

COWIB Procedure for Processing Discrimination Complaints

February, 2005

(Approved by the Board of Local Elected Officials – October 27, 2005)

(Approved by the COWIB – December 21, 2005)

1. Purpose

The purpose of this procedure is to implement a process for handling discrimination complaints that may be filed by individuals who believe that they have been discriminated against in violation of the Workforce Investment Act.

This procedure will be used whenever a complainant alleges that they have been subjected to unlawful discrimination by the COWIB, its Board of Local Elected Officials, officers, or employees.

Generally speaking, this procedure is not intended to be used for complaints alleging discriminatory actions that may have been carried out by another local recipient. The COWIB's One-Stop Operator, Youth Providers, One-Stop Partners, and other recipients are required to maintain their own discrimination complaint processing procedures. In some circumstances, however, the COWIB may decide to accept jurisdiction over a complaint against another recipient. For example, Item 19(b)(2) of this Procedure allows the COWIB to accept limited jurisdiction over complaints filed against a One-Stop Partner agency.

For additional information on the “nondiscrimination” requirements of the Workforce Investment Act, please see the Code of Federal Regulations, 29 CFR Part 37.

2. Authority

This procedure helps to implement the Equal Opportunity Policy of the Central Oklahoma Workforce Investment Board (COWIB), which includes a requirement to, “Develop and adhere to a written policy to handle complaints of discrimination.”

The Workforce Investment Act of 1998 (WIA) requires each local workforce investment board to designate an Equal Opportunity Officer (“EO Officer”), whose responsibilities shall include, among other duties:

“Developing and publishing the recipient's procedures for processing discrimination complaints... and making sure that those procedures are followed.”

Cite: 29 CFR Part 37.23; 29 CFR Part 37.25(d).

3. Definitions

Complainant. An individual or entity who files a complaint of discrimination. See Item 5 of this Procedure for additional information on who may file a complaint.

CRC. "CRC" means the Civil Rights Center, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

COWIB. Central Oklahoma Workforce Investment Board.

Discriminatory Act. See Item 4 of these Procedures for a summary of discriminatory acts that are prohibited under the Workforce Investment Act.

EO Officer. As used in the Procedure, this term refers to the Equal Opportunity Officer of the Central Oklahoma Workforce Investment Board. See Item 7 of this Procedure for a description of the EO Officer's duties.

Recipient. This term means any entity to which financial assistance under WIA Title I is extended, either directly from the U.S. Department of Labor or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. "Recipient" includes, but is not limited to:

- State and local Workforce Investment Boards;
- LWIA grant recipients;
- One-Stop operators;
- Service providers, including eligible training providers;
- On-the-Job Training (OJT) employers;
- Other National Program recipients.

In addition, for purposes of this part, One-Stop partners, as defined in section 121(b) of WIA, are treated as "recipients," and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system. For a complete definition of this term, please see the Code of Federal Regulations, 29 CFR Section 37.4.

Respondent. This term refers to the individual or entity against whom the complaint is filed.

SAE's EO Officer. This term refers to the Equal Opportunity Officer for the State Administrative Entity for WIA programs. In Oklahoma, the State Administrative Entity is the Oklahoma Employment Security Commission (OESC).

4. What is a Discriminatory Act?

The Workforce Investment Act (WIA) provides that no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment

in the administration of or in connection with, any such program or activity because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief.

Examples of discriminatory acts specifically prohibited, other than those based on a disability, are set forth in 29 CFR Part 37.6. The regulatory requirements associated with employment practices and communication with individuals with disabilities are set forth in 29 CFR 37.7, 37.8, and 37.9.

Section 37.6(b) of the federal regulations provides that a local workforce investment board must not, directly or through contractual, licensing, or other arrangements, take any of the following actions on a prohibited ground:

- (1) Deny an individual any aid, benefits, services, or training provided under a WIA Title I-funded program or activity;
- (2) Provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIA Title I-funded program or activity;
- (3) Subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIA Title I-funded program or activity;
- (4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIA Title I-funded program or activity;
- (5) Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIA Title I-funded program or activity;
- (6) Deny or limit 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;
- (7) Deny 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;
or
- (8) Otherwise limit 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.

Section 37.6(c) provides that the COWIB must not:

- (1) Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground in providing any aid, benefits, services, or training to registrants, applicants or participants in a WIA Title I-funded program or activity; or
- (2) Refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in undue hardship.

Section 37.6(e) provides that, when the COWIB determines the site or location of facilities, it must not make selections that have the purpose or effect of discriminating unlawfully.

