



Noncriminal and Discrimination Complaints Procedures

Department: Office of Economic & Workforce Development

Effective Date: September 1,
2018

Directive # 18-21

Supersedes: 21-12

PURPOSE

The purpose of this directive is to establish the Workforce Innovation and Opportunity Act (WIOA) Complaint Resolution Procedure for noncriminal and discrimination violations of WIOA Title I requirements. The City's WIOA Title I programs are administered by the Office of Economic and Workforce Development (OEWD). This policy applies to all OEWD grantees, and is effective immediately.

REFERENCES

- California Employment Development Department WSD-176
- Workforce Innovation and Opportunity Act of 2014 (WIOA), Section 188
- WIOA Title 20 *Code of Federal Regulations* (CFR), Subpart F, Section 683.60 and 683.610
- Title 29 CFR, Subtitle A, Sections 31, 32, 38, and 1691.
- Title 41 CFR Subpart 101-19.6
- Americans with Disabilities Act of 1990, Title II, Subpart A
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1972
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended

POLICY

The principles and procedures set forth in this Complaint Resolution Procedure shall be used by all America's Job Center of California sites and neighborhood access points, subgrantees, and service providers within the City and County of San Francisco to resolve complaints which arise in connection with programs operated under OEWD funding. This directive contains guidance regarding the receipt, hearing, resolution, and appeals process of WIOA Title I grievances and complaints at the local level in accordance with Title 20 CFR Sections 683.600 and 683.610.

Grievances or complaints must be filed within one year of the alleged violation. All grievances, complaints, amendments, and withdrawals must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, and discrimination.

No person, organization or agency may discharge, or in any manner discriminate or retaliate against any person, or deny any person a benefit to which that person is entitled under the provisions of the WIOA Title I regulations because such person has filed any complaint, instituted or caused to be instituted, any such proceeding or investigation, or has provided information or assisted in an investigation.

The identity of any person who has furnished information relating to, or assisting in, the investigation of a possible violation of the Act shall be confidential to the extent possible, consistent with a fair determination of the issues.

Furthermore, all OEWD grantees and subgrantees must make reasonable efforts to ensure their policies and corresponding information will be understood by affected participants and individuals, including youth and individuals with limited English proficiency. These efforts must comply with the language requirements of Title 29 CFR Section 38.9.

In any case where the alleged violation of the WIOA Title I regulation is also an alleged violation of another law, regulation or agreement with respect to the non-WIOA Title I cause of action, as well as filing a complaint under the WIOA Title I in accordance with the procedures described herein.

All time frames specified in these procedures refer to consecutive calendar days including weekends and holidays.

“Grievance complaint” means a written expression by a party alleging a violation of the Act, regulations promulgated under the Act, recipient grants, sub agreements, or other specific agreements under the Act.

Service Provider Requirements:

All service providers shall have the duty and responsibility to ensure that they are in compliance with the provisions of the Complaint Resolution Procedure and shall work cooperatively with OEWD’s EEO/Compliance Officer to process all complaints filed with their agency involving OEWD-funded customer activities. At orientation, each customer in the program will be provided a copy of the Complaint Resolution. **Each customer will sign a receipt indicating that he or she has received the complaint information and that shall be maintained in the customer’s file.**

These procedures will be available for use by all individual entities, including unsubsidized employees in an employment activity operating with OEWD funds, customers in an employment activity operated with OEWD funds, service providers and subgrantees of OEWD, entities and individuals who are applicants for program funding, labor unions, community-based organizations, education agencies, private employers and other interested parties.

Types of Complaints:

There are three (3) distinct procedures for filing complaints. The procedures are categorized by the following types of complaints:

- A. Grievance (Noncriminal);
- B. Discrimination and Equal Opportunity (Noncriminal); and
- C. Fraud, Waste and Abuse (Criminal)

Relevant Noncriminal Complaint Issues:

Displacement [20 CFR 683.270] - A customer in a program or activity authorized under Title I of WIOA must not displace (including a partial displacement, such as reduction in the hours of non-

overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation). Where an employment activity would violate a collective bargaining agreement, the regulations provide that appropriate affected labor organization and employer must provide written concurrence before the employment activity can be undertaken. The employment or assignment of a WIOA customer or the filling of a position is prohibited when the employer has terminated any regular, unsubsidized employee or otherwise reduced its workforce with the intent of filling the vacancy with a WIOA customer. A WIOA customer may not be employed or assigned to a position where the employer has caused an involuntary reduction to less than full time in hours of an employee in the same or substantially equivalent job.

