective upon date of issue. It supersedes previous policies dated August 26, 2008.

PURPOSE

This purpose of this policy is to establish the Pacific Gateway Workforce Investment Network (Network) policy based on the federal nondiscrimination and equal opportunity provisions.

Section 188 of the Workforce Investment Act (WIA) contains the nondiscrimination and equal opportunity provisions that prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. Title 29 **CFR** 37 implements the nondiscrimination and equal opportunity provisions specified in Section 188 of WIA.

POLICY

The Network and its subcontractors are required to implement and to maintain an effective mechanism for assuring equal opportunity and nondiscrimination in all programs and activities funded wholly or in part with WIA monies. To ensure compliance, it continues to be the Network's policy and practice that all terms and conditions or privileges of employment shall be administered without regard to race, color, religion, sex, national origin, age, disability, citizenship or participation in a WIA Title financially assisted program.

Additionally, no individual shall be excluded from participation in, denied benefits of, subjected to discrimination under, or denied employment in the administration of, or in connection with, any Network-sponsored WIA Title I-financially assisted program because of race, color, religion, sex, including sexual harassment and sexual orientation, national origin, age, disability, citizenship or political affiliation



or belief.

DEFINITIONS

"Recipient", taken from Title 29 CFR Part 37, means any entity to which financial assistance under WIA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient, but excluding the ultimate beneficiaries of the WIA Title I funded activity. Network and subcontractors as defined in Section 121 (b) of the WIA are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 37 to the extent that they participate in the One-Stop delivery system.

Small recipient means a recipient who (1) serves a total of fewer than 15 beneficiaries during the entire grant year and (2) employs fewer than 15 employees on any given day during the grant year.

"Complaint", for this directive only, means an allegation of a violation of the nondiscrimination and equal opportunity provisions.

Each Network Center and Subcontractor is required to comply with all equal opportunity and nondiscrimination laws. The Network has identified eight (8) major Equal Opportunity (EO) elements, each of which, when fully implemented, will ensure that the Network and Subcontractor are satisfactorily complying with applicable nondiscrimination provisions. The eight (8) EO elements are:

This policy establishes the Network policy on the nondiscrimination and equal opportunity procedures for the Workforce Investment Act (WIA) Title I-financially assisted programs or activities. It is also to ensure that all WIA Title I Subcontractors are responsible for complying with all provisions of Federal, State and Networks' Equal Opportunity and Nondiscrimination regulations.

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any federally funded program or activity on the ground of race, color or national origin.

1. Designation of an EO Complaints Officer;
2. Communication of EO policy and procedures;
3. Inclusion of the EO provisions and nondiscrimination assurances in all contracts, plans, and agreements;
4. Universal Access;
5. Physical and Program Accessibility;
6. Collection and maintenance of EO data;
7. Distribution of a written EO Nondiscrimination Policy statement;
8. Compliance with the Network's WIA Complaint Procedures

The various requirements are summarized in the attached Equal Opportunity

Nondiscrimination policy.

If you have any questions on how to comply with the equal opportunity and nondiscrimination contract provisions, please contact Arleen M. Ward, EO Officer (562) 570-3680, TTY (562) 570- 4629 or fax (562) 570-3704.

Attachment

***PACIFIC GATEWAY WORKFORCE INVESTMENT NETWORK
EO/NONDISCRIMINATION POLICY***

This policy establishes the Network's policy on the nondiscrimination and equal opportunity procedures for the Workforce Investment Act (WIA) Title I-financially assisted programs or activities. It is also to ensure that all WIA Title I subcontractors are responsible for complying with all provisions of Federal, State and Network' Equal Opportunity and Nondiscrimination regulations.

Compliance with Federal Equal Opportunity and Nondiscrimination Laws

In administering all aspects of the WIA and providing employment and training services under the Act, the LWIA and WIA Title I subcontractors are responsible for complying with all provisions of Federal equal opportunity and nondiscrimination laws including, but not limited to, the following:

Title VI of the Civil Rights Act of 1964

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any federally funded program or activity on the ground of race, color or national origin.