Section 37.6(f) provides that the COWIB must not permit participants to be employed or trained in sectarian activities.

Discriminatory actions based on disability are also prohibited. Section 37.7 describes some discriminatory actions based on disability that are specifically prohibited. Some of these include:

- (1) Denying a qualified individual with a disability the opportunity to participate in the WIA program;
- (2) Providing services or training that is not equal to that afforded others;
- (3) Providing a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (4) Providing different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;
- (5) Denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
- (6) Otherwise limiting a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

The COWIB is required to administer WIA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

When selecting contractors, the COWIB is prohibited from using criteria that subjects qualified individuals with disabilities to discrimination on the basis of disability.

Section 37.8 of the federal regulations describes the COWIB's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities. The COWIB is required to 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 undue hardship.

Section 37.9 of the federal regulations describes the COWIB's responsibilities to communicate with individuals with disabilities. The COWIB is obliged to take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities, are as effective as communications with others.

NOTE: See the Code of Federal Regulations for a complete list of program requirements and prohibited actions.

5. Who may file a discrimination complaint?

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 file a written complaint through a representative.

6. Where should the complaint be filed?

The complaint may be filed either with the COWIB's Equal Opportunity Officer or with the Director of the U.S. Department of Labor's Civil Rights Center:

COWIB Equal Opportunity Officer--
Central Oklahoma Workforce Investment Board
Attention: Bill Bryant
3813 N. Santa Fe, Suite 135
Oklahoma City, OK 73118
Phone ... (405) 622-2026
TDD/TTY ... (800) 722-0353

U.S. Department of Labor—
Director, Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue NW, Room N-4123
Washington, DC 20210
Telephone ... (202) 219-6118
TTY/TDD ... (800) 326-2577

For a description of the Civil Rights Center's procedure for processing complaints, see the Code of Federal Regulations, 29 CFR 37.70 through 29 CFR 37.105.

7. What is the role of the COWIB's Equal Opportunity Officer?

The COWIB has designated the above-named individual as its Equal Opportunity Officer. The duties of an Equal Opportunity Officer are described in the federal regulations at 29 CFR Part 37.25. The EO Officer's responsibilities include, but are not limited to—

- Serving as the COWIB's liaison with the Civil Rights Center and SAE's EO liaison;
- Monitoring and investigating the COWIB's activities, and the activities of the entities that receive WIA Title I funds from through the COWIB, to make sure that the COWIB and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIA Title I and this part;

- Reviewing the COWIB's written policies to make sure that those policies are nondiscriminatory;
- Developing and publishing the COWIB's procedures for processing discrimination complaints;
- Reporting directly to the appropriate officials (officers of the COWIB and its Board of Local Elected Officials) about equal opportunity matters.

As required by 29 CFR 37.24, the COWIB's Equal Opportunity Officer is a senior-level employee of the COWIB. The COWIB's EO Officer is not permitted to have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an Equal Opportunity Officer.

8. What is the time limit for filing a complaint?

A complaint filed pursuant to this procedure must be filed within 180 days of the alleged discrimination.

9. What are the required contents of a written complaint?

Each complaint must be filed in writing, and must contain the following information:

- A. The complainant's name and address (or another means of contacting the complainant);
- B. The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
- C. A description of the complainant's allegations. This description must include enough detail to allow the EO Officer to decide whether:
 - 1. The EO Officer has jurisdiction over the complaint;
 - 2. The complaint was filed in time; and
 - 3. The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37; and
- D. The complainant's signature or the signature of the complainant's authorized representative.

10. Are there any forms that a complainant may use to file a complaint?

Yes. A complainant may file a complaint by completing and submitting Complaint Information and Privacy Act Consent Forms of the Civil Rights Center, which may be obtained either from the COWIB's EO Officer, or from CRC at the address listed in Item 6, above.

The form may be downloaded from the internet:

<http://www.dol.gov/oasam/programs/crc/Cife.pdf>

11. Is there a right of representation in the complaint process?

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

12. When a complaint is filed, who will the EO Officer notify?

When a complaint is filed with the COWIB, the EO Officer will date stamp it and write a letter to the personal confirming the receipt of the complaint. This letter will include a written notice that the complainant has the right to be represented in the complaint process. Additionally, the EO Officer will immediately notify the SAE's EO Officer, the Chairperson of the COWIB, and the Chairperson of the COWIB's Board of Local Elected Officials.