Health and Safety [20 CFR 683.280] - Health and safety standards established under the Federal and State Law otherwise applicable to working conditions of employees are equally applicable to working conditions of customers engaged in programs and activities under Title I of WIOA.

Workers' Compensation - To the extent that workers' compensation law applies, workers' compensation must be provided to customers in programs and activities under Title I of WIOA on the same basis as the compensation provided to other individuals in similar employment.

NOTE: In the case of a complaint alleging a violation of health and safety standards by a contractor (employer), the contractor will be required to demonstrate its compliance with State and Federal regulations governing health and safety requirements for that industry [e.g., CAL/OSHA certification].

Wage and Labor Standards [20 CFR 683.275] - Individuals in on-the-job training or employed in activities under Title I of WIOA must be paid at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law [Fair Labor Standards Act of 1938, Section 6(a)(1) 29 U.S.C. 206(a)(1) or applicable State or local minimum wage law].

Violation of the Act, grant or agreement (including retaliation), [WIOA Section 188(a)];

Terms and conditions of WIOA customer employment (On-the-Job Training, Customized training, Work Experience);

Complaints filed under this section relate only to the terms and conditions of WIOA customer employment. Typical complaints under this section include disputes over wages or working hours, working conditions, employee and/or training evaluations and disciplinary actions, including termination for cause. The responsibility for resolving the complaint rests initially with the employer and/or contractor.

If violations of WIOA, WIOA regulations, or other agreements under the Act are also alleged in the complaint, said portions of the complaint shall be processed accordingly (e.g., discrimination complaint).

PROCEDURE:

GRIEVANCE OR COMPLAINT – NONCRIMINAL:

These procedures will guide the receipt, hearing and resolution of noncriminal grievance complaints filed at the OEWD level for complaints relating to OEWD-funded programs and services.

Only a complaint which alleges a violation of WIOA, regulations promulgated under the Act, recipient grants, sub-agreements, or specific agreements under the Act, including terms and conditions of customer employment, may be filed.

Complaints may be brought by any individual or organization including, but not limited to: WIOA applicants/customers, service providers, subgrantees, collaborators, vendors (ITAS), staff of OEWD, subgrantees, or service providers, applicants for participation or financial assistance, labor unions, community based organizations or any other interested persons.

A complainant who has not exhausted this procedure may appeal directly to the Governor's Office, if the OEWD has not rendered a decision **within 60 days** of the filing of the complaint specified in the procedures, if the complainant believes OEWD's complaint procedure is not in compliance with the WIOA.

Filing:

Every complaint **must be in writing** before the official complaint resolution process will commence. The complaint must be signed, dated and contain the following information:

- The full name, mailing address and telephone number of the complainant;
- The full name, telephone number and address of the respondent;
- Clear and concise statement of facts and dates describing the alleged violation;
- The provisions of WIOA, regulations, grant or other agreements under WIOA believed to have been violated;
- The remedy which would satisfy the Complainant.

Complaints may be amended to correct technical amendments at any time up to the start of the hearing. Grievances or complaints may not be amended to add new issues unless the complainant withdraws and resubmits the complaint. However, the one year time period in which a grievance or complain may be filed is not extend for grievances or complaints refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision.

If the Complainant fails to cooperate or is unavailable, the complaint may be dismissed upon reasonable notice to the last known address of the Complainant.

Level One-Filing with the Service Providers:

Informal Resolution of Program Issues Complaint

It is the policy of OEWD that complaints under WIOA should be resolved at the lowest level possible. Therefore, under the WIOA complaint resolution procedures, complaints under WIOA

(with the exception of those involving discrimination) must first be filed with the designated EEO Complaints Officer at the service provider or subgrantee level.

The service provider or subgrantee must notify OEWD within **24 hours of the receipt of a written WIOA complaint**. The notification should be sent to:

Office of Economic and Workforce Development
One South Van Ness Avenue
San Francisco, CA 94103
Attn: OEWD Director of Operations
Telephone Number: (415)-701-4848
Fax Number: (415) 701-4897

OEWD reserves the right to intervene in the processing of any WIOA complaint at the informal resolution stage in order to assist in resolution, clarify the issues, provide technical assistance, conduct the informal resolution meeting or schedule a hearing before an impartial hearing officer in order to ensure due process and compliance with the 60-day time limit required for resolution pursuant to WIOA regulations.