Title VII of the Civil Rights Act of 1964, as amended

Private employers, state and local governments, and educational institutions with fifteen or more employees are prohibited from discriminating against their employees and job applicants on the basis of race, religion, color, sex or national origin.

The Age Discrimination Act of 1975, as amended

No persons, who are at least 40 years old, shall be excluded from participation, be denied the benefits of or be subjected to discrimination under any federally funded programs or activity.

Title IX of the Education Amendment of 1972

No person, on the basis of sex, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any federally funded programs or activity.

Section 188 of the WIA

The WIA Section 188 contains the nondiscrimination and equal opportunity provisions, which prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. Title 29 CFR Part 37 implements the nondiscrimination and equal opportunity provisions specified in Section 188 of WIA.

Section 504 - Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 prohibits any qualified disabled individual, on the basis of disability, from being excluded from participation in, denied benefits of, or otherwise being subjected to discrimination under a program or activity that receives or benefits from federal financial assistance.

Subsection 32.4 - Discrimination Prohibited

WIA funded contractors are prohibited from discriminating against individuals on the basis of disability, excluding qualified disabled persons from program participation or denying them the benefits of any program or activity. A "qualified disabled person" is defined as an individual who: 1) has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment; and, 2) meets the essential eligibility requirements for participation in, or receipt of benefits from, a particular program or activity.

Subsection 32.6 (c) - Self-Evaluation

Each WIA Title I contractor is required to: (a) evaluate its current policies and practices to ensure that they do not discriminate against qualified disabled persons; (b) modify any current policies and practices that discriminate against disabled persons; and (c) take appropriate steps to eliminate the effects of any discrimination that resulted from adhering to these policies and procedures. WIA Title I contractors, for at least three years following completion of the evaluation, are required to maintain a list of interested people consulted; provide, upon request, a description of area examined and any problems identified; and provide a description of any modifications made.

Section 32.7 - Designation of Coordinator for the Disabled

Pursuant to this section, each WIA service provider is requested to designate a person to coordinate the contractor's efforts in complying with the 504 Rehabilitation Act regulations.

Subsection 33.5 - Notice of Nondiscrimination

The Network requires that each WIA Title I subcontractor notify participants, beneficiaries, referral sources, applicants, employees, unions and professional organizations with whom it conducts business that it does not discriminate against disabled persons. Notice may be included in the subcontractors' overall equal opportunity/nondiscrimination policy statement, posted in bulletins, newspapers, magazines, internal publications, memoranda, or other written communications.

Subsection 32.13 - Reasonable Accommodation

Each WIA Title I contractor is required to make "reasonable accommodation" for qualified disabled applicants, employees, or participants unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its program. "Reasonable accommodation" is defined as the changes and modifications that can be made in the structure of a job or training programs, or in a way a job is performed or a program is conducted. Reasonable accommodation may include making an agency's facilities readily accessible to and usable by disabled persons, job restructuring, acquiring or modifying equipment or devices, and/or providing readers or interpreters.

Subsection 32.14 - Job Qualifications

This section requires all WIA Title I Network Centers and contractor's review all job qualifications for job-related-ness to ensure that they do not exclude qualified persons because of a particular disability. In addition, contractors are required to maintain adequate records demonstrating that they have complied with this section.

Subsection 32.15 - Pre-employment Inquiries

Except as stipulated in this section, no WIA Title I Network Center or subcontractor may conduct pre-employment medical examinations or make pre-employment inquiries of an applicant for services as to whether he or she is a disabled person.

Subsection 32.27 - Program Access

WIA Title I Network Centers and subcontractors must ensure that their programs are readily accessible to qualified disabled persons. Subcontractors are required to adopt and implement procedures ensuring that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of services, activities, and facilities that are accessible to and usable by qualified disabled person. (Refer to the subsection titled, "Architectural Standards," for information regarding structural changes).

Subsection 32.28 -Architectural Standards (Physical Accessibility)

Effective April 7, 1987, DOL recipients are held to the Uniform Federal Accessibility Standards when designing, constructing or altering facilities with the use of federal funds.