13. Will the confidentiality of the complainant be respected?

The name of the complainant will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint. The 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 process in order to allow the individual or entity the opportunity to respond to the allegation(s).

14. Will the confidentiality of witnesses be respected?

The identity of any individual who furnishes information to, or assist 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.

15. Are there protections against intimidation and retaliation?

Yes. A recipient of WIA Title I-financial assistance 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 29 CFR Part 37; 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 of privileges secured by the nondiscrimination and equal opportunity provisions of WIA or the regulations.

The sanctions and penalties contained in Section 188(b) of WIA or the regulations may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

16. Does the EO Officer accept every complaint for resolution?

No. The EO Officer must determine whether the COWIB will accept a particular complaint for resolution. For example, a complaint need not be accepted if:

- (a) It has not been timely filed;
- (b) The COWIB has no jurisdiction over the complaint; or
- (c) The COWIB has previously decided the matter.

17. What happens if a complaint does not contain enough information?

- (a) If a complaint does not contain enough information, the EO Officer will try to get the needed information from the complainant.
- (b) The EO Officer may close the complainant's file, without prejudice, if:
 - (1) The EO Officer makes reasonable efforts to try to find the complainant, but is unable to reach him or her; or
 - (2) The complainant does not provide the needed information to the EO Officer within the time specified in the request for more information.
- (c) If the EO Officer closes the complainant's file, s/he must send written notice to the complainant's last known address.

18. If the EO Officer determines that the COWIB has no jurisdiction over a complaint, what will happen then?

If the EO Officer determines that the COWIB does not have jurisdiction over a complaint, s/he will notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction will include:

- (a) A statement of the reasons for that determination, and
- (b) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

The notice will be sent to the complainant and the respondent by certified mail. A copy of the notice will be sent to the Chairperson of the COWIB, the Chairperson of the COWIB's Board of Local Elected Officials, and the SAE's EO Officer.

19. Are there any circumstances in which the EO Officer will send a complaint to another authority?

Yes. The EO Officer may refer complaints to other agencies in the following circumstances:

(a) Where the only allegation in the complaint is a charge of individual employment discrimination that is covered both by WIA or this part and by one or more of the laws listed below, then the complaint is a "joint complaint," and the EO Officer may refer it to the EEOC for investigation and conciliation under the procedures described in 29 CFR part 1640 or 1691, as appropriate. The relevant laws are:

- (1) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e-17);
- (2) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d));
- (3) The Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, et seq.); and
- (4) Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.).

(b) Where the complaint alleges discrimination by an entity that operates a program or activity financially assisted by a Federal grantmaking agency other than the U.S. Department of Labor, but that participates as a partner in a One-Stop delivery system, the following procedures apply:

- (1) Where the complaint alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the other Federal grantmaking agency, then EO Officer will refer the complaint to the entity for processing. In such circumstances, the One-Stop Partner agency's regulations will govern the processing of the complaint.
- (2) Where the complaint alleges discrimination on a basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the other Federal grantmaking agency, then the COWIB may accept jurisdiction over the complaint, and may retain the complaint and process it pursuant to this Procedure. Such bases generally include religion, political affiliation or belief, citizenship, and/or participation in a WIA Title I-financially assisted program or activity.

(c) Where the EO Officer makes a referral under this section, he or she will notify the complainant and the respondent about the referral.

20. What must the EO Officer do if he or she determines that a complaint will not be accepted?

If a complaint will not be accepted, the EO Officer must notify the complainant, in writing, about that fact, and provide the complainant his/her reasons for making that determination.

The notice will be sent to the complainant by certified mail. A copy of the notice will be sent to the Chairperson of the COWIB, the Chairperson of the COWIB's Board of Local Elected Officials, and the SAE's EO Officer.

21. What must the EO Officer do if he or she determines that a complaint will be accepted?

If the EO Officer accepts the complaint for resolution, he or she must notify the complainant, the respondent, and the SAE's EO Officer. The notice will be sent to the complainant and the respondent by certified mail. The notice must:

- (a) State that the complaint will be accepted,
- (b) Identify the issues over which COWIB has accepted jurisdiction; and
- (c) Explain the reasons why any issues were rejected.

The COWIB will notify the complainant and the respondent of the prohibition against retaliation and intimidation set forth in Item 15 of this Procedure.

22. If a complaint is accepted for processing, how much time is allowed to process the complaint?

The COWIB will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed.

23. Who may contact the COWIB about a complaint?

Both the complainant and the respondent, or their authorized representatives, may contact the COWIB for information about the complaint. The EO Officer will determine what information, if any, about the complaint will be released.