Service providers or subgrantees have **10 days from the receipt** of the written complaint to schedule and conduct an informal complaint resolution meeting at its level.

After the complaint is accepted, the Complainant will be notified by the service provider or subgrantee, in writing, of the date, time and place of the informal resolution meeting. At that meeting an attempt to resolve the complaint informally will take place. Respondents must make good faith efforts to resolve all grievance complaints prior to the scheduled hearing.

Failure on the part of any party in the grievance complaint to exert good faith efforts shall not constitute a basis for dismissing a grievance complaint, nor shall this be considered to be a part of the facts to judge in the resolution process. OEWD and its service providers and subgrantees must assure that every grievance complaint not resolved informally is given a formal hearing, regardless of the grievance complaint's apparent merit or lack of merit.

In the event of an informal resolution of the WIOA complaint at the first level, the service providers or subgrantee will provide a written settlement agreement to the Complainant which describes the issues, provides the date of the informal resolution meeting, the attendees, and the terms of the agreement which has been reached by the parties as full and complete settlement of the complaint. The written agreement will be signed by the executive management of the agency or its authorized representative and the Complainant. A copy of the signed settlement agreement will be maintained in the Complainant's customer file, in the Complainant's log of the agency, and at the OEWD level for audit purposes. In the event of resolution or impasse, the complainant must provide a written withdrawal of the complaint within 10 days of receipt of the notice or resolution or impasse.

Customers' Terms and Conditions of Employment Complaints:

Each service provider and subgrantee is required to establish procedures for resolving complaint matters relating to the terms and conditions of customer employment. In addition, third party contractors (OJT/Customized Training) are also required to establish and maintain procedures for resolving disputes involving the terms and conditions of employment. At a minimum these procedures must include the following:

- Written notice, upon enrollment into employment or training programs, of the scope and availability of such procedures. Service provider and subgrantees' complaint procedures shall set forth in a written document and shall stipulate that a complaint will be resolved within **20 days** from the date the complaint was filed. A copy of the contractors'/OJT employers' complaint resolution procedure shall be provided to each customer upon his/her enrollment into the program and at the time of placement in the job.
- Written notice, at the time the complaint is filed, of the procedures under which the complaint will be processed.
- Written notification of the disposition of the complaint, and the reasons therefore, this shall be issued within **25 days** of the filing of the complaint. If the employer is required to use a certain grievance procedure under a covered collective bargaining agreement, then these procedures should be followed for the handling of WIOA complaints under this section.
- Written notification of the Complainant's right to request a review of the One-Stop Center, service provider or subgrantee's or third party's decision by OEWD. Such requests for review must be filed within **five (5) days** upon the receipt of the contractor's written decision. The request for review shall include the following information:
 - The full name, telephone number and mailing address of the party requesting the review;
 - The name, address and telephone number of the other party;
 - A copy of the written decision issued by the employer and/or WIOA service provider or subgrantee;
 - A statement of why the request for review is being made and/or the section of the decision to be reviewed;
 - A statement of the relief (i.e., remedy) being sought.

Requests for review should be sent to the EEO Compliance Officer at the address noted above.

Review by OEWD:

Request for Administrative Hearing Before an Impartial Hearing Officer

If an informal resolution cannot be reached at the OEWD level, the Complainant may request that an administrative hearing be scheduled before an impartial hearing officer. Request for an administrative hearing at the OEWD level should be made within **three (3) days** of the Complainant's receipt of the written decision at the lead agency/contractor level that an impasse has been reached in settling the complaint matter. The request should be sent to the EEO Compliance Officer at the address noted above.

The administrative hearing will be scheduled within **30 days** of the official filing date of the complaint. However, if time permits and the parties agree, OEWD may conduct an informal resolution meeting prior to scheduling the hearing.

Prior to the hearing, the Complainant may amend his/her complaint to correct technical deficiencies but not to add issues. The amendment must be submitted in writing to the OEWD EEO/Compliance Officer at the address above.

A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the hearing. Grievances or complaints may not be amended to add new issues. The one-year time period in which a grievance or complaint may be filed is not extended for grievances or complaints that are re-filed with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision. OEWD shall send a copy of the grievance or complaint to the respondent.

Prior to the hearing, Complainant and Respondent are entitled to reasonable discovery requests for production of documents. In the event of a dispute, the hearing officer shall make the final determination of reasonable request for document production. However, neither the Complainant nor the respondent has the right to conduct a deposition of prospective witnesses.