Subsection 32.44 -Maintenance of Compliance Information

WIA Title I Network Centers and subcontractors are required to maintain accurate records concerning the extent to which disabled persons are beneficiaries and participants in their WIA programs. Network Centers and Subcontractors are also required to have posters, handbooks, pamphlets, and other materials that provide information on Section 504 available for WIA participants, staff, and any other interested person.

Subsection 32.40 -Record Keeping

Pursuant to this section, WIA Title I Network Centers and subcontractors must maintain necessary records, as required in the regulations, for at least three (3)

years. These records include:

- All notices stating that the service provider does not discriminate against disabled persons;
- All records pertaining to the service provider's employment practices and training programs for disabled;
- All records pertaining to the service provider's efforts to make "reasonable accommodations" for qualified disabled applicants, employees or participants;
- All records pertaining to the service provider's review of all job qualifications for job-relatedness and nondiscrimination of disabled persons;
- All records pertaining to the contractor's efforts to make its program accessible to disabled persons;
- All records showing the extent to which disabled persons are beneficiaries and participants in the service providers WIA program.

Americans with Disabilities Act (ADA) of 1990

All requirements and standards set by Section 504 of the Rehabilitation Act of 1973 will continue to be applicable under the Americans with Disabilities Act of 1990. The Americans with Disabilities Act of 1990 does not supersede or negate, but rather compliments Section 504 of the Rehabilitation Act of 1973. The following information will assist in complying with the Americans with Disabilities Act of 1990.

- Those individuals who suffer any physical or mental disability that substantially limits major life activities are protected by the ADA. Those with obvious physical impairments are protected, but in addition, the ADA protects persons suffering from AIDS and other contagious diseases, as long as they do not pose a direct threat to their co-workers. Rehabilitated drug abusers and alcoholics are also covered, but those currently abusing drugs or alcohol are not covered. Obese persons or individuals with cosmetic disfigurements cannot be discriminated against under ADA;
- Any and every business that employs 15 or more people must adhere to the ADA;
- Employers are required by the ADA to make "reasonable accommodations" (reasonable accommodation is defined under the Rehabilitation Act of 1973, as amended) on behalf of a worker who is known to be disabled but is otherwise qualified to handle the "essential functions" of a job.

The following conditions apply to the ADA:

- Pre-employment medical tests or medical questionnaires are prohibited. All medical questions must be specific and tailored to the job;
- Post (employment) offer medical examinations may be given only if the company can prove the examination is job-related;
- Qualification standards or tests that even *unintentionally* screen out persons with disabilities are prohibited. An exception to this rule is when an employer

can demonstrate that the challenged tests or standards are job-related and consistent with the business necessity;

- Employers cannot participate in contractual and other relationships if the purpose or effect of the contract is to discriminate against employees on the basis of a disability. For example, employers that contract with companies to provide training for their employees are subject to the same responsibilities and limitations of reasonable accommodation that would apply if the employers themselves provided the training;
- Restricting the employment opportunities of an individual with a disability on the basis of stereotypes and myths about the individual's disability are prohibited. An employer should determine the capabilities of individuals on a case-by-case basis. In addition, employers should not segregate or classify persons with disabilities into separate work areas or classify them into separate "tracks" for promotion;
- Discrimination against anyone perceived to be disabled and/or relatives of a disabled person is prohibited by ADA;
- The employer may refuse to make a necessary accommodation on behalf of a disabled employee only if it would impose an undue hardship on the business.

Compliance with State of California Method of Administration

Title 29 CFR Section 37.54(a) requires that each Governor must establish and adhere to Methods of Administration (MOA) for WIA Title I-financially assisted state programs, activities and contractors. The MOA is a state-level document that reflects the Governor's commitment to nondiscrimination and equal opportunity. It outlines the activities required to comply with the provisions of WIA and Title 29 CFR Part 37. Outlined below are the requirements WIA Title I Network Centers and subcontractors. The Network has adopted several of the MOA elements and extends the requirement to the subcontractor level.