24. How will the complaint be resolved?

- A. The complainant has the option of resolving his or her complaint through a fact-finding / investigation process or through an alternative dispute resolution (ADR) process.
- B. If the complainant choose the 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. Once this evidence has been gathered, the COWIB must issue a written decision in which each issue accepted for review is addressed. The decision will be sent to the complainant and respondent by certified mail, and a copy of the decision will be sent to the SAE's EO Officer.
- C. If the complainant chooses the alternative dispute resolution (ADR) method, the EO Officer or an impartial third party will act to encourage and facilitate the resolution of a dispute without prescribing what it should be. The mediator must be trained to comply with Equal Opportunity rules, and s/he will follow the "OESC Mediation Guidelines" as published in the Oklahoma Employment Security Commission's Methods of Administration.

- (1) **Written Settlement Agreement.** The final resolution of the complaint will be set forth in a written settlement agreement. The written settlement agreement will be sent to the complainant and respondent by certified mail, and a copy will be sent to the SAE's EO Officer.
- (2) **Breach of Agreement.** A party to any agreement reached under ADR may file a complaint with the Director of the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
- (3) **CRC Process for Investigating Breaches.** The Director of the CRC will evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint.
- (4) **Failure to Agree.** If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director of the CRC as described in 29 CFR Sections 37.71 through 37.74.

27. Notice of Final Action

At the conclusion of the COWIB's complaint resolution process, the EO Officer will issue a written decision ("Notice of Final Action") in which each issue accepted for review is addressed. The decision will be sent to the complainant and respondent by certified mail, and a copy of the decision will be sent to the SAE's EO Officer.

The Notice of Final Action will contain the following information:

- (a) For each issue raised in the complaint, a statement of either:
 - (1) The recipient's decision on the issue and an explanation of the reasons underlying the decision, or
 - (2) A description of the way the parties resolved the issue; and
- (b) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

28. If, before the 90-day period has expired, the COWIB issues a Notice of Final Action with which the complainant is dissatisfied, is there an appeal process?

If, during the 90-day period, the COWIB issues a Notice of Final Action, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or his/her representative may file a complaint with the Director of CRC within 30 days after the date on which the complainant receives the Notice.

29. What happens if the COWIB fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?

If, by the end of 90 days from the date on which the complainant filed the complaint, the recipient has failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the Director of CRC within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Director of CRC within 120 days of the date on which the complaint was filed with the recipient.

30. Notification of Complaints / Lawsuits

The COWIB will immediately and promptly notify the SAE's 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 this notice are set forth in 29 CFR Section 37.38.

31. Complaint Log

The COWIB's EO Officer will maintain a log of complaints filed with it that allege 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 log will include: the name and address of the complainant; the ground of the complaint; a description of the complainant; 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 will be kept confidential.

32. Retention of Records

The COWIB will maintain records regarding complaints and actions taken thereunder for a period of not less than three years from the date of resolution.

29 CFR Section 37.76

What are the required elements of a recipient's discrimination complaint processing procedures?

- (a) The procedures that a recipient adopts and publishes must provide that the recipient will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed.
- (b) At a minimum, the procedures must include the following elements:
- (1) Initial, written notice to the complainant that contains the following information:
 - (i) An acknowledgment that the recipient has received the complaint, and
 - (ii) Notice that the complainant has the right to be represented in the complaint process;
 - (2) A written statement of the issue(s), provided to the complainant, that includes the following information:
 - (i) A list of the issues raised in the complaint, and
 - (ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;
 - (3) A period for fact-finding or investigation of the circumstances underlying the complaint;
 - (4) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section
 - (5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:
 - (i) For each issue raised in the complaint, a statement of either:
 - (A) The recipient's decision on the issue and an explanation of the reasons underlying the decision, or
 - (B) A description of the way the parties resolved the issue; and
 - (ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.
- (c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:
- (1) The choice whether to use ADR or the customary process rests with the complainant;
 - (2) A party to any agreement reached under ADR may file a complaint with the Director in the event the agreement is breached. In such circumstances, the following rules will apply:
 - (i) The non-breaching party may file a complaint with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach;
 - (ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint.
 - (3) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in Secs. 37.71 through 37.74.

← Item 22

← Item 12

← Item 21

← Item 24

← Item 24

← Item 27

← 24-A

← 24-C-(2)

← 24-C-(2)

← 24-C-(3)

← 24-C-(4)