The recommendation(s) of the hearing officer will be reviewed by the Director of OEWD. The Director may adopt or reject, in whole or in part, the findings and/or recommendation(s) of the hearing officer and will render the Final Determination for the City and County of San Francisco Local Workforce Investment Area (LWIOA) within 60 days of the filing of the complaint.

Conduct of Hearings:

The hearing will be conducted by an impartial hearing officer appointed by OEWD. Written notice of the date, time, and place of the hearing, the manner in which it will be conducted, the issues to be decided and the rights of the parties will be sent to the Complainant and Respondent(s) by Certified Mail/Return Receipt Requested. Other interested parties may also apply for notice by contacting the EEO/Compliance Officer. [For the purposes of this procedure, such other interested party is defined as a person or organization potentially affected by the outcome. The notice to other interested parties will include the same information furnished to the Complainant and Respondent and state whether such interested parties may participate in the hearing and, if applicable, the method by which they may request such a hearing].

Any request to withdraw complaint must be in writing and received prior to the scheduled hearing.

Requests to reschedule a hearing must also be made in writing and for good cause. OEWD will make the final decision on such requests subject to acceptance of all parties of an extension of the 30-day requirement on scheduling a hearing and the 60-day requirement to have a final decision. Requests must be made at least **72 hours** prior to the scheduled hearing.

An attorney or other representative at his/her own expense may represent any party. OEWD cannot appoint an attorney to represent either party nor can OEWD provide advice to either party.

Either party may bring witnesses and documentary evidence.

Either party may have records or documents relevant to the issues produced by their custodian when either party keeps such records or documents in the ordinary course of business. The Complainant may also request that the employees and/or customers of the Respondent who have knowledge of the pertinent facts in the complaint be available to testify at the hearing. Any requests for records, documents, and/or persons serving as witnesses must be made in writing and must first be submitted to the EEO/Compliance Officer at least **seven (7) days** prior to the date of the hearing. The request must specify which records; document and/or individuals are presumed to be relevant to the issue(s) set forth in the complaint. The hearing officer will have the discretion to determine issues of relevancy at the time of the hearing. Failure on the part of either party to supply information and/or make persons available who have been requested may result in sanctions imposed by the hearing officer and/or OEWD. If the failure is on the part of the Respondent (e.g., WIOA service provider/subgrantee) it may be considered a breach of the Respondent's WIOA contractual agreement with the City.

The hearing will be conducted in an informal manner with strict rules of evidence not being applicable. Both parties have the right to present written and/or oral testimony and arguments; the right to call and question witnesses in support of their position; the right to examine records and documents relevant to the issues; and the right to be represented. The hearing will be recorded electronically.

Decision:

Not later than **60 calendar days** after the filing of the grievance complaint, OEWD will notify the Complainant and Respondent in writing of the recommendation(s) of the hearing officer and the Final Determination of OEWD. The written decision will contain the following information:

- The names of the parties involved;
- A statement of the alleged violation(s) and the issues related to the alleged violations;
- A statement of the facts;
- The hearing officer's recommended decision and the reasons for the decision;
- The OEWD Director's review of the hearing officer's recommendation(s) and the Final Determination at the LWIOA level;
- A statement of corrective action or remedies for violations, if any, to be taken; and,
- Notice of the right of either party to request, within **10 days** of the receipt of the decision, a review of the decision by the State Review Panel (SRP).

Appeals of OEWD-Level Decisions or Requests for EDD Review:

If OEWD has issued an adverse decision or failed to follow the procedures in this directive, the complainant may file an appeal with the state. Additionally, if OEWD has not issued a decision within the 60 day time limit, or if there has been any incident(s) of restraint, coercion, or reprisal at the local level as a result of filing a grievance or complaint, the complainant may file a request for EDD review.

The State Review Panel (SRP) will review appeals of decisions issued at the OEWD level. The SRP will not conduct any evidentiary hearings, but will review the record established by OEWD and issue a decision on the basis of the information contained therein.