COMPLIANCE REQUIREMENTS:

1. Appointment of an Equal Opportunity Complaints Officer

- The Network has designated an Equal Opportunity (EO) Complaints Officer who is responsible for coordinating its obligations under these regulations. The Network will notify EO Compliance Unit whenever the designation of the EO Complaints Officer changes.

EO Officer's responsibilities include:

- Participating in periodic training and communicating training information to program staff in order that they keep abreast of equal opportunity issues.
- Inform employees and participants of their rights and responsibilities;
- Advise individuals on the WIA complaint process including the right to file with the Network or the Department of Labor, Civil Rights Center;
- Explain to employees or participants how the equal opportunity complaint system works;
- Submit a copy of the local level EO Officer's position description and

organizational chart showing the relationship of each EO Officer to their LWIA Executive Director,

- E.O. Officer's name and business address (including e-mail address if applicable) must be publicized through a variety of means including posters, handouts, and listings in local directories.

2. Dissemination of WIA Equal Opportunity/Nondiscrimination Policy Statement

- Internally to managers, supervisors, staff, collaborators, subcontractors and WIA program participants;
- Externally to sources and potential sources of recruitment, potential applicants for the program, to those with whom WIA Title I contractors does business and the community at large.

Initial and continuing notice of nondiscriminatory practices and the right to file a complaint must be:

- Posted in prominent locations;
- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks, manuals, brochures, *flyers* and broadcasted program information;
- Available to each staff, collaborator, subcontractor and participant;
- Participant's file must include both the complaint procedures the "EO is the Law" notice and "What to Do if You Believe You Have Experienced Discrimination".

The notice shall be provided in appropriate formats to individuals with visual impairments. A record of this notice shall be documented in the WIA Title I contractors' staff and participants' files as well as posted in prominent places.

Publications, which promote WIA programs/activities, *must include the following taglines:* "This WIA Title I-financially assisted program or activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities."

Where materials indicate that the Networks Centers may be reached by telephone, the telephone number of any Telecommunications Device for the Deaf (TOO), which is also known as teletypewriter (TTY) or California Relay Services (CRS) must be indicated.

If the Networks Center does not have a TDD/TTY, the California Relay Service (CRS) (1-800/735-2922) is an alternative. The CRS relays messages to hearing impaired persons via the telephone. A caller can contact the relay service by voice or TOO, and an operator will contact the party to be called using voice or TDD/TTY.

3. Limited English Proficiency (LEP)

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency". This Executive Order mandates that individuals with Limited English Proficiency (LEP) have equal access to federally funded programs and activities. Recipients of federal financial assistance must take reasonable steps to ensure that individuals having LEP receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by contractors.

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

4. Inclusion of the E.O Provisions and nondiscrimination assurances in all contracts, plans and agreements.

The Network must ensure that all contracts, job training plans, policies and procedures contain the nondiscrimination assurances as specified. The nondiscrimination assurances must state that the grant applicant and subcontractors will "comply fully with the nondiscrimination and equal opportunity provisions" of WIA and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance. The nondiscrimination assurances shall be discussed at collaborators'/subcontractors' meetings so that everyone has a firm understanding of the implications.

5. Universal Access

The Networks Centers must ensure universal access to WIA Title I financially assisted programs and activities by:

- Implementing an outreach and recruitment plan to solicit participation of all potentially WIA Title I eligible applicants in the entire locale;
- Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community services groups;
- Considering a pool of individuals for participation that includes members of both sexes, various *race/ethnicity/age* groups, and individuals with disabilities;
- Establishing a hiring and eligibility process that is accessible to qualified applicants with disabilities; and
- Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids

accommodations.

6. Physical and Program Accessibility

Access to WIA Title I financially assisted programs and activities must be administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This includes employment tests or other selection criteria used by the WIA Title I subcontractors. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and title 29 CFR, part 37.