A request for a State review of OEWD's decision must be filed in writing, signed, and dated. Appeals must be filed or postmarked to the California Employment Development Department Compliance Review Division (CRD) within **ten (10) days** of the receipt of the adverse decision by the appealing party. The request for review should contain the following information:

- Full name, telephone number and mailing address of the appellant and OEWD;
- A copy of the local hearing officer's decision;
- A copy of the Final Determination issued by OEWD;
- Copies of additional relevant documents;
- A brief statement of the reasons a State review is being requested. The statement must specify the errors of fact and/or statutory and regulatory interpretations that are alleged to have been made by the hearing officer/OEWD. If appropriate, the statement must identify the elements of the hearing officer's decision to be reviewed; and
- A statement of the remedy sought by the appellant. If not provided elsewhere in the appeal, the appellant must provide a statement setting forth the arguments presented to the local hearing officer that the appellant considers to support the appropriateness of the remedy he or she is seeking.

The Complainant may file a request with the State by submitting a written request to:

Compliance Review Office, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001
Attn: Division Chief

If an evidentiary hearing was held at the local level, the Compliance Review Office shall request the record of the hearing from OEWD and shall review the record without scheduling an additional hearing. OEWD is to provide written transcripts of any audio or visual recordings of the hearings via overnight mail. Within 10 days of receipt of the grievance or complaint, the Compliance Review Office shall notify the complainant and respondent of the opportunity for an informal resolution and proceed with the informal resolution process.

If an evidentiary hearing was not held at the local level, the Compliance Review Office shall instruct OEWD to hold a hearing within 30 days of receipt of the appeal or request for EDD review. If OEWD refuses to hold a hearing within the required timeframe, the EDD shall schedule an evidentiary hearing before an impartial hearing officer within the 30 day timeframe.

State Level Grievances and Complaints

All grievances or complaints alleging noncriminal, state violations of WIOA Title I requirements, or grievances or complaints by individuals or interested parties affected by statewide workforce programs shall be filed in writing with the Chief of the Compliance Review Office. The official filing date of the grievance or complaint is the date it is received by the Compliance Review Office. The filing shall be considered a request for a hearing and the State Review Panel

shall issue a written decision within 60 days of the official filing date. The Compliance Review Office shall send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be in writing, dated, and signed by the complainant. The state will attempt to obtain the following information for all complaints. However, the absence of any of the requested information will not be used as a basis for dismissing the grievance or complaint.

- Full name, telephone number, and mailing address of the complainant and respondent.
- A clear and concise statement of the facts and dates describing the alleged violation.
- The provision(s) of WIOA, federal regulations, state laws or regulations, grant, or other agreements under WIOA believed to have been violated.
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

The Chief of the Compliance Review Office or their designee shall review the grievance or complaint and notify the complainant and respondent of the opportunity for an informal resolution within 10 days of receipt. If the state cannot resolve the grievance or complaint informally, a hearing will be held.

EDD Hearing

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of the grievance or complaint. The complainant, respondent, and OEWD shall be notified in writing of the hearing at least 10 days prior to the hearing. The hearing shall be conducted by an impartial officer. The hearing notice shall contain the following information:

- The date of the notice, name of complainant, and the name of the party against whom the grievance is filed.
- The date, time, and location of the hearing.
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

The EDD hearing shall be conducted in an informal matter without the application of strict rules of evidence. Both parties shall have the right to be represented, present written and/or oral testimony under oath and arguments, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing shall be recorded either electronically or by a court reporter.

Title 22 CCR regulates the responsibilities and processes of EDD administrative law judges and hearings and as such, applies to the EDD hearings and hearing officers described in this directive. Title 22 CCR Sections 5050 through 5070 outline all applicable state laws and must be adhered to by the EDD hearing officers. Examples of subjects addressed include: special hearing accommodation, electronic hearings, ex parte communications, and consolidation of similar cases. All references to “administrative law judge” hold the same meaning as “hearing officer” in regard to these regulations.

State Review Panel

Following completion of the EDD hearing, the EDD hearing officer shall make a written recommendation to the State Review Panel. The hearing officer's recommendation shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The EDD hearing officer's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.

The State Review Panel shall not conduct a new evidentiary hearing, but shall review the record established by either the local level hearing or the EDD hearing. The State Review Panel shall issue a decision on the basis of the information contained within the record. The State Review Panel may accept, reject, or modify the EDD hearing officer's recommendation or the decision of the Local Area, and shall issue a written decision to the concerned parties within 60 days of the EDD's receipt of the local level appeal, request for EDD review, or grievance or complaint.

The State Review Panel shall send a written decision to both the complainant and the respondent by certified mail. The decision shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The State Review Panel's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.
- A notice of the right of either party to file an appeal with the U.S. Secretary of Labor (Secretary).

Remanded Local Grievances and Complaints

Grievances or complaints filed directly with the state related to OEWD programs will be remanded to OEWD. Reviews that reveal a trial issue, such as the hearing officer being an interested party, will be remanded to OEWD for a retrial of the grievance or complaint.

Federal Level Appeal Process

If the State Review Panel has issued an adverse decision regarding a grievance or complaint, or has not issued a decision within 60 days of receipt of a local level appeal, request for EDD review, or grievance or complaint, the complainant may file an appeal with the Secretary. This appeal process applies to grievances and complaints that originated at the local or state level.

Appeals of an adverse decision must be filed within **60** days of receipt of the adverse decision from the State Review Panel. In cases where the State Review Panel did not issue a decision, the complainant must file an appeal within 120 days of either of the following:

- The date on which the complainant filed the appeal of a local level decision or request for EDD review with the state.
- The date on which the complainant filed the grievance or complaint with the state.

All appeals to the Secretary must be sent to the DOL National Office via certified mail with return receipts requested. Copies of the appeal must simultaneously be provided to the DOL Employment and Training Administration (ETA) Regional Administrator and the respondent. Mailing addresses for the DOL National Office and ETA Regional Administrator are included below:

DOL National Office

Secretary of Labor
Attn: Assistant Secretary of ETA
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

ETA Regional Administrator

Office of Regional Administrator
U.S. Department of Labor
P.O. Box 193767
San Francisco, CA 94119-3767

Grievances or complaints filed directly with the Secretary that were not previously filed with OEWD and/or State will be remanded to OEWD or State, as appropriate.

The Secretary shall issue a final determination no later than 120 days after receiving the appeal.

Remedies

Remedies that may be imposed for a violation of any requirement under WIOA Title I shall be limited to the following:

- Suspension or termination of payments under WIOA Title I.
- Prohibition of placement of a participant with an employer that has violated any requirement under WIOA Title I.
- Reinstatement of an employee, where applicable, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment.
- Other equitable relief, where appropriate.

None of the above shall be construed to prohibit a complainant from pursuing a remedy authorized under another federal, state, or local law for a violation of WIOA Title I.

DISCRIMINATION GRIEVANCES:

This section covers the resolution of complaints alleging discrimination on the basis of race, color, national origin, age, sex (including pregnancy, gender identity, and sexual harassment), sexual orientation, religion, disability, political affiliation or belief, retaliation and citizenship, or status as a parent, where appropriate.

POLICY

The City and County of San Francisco Local Workforce Investment Area (LWIOA) in its WIOA grant agreement has assured the U.S. Department of Labor (DOL) and the State of California Employment Development Department (EDD) that no one enrolled in its WIOA program will be discriminated against because of race, creed, color, national origin, age, sex (including pregnancy, gender identity, and sexual harassment), sexual orientation, disability, citizenship, political affiliation or belief, or status as a parent. This means that:

- No benefits may be denied a WIOA customer because of race, creed, color, national origin, sex, sexual orientation, age, disability, citizenship, political affiliation or belief, or status of a parent while being registered, interviewed, counseled, tested, or while working, engaged in a work activity or attending class as part of the program;
- WIOA customers must be provided with the same opportunities to use all the facilities available in the program as any other customers;
- Fair employment practices shall be provided to all employees with regard to recruitment selection, assignment, transfer, promotion, training, compensation, benefits and termination regardless of race, creed, color, national origin, sex, sexual orientation, age, citizenship, disability or political affiliation or belief.

In addition, sexual harassment is against the law. Act of sexual harassment are grounds for a discrimination complaint based under Title VII of the Civil Rights Act of 1994.

A discrimination complaint may be filed within 180 days of the alleged discrimination, either with OEWD or with the Department of Labor, Civil Rights Center (CRC).

PROCEDURES FOR DISCRIMINATION COMPLAINTS FILED WITH OEWD:

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

Complaints filed with OEWD should be mailed directly to:

Office of Economic and Workforce Development
One South Van Ness Avenue
San Francisco, CA 94103
Attn: Director of Operations
Telephone Number: (415)-701-4848
Fax Number: (415) 701-4897

Complaints should be filed in writing and shall:

- Be signed by the Complainant or his or her representative;

- Contain the Complainant's name, address or other means of contacting him or her; Identify the Respondent; and,
- Describe the Complainant's allegation in sufficient detail to allow OEWD staff to determine whether: (1) OEWD or the Civil Rights Center (CRC) of the U. S. Department of Labor has jurisdiction over the complaint; (2) the complaint was filed timely (i.e., **within 180 days of the occurrence**); and (3) the complaint has apparent merit (i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA.