The Networks Centers must provide means for individuals with disabilities 'to receive information about availability of facilities accessible to them, Additionally, all Network Centers must provide auxiliary aids and services as well as reasonable accommodation to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs),

The Networks Centers must also provide:

- Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled concrete, gravel);
- Signage at a primary entrance to each of their inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities;
- The international symbol for accessibility at each primary entrance of accessible facility;
- Building entrance doors that can be opened with one hand;
- Accessible information/public counter areas;
- Facility elevators that are accessible from the entrance meeting the above criteria;
- Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- At least one accessible public telephone;
- Accessible meeting rooms with Braille symbols at an accessible height;
- Restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed (Access to the grab bars should not be obstructed by such things as toilet paper dispensers, etc.); and
- Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

7. Reasonable Accommodation

Title 29 CFR Section 37.8, requires that with regard to aid, benefits, services, training and employment, a recipient must:

- Provide reasonable accommodation to qualified individuals with disabilities, who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause the recipient undue hardship on business operations; and
- Make reasonable modification 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 WIA Title 1-financially assisted service, program or activity,
- In those circumstances where a recipient believes that the proposed accommodation would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration only after considering all factors listed in the definitions of “undue hardship: and “fundamental alteration”. 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(s) who requested the accommodation.

8. Data and Information Collection and Maintenance In Compliance with Section 29 CFR Sections 37.37 through 37.41 and Section 188 of WIA, all WIA Title I contractors must:

- Collect data on race/ethnicity, sex, age and, where known, disability status, of each applicant, registrant, eligible applicant/registant, participant, termini, applicant for employment, and employee;
- Maintain records of data in a system designed to allow the Networks, EO Compliance Unit to conduct statistical or other quantifiable analyses to verify compliance;
- Safeguard the confidentiality of the required information (confidential information should only be used for record keeping and reporting purposes; determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; determining if the Networks Centers and subcontractors are operating its WIA program in a nondiscriminatory manner, or other use authorized by law.);
- Promptly notify the CRC and Networks EO Compliance Unit of any administrative enforcement actions or lawsuits filed against an LWIA alleging Discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program and activity. Provide a brief description of the findings in any civil rights

compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed, with it according to procedures set by CRC;

- Retain records, including records of complaints, for a period of not less than three (3) years from the close of the applicable program year or date of resolution of complaint; and
- Adopt procedures for responding to complaints of discrimination.

9. Monitor for Compliance

In accordance with the Title 29 CFR Sections 37.54(d)(2)(ii) and 37.54(d)(2)(iii), the EEO Office of the EDD monitors LWIAs for nondiscrimination and equal opportunity compliance as required by WIA provisions and related regulations.

Complete and submit the Electronic Monitoring Checklist (EMC) biennial self-assessment checklists. The EEO Office will review the self-assessments, along with the additional equal opportunity-related data, to coordinate and determine if an on-site review is necessary during a given program year.

10. Development and Implementation of Action Steps to Achieve Equal Opportunity Goals and Objective:

The Networks Centers and subcontractors must develop a written equal opportunity/nondiscrimination policy statement, which should be signed by the chief executive (e.g., Executive director) and should include the following key elements:

- Assurance that all aspects of the WIA Title I-financially assisted program will be administered in compliance with Titles VI and VII of the 1964 Civil Rights Act; the Age Discrimination Act of 1975, as amended; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; and Sections 188 of the WIA;
- Assurance that no individual will be excluded from participation in, denied benefits of, subjected to discrimination under or denied employment in the administration of or in connection with the WIA Title I-financially assisted program because of race, color, religion, age, disability, citizenship or political affiliation or belief;
- Assurance that participation in programs and activities financially assisted in whole or in part under WIA shall be open to citizens and nationals of the United States, lawfully admitted refugees and parolees and other individuals authorized by the Attorney General to work in the United States;
- Assurance that no individual will be intimidated, threatened, coerced or discriminated against because of filing a complaint, furnishing information or assisting or participating in any manner in an investigation, compliance

review, hearing or any other *activity* related to the administration of the WIA Title I financially assisted program.

The Networks' entire employment and training system shall identify any artificial barriers to equal opportunity/nondiscrimination. In addition, Network assures program accessibility to individuals with disabilities and to individuals with limited English speaking ability.