For complaints filed with OEWD, an investigation of the complaint shall be conducted and a written report shall be prepared and sent to the Complainant and the Respondent, and an attempt to resolve the complaint informally shall take place within **thirty (30) days** of filing of the complaint.

The choice to use Alternative Dispute Resolution (ADR) procedures rests with the Complainant. A party to any agreement reached under the ADR may file a complaint with CRC in the event the agreement is breached. In such circumstance, the following rules apply:

- The non-breaching party may file a complaint with CRC within **thirty (30) days** of the date on which the non-breaching party learns of the alleged breach;
- The CRC will 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/her original allegation(s) and the CRC will waive the time deadline for filing such a complaint.

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

If an informal resolution cannot be reached, the complainant may request an administrative hearing. The request for administrative hearing shall be made within **five (5) days** of the informal resolution meeting.

The administrative hearing shall be scheduled within **ten (10) working days** of the request for hearing. A Notice of Final Determination shall include notification of the right to file a complaint with the Department of Labor, Civil Rights Center (CRC).

If the complainant is dissatisfied with the resolution of the complaint, they may file a complaint with CRC within **thirty (30) days** of the date the complainant received the Notice of Final Determination from OEWD. If the complainant has not received notice of resolution within 90 days of filing, the complainant may file the complaint with CRC within 30 days of the expiration of the 90-day period (in other words, within 120 days of the date on which the original complaint was filed.).

If the complainant wishes to file a complaint with CRC, the complainant must wait until OEWD issues a decision or until **ninety (90) days** have passed since the filing of the original complaint with OEWD.

Discrimination Complaints filed with the Center of Civil Rights (CRC)

A complaint filed pursuant to this part must be filed within **180 days** of the alleged discrimination. The CRC, for good cause shown, may extend the filing time. In order to receive an extension, the Complainant must be notified by OEWD that a waiver letter is to be filed with CRC. The waiver letter should include the reason the **180 day time period** has elapsed. [This time period for filing is for the administrative convenience of the CRC and does not create a defense for the Respondent].

Complainants are encouraged to file by completing CRC's Complaint Information Form (CIF) and Privacy Act Consent Form, which are available [here](#) and at

<https://www.dol.gov/oasam/programs/crc/DL1-2014a-English.pdf>

If the CIF and Privacy Act Consent Form are not submitted initially, CRC will send them to the complainant to be completed, signed, and returned. CRC will not process a complaint without these forms.

Complaints filed with the Civil Rights Center (CRC), may be submit via:

Postal mail:

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

Fax: (202) 693-6505, Attn: Office of External Enforcement (Limit 15 pages)

Emailed: CRCEXternalComplaints@dol.gov

Complaints should be filed and in writing and shall:

- Be signed by the Complainant or his or her representative;
- Contain the Complainant's name, address or other means of contacting him or her;
- Identify the Respondent.

Describe the Complainant's allegation in sufficient detail to allow the CRC, OEWD, as applicable, to determine whether: (1) the CRC or OEWD has jurisdiction over the complaint; (2) the complaint was filed timely (i.e., within 180 days of the alleged occurrence); and, (3) the complaint has apparent merit, (i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions).

Both the Complainant and the Respondent have the right to be represented, at their own expense, by an attorney or other individual of their own choice. Written notice from the complainant must be provided to CRC, identifying the representative.

Actions by CRC:

The CRC evaluates all incoming complaints for CRC jurisdiction and timeliness filed pursuant to Title 29 CFR Section 38. When CRC accepts a complaint for investigation it shall:

- Notify OEWD, the service provider or subgrantee and the Complainant of the acceptance of the complaint for investigation; and,
- Advise OEWD, the service provider or subgrantee and Complainant on the issues over which the CRC has accepted jurisdiction.

OEWD, the service provider or subgrantee, the Complainant, or a representative may contact the CRC for information regarding the complaint filed pursuant to Title 29 CFR Section 38.84.

When the complaint contains insufficient information, the CRC will seek the needed information from the Complainant. If the Complainant is unavailable after reasonable means have been used to locate him or her, or the information is not furnished within **the timeline specified in the request for more information**, the complaint file may be closed without prejudice upon notice sent to the Complainant's last known address.

The CRC may issue a subpoena to the Complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done anywhere in the United States, at any designated time or place.

Where the CRC lack jurisdiction over a complaint, the CRC shall:

- Advise the Complainant, indicating why the complaint is not covered by the nondiscrimination and equal opportunity provisions outlined in WIOA or Title 29 CRF Section 38.80; and,
- Refer the Complainant to the appropriate federal, state or local authority when possible.

The CRC will contact the Complainant when a claim is not to be investigated and explain the basis for that determination. The CRC will refer the complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43 (c)(3).

If the Complainant alleges more than one kind of complaint, "joint complaint", (e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc.), the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission (EEOC) for investigation and conciliation procedures for joint complaints at Title 29 CFR Part 1691. The CRC will advise the Complainant, OEWD, the service provider or the subgrantee of the referral.

At the conclusion of the investigation, the CRC shall issue and Initial Determination. The Initial Determination shall notify the Complainant and OEWD, the service provider or subgrantee, in writing of:

- Specific findings of the investigation;
- Proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;

- Whether it will be necessary for the LWIOA or subgrantee to enter into a written agreement; and,
- The opportunity to participate in voluntary compliance negotiations.

Where no cause determination is made, the Complainant and OEWD, the service provider or subgrantee shall be notified in writing. Such determination represents the final agency action of the Department.

Corrective Actions/Sanctions for Discrimination:

- Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 38.64, 38.66, or 38.87, respectively, shall include the steps and the specific time period it will take the LWIOA or subgrantee to achieve voluntary compliance. (See Section 34.44 for corrective action steps).
- **Monetary corrective action may not be paid from federal funds.**

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

FRAUD AND ABUSE (CRIMINAL) AND DISALLOWED COSTS

Initial Determination

OEWD, the service provider or subgrantee will be notified in writing by letter of the Initial Determination base on the audit review by the Workforce Development Division (WDD), or Audit Section Financial Management Division, (FMD), as appropriate.

The Initial Determination letter will include:

1. A list of all questioned costs;
2. Whether the costs are allowed or disallowed, including the reasons with appropriate citations for such actions;
3. Acceptance or rejection of any corrective action taken to date, including correction on administrative findings;
4. Possible sanctions; and,
5. The opportunity for an informal resolution of no more than **60 days** from the date of the Initial Determination.

Informal Resolution

The contractor will have **10 days** in which to request an informal resolution of the audit issues. The request must be in writing to the EEO/Compliance Unit. During the informal resolution, the auditee may provide documentation to support allow ability of costs and proposed actions of administrative findings. Negotiations of repayments may be initiated at this time.

Final Determination

OEWD will issue a Final Determination. The Final Determination will include:

1. Reference to the Initial Determination;
2. Summation of the informal resolution meeting, if held;
3. Decisions regarding the disallowed cost listing each disallowed cost and noting the reason for each disallowance;
4. Questioned costs that have been allowed by the LWIOA and the reason for the allowance;
5. Demand for payment of the disallowed costs;
6. Description of the debt collection process and other sanctions that may be imposed if payment is not received;
7. Rights to a hearing;
8. Status of each administrative finding.

The auditee/contractor will have **21 calendar days** after the Final Determination is issued to submit a written request for hearing with the EEO/Compliance Officer. *If there is no appeal request, OEWD's final determination will represent final Departmental action.*

The auditee will receive written notice of the scheduled hearing at least **10 calendar days** before the hearing. The **10 day** notice may be shortened with the written consent of both parties. The auditee may withdraw the hearing request; the withdrawal request must be submitted in writing.

The hearing officer's report, which should be completed within **20 days** after the conclusion of the hearing, and any other reports or documentation, will be submitted to the Director of OEWD. The EEO/Compliance Officer will notify the service provider or subgrantee of the date of the meeting and provide a copy of the Department's report on the hearing officer's findings and recommendations.

The service provider or subgrantee will be notified in writing of the final decision of the City. The written notification shall be given **60 days** from the date of the receipt of the request for appeal. If the service provider or subgrantee does not appeal the final finding of OEWD, it shall agree to a repayment plan **30 days** of the final or program funds may be discontinued.

INQUIRIES

Inquiries should be addressed to the OEWD Director of Operations at 415-701-4848 or workforce.development@sfgov.org.

Attachments:

1. Equal Opportunity is the Law/What to do if You Believe You Have Experienced Discrimination
2. Discrimination Complaint Form
3. Reasonable Accommodation Policy and Procedure Guide

OEWD and its service providers shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required.