It is recommended that each subcontractor *review* the following areas:

- Recruitment of staff and program participants;
- Staff and participant selection processes (e.g., job/enrollment requirements, job descriptions, assessments, promotions, transfers, training);
- Staff upward mobility opportunities (i.e., regarding assignments, promotions, transfers, training);
- Participant training wages and staff salary structure by ethnic group and sex;
- Benefits and conditions of employment;
- Disciplinary procedures for staff and program participants, as appropriate; and
- Any union contract provisions affecting the *above* areas.

11. Equal Opportunity and Nondiscrimination Self-Evaluation

To ensure compliance with the State MOA, all Networks Centers shall be completed and submit a Nondiscrimination and Equal Opportunity Self – Evaluation to the WIA Title I funding sources EO Compliance Unit, when requested.

12. Discrimination Complaint Processing

The Network has established the WIA Complaint Resolution procedures by *WSD07-6* that describes the complaint process for filing discrimination complaints with either the DOL or with the LWIA.

The complaint may be filed either with the Network, EO Compliance Unit, or directly with the Civil Rights Center (CRC), U. S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.

Any person who believes that they or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and Equal Opportunity provisions of WIA may file a written complaint by using the discrimination complaint form – Workforce Development community (Attachment 3) or a representative may file the complaint on their behalf. The Networks Center's EO Complaints Officer is responsible for informing the complainants alleging violation of WIA Section 188 or Title 29 CFR Part 37.76, that they have 180 days from the date of the

alleged violation to file a complaint and that they may file their complaint with:

Pacific Gateway Workforce Investment Network
Attn: Arleen M. Ward, EO Compliance Officer
3447 Atlantic Avenue, Long Beach, CA 90807
Telephone Number (562) 570-3680, (562) 570-4629 TTY
E-mail Address: arleen.ward@longbeach.gov

OR

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

The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the Complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180 days time period elapsed. This time period for filing is for administrative convenience of the CRC and does not create a defense for the Respondent.

Complaints should be filed in writing and shall (if requested, Network or subcontractor staff shall provide assistance in writing and filing complaints):

- Be signed by complainant or their representative;
- Contain complainant's name, address, or other means of contacting them;
- Identify the respondent; and
- Describe the complainant's allegation(s) in sufficient detail to allow the CRC of the EO Officer, as applicable, to determine whether: 1) the CRC of LWIA has jurisdiction over the complaint; 2) the complaint was filed timely; 3) the complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA;
- Be signed by the complainant or his or her authorized representative.
- Each complainant and respondent has the right to be represented by an attorney or other individual of his/her own choice.
- The methods available to resolve the complaint must include Alternative Dispute Resolution (ADR) procedures. [Alternative Dispute Resolution is described in the Networks Complaint Resolution Procedures].

11. Complaints filed with the Network

For a detailed explanation, please refer to the Networks Complaint Procedures.

- Any person who believes that he or she or any specific class of individuals has been, or is being, subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIA regulations may file a written complaint or a representative may file the complaint on

his or her behalf, within 180 days of the alleged discrimination. The Network or subcontractor has 90 days from the date of the receipt of the written discrimination complaint to issue a decision in the matter.

- Complaints filed with the Network should be mailed to:

Pacific Gateway Workforce Investment Network
Attn: Arleen M. Ward, EO Compliance Officer
3447 Atlantic Avenue, Long Beach CA 90807
Telephone Number (562) 570-3680, (562) 570-4629 TTY
E-mail Address: arleen.ward@longbeach.gov

-OR-

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

If you receive a written Notice of Resolution on your complaint from the PGWIN for Los Angeles County programs your request must be sent to:

Grievance Hearing Officer
Dept. of Community & Senior Citizens Services
County of Los Angeles
3175 W. Sixth Street
Los Angeles, CA 90020

You must file your complaint within **15 days** of the date on which you received the Notice of Final Action.

- For complaints filed with the Network, the Complainant will be offered Alternative Dispute Resolution immediately upon receipt of the complaint. The choice of whether to use ADR rests with the Complainant; the preferred method of ADR is mediation;
- Mediation is a voluntary process during which a neutral third party assists both parties (Complainant and Respondent) communicate their concerns and come to an agreement about how to resolve a dispute;
- The mediator does not make decisions, rule as to what is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to resolve their differences;
- As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings;
- If the parties do not reach an agreement under ADR, the Complainant may file directly with the CRC as described in Title 29 CFR Sections 37.7137.74;
- A party to any agreement reached under ADR may file a complaint with the

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

PROGRAM DISCRIMINATION COMPLAINT FILED WITH THE NETWORKS WORKFORCE INVESTMENT AREA

Participant's discrimination complaint must be referred to City LWIA, EO Compliance Unit. (Please see Network, WIA Complaint Procedures)

- The Networks EO Compliance Officer shall issue a written acknowledgement of receipt by the LWIA of the complaint alleging discrimination by a WIA Title I recipient and shall include a notice of the Complainant's right to representation in the complaint process;
- One copy of the written complaint shall be provided to the Equal Employment Opportunity Office, Employment Development Department, 800 Capitol Mall, MIC 49, P.O Box 826880, Sacramento, CA 94280-0001;
- If the Complainant elects not to participate in the ADR process, the EO Officer shall investigate the circumstances underlying the complaint;
- At any point in the investigation of the complaint, the Complainant, Respondent, or the EO Compliance Officer may request that the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.
- Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions;
- If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing and signed by the parties, at which time it becomes a legally binding contract and falls under contract law;
- The LWIA has **90 days** to issue a "Notice of Final Action". If, during the 90 day period, the LWIA issues a decision that is not acceptable to the Complainant, the Complainant, or his/her representative may file a complaint with the CRC within **30 days** after the date on which the Complainant receives the "Notice";
- If the **90 days expire**, and the Complainant does not receive a "Notice of Final Action" from the LWIA, or the LWIA failed to issue a Notice of Final Action, the Complainant or his/her representative may, within **30 days** of the expiration of the **90 day** period, file a complaint with the CRC. The complaint must be filed with the CRC within **120 days** of the date on which the complaint was filed with the LWIA. The CRC may extend the **30 day** time limit

if the complainant is not notified, as provided in Title 29 CFR Section 37.81, or for other good cause shown.

Non-jurisdiction

The LWIA will notify the Complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA. The "Notice of Lack of Jurisdiction" will include the basis for the determination as well as a statement of the "Complainant's Notice".

Due Process

During the complaint resolution process, the EO Compliance Officer shall assure that all parties involved are given due process. These due process elements include:

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

Complaints filed with CRC

For a detailed explanation, please refer to the Networks WIA Complaint Procedures.

Corrective Actions Sanctions

It is the responsibility of the Networks Centers to comply with EO Compliance Unit's request for compliance documentation. Failure to provide the necessary document will result in corrective actions/sanctions.

REFERENCES

Section 188 of the Workforce Investment Act of 1998
Americans with Disabilities Act of 1990, Title II, Subpart A
Age Discrimination Act of 1975, as amended
Section 504 of the Rehabilitation Act, as amended
Title IX of the Education Amendments of 1972
Titles VI and VII of the Civil Rights Act of 1964, as amended
Title 20 Code of Federal Regulations (CFR) Section 667.275
Title 20 CFR Section 658.400, Title 29 CFR Parts 31,32 and 37
Title 41 CFR Subpart 101-19.6
Fair Employment & Housing Act (Gov. Code, Title 2, Div. 3, Part 2.8), Chapters 1-6
Dymally-Alatorre Bilingual Services Act, Government Code Section 72907299.8
WIA Directive WIAD04-20, Subject: Limited English Proficiency (May 12, 2005)
WIA Directive WSD10-1, Adding Wagner Peyser funded programs (July 21,2010)

Should you have any questions regarding this Policy Memorandum, please contact Arleen Ward at 562.570.3680 or TTY 562.570.4629.
BSR:amw:rg