



Workforce Development System Technical Advisory



January 22, 2001

Workforce Development System Technical Advisory #01-2

- To:** Chairpersons of Local Workforce Investment Boards,
Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents,
WIA Local Area Contacts, One-Stop Operators/Partners,
Providers of Services, Aid, Benefits, or Training,
On-the-Job Training (OJT) Employers and Placement Agencies
- Subject:** Implementation of the Non-Discrimination and Equal Opportunity
Provisions of the Workforce Investment Act (WIA) of 1998
- Purpose:** To advise LWIAs and other WIA recipients of the procedures issued by
USDOL and NYSDOL regarding discrimination complaints. This
supersedes SDA Bulletin No. 9-93.
- Background:** Section 188 of WIA contains the non-discriminatory and equal
opportunity provisions of WIA. Regulations under Section 188 (e) of the
Federal Register issued November 12, 1999, require states to formulate
procedures for processing discrimination complaints within one year of
the passage of WIA.
- Action:** In accordance with the New York State Department of Labor's Methods of
Administration (MOA) the following "discrimination complaint
procedures" are to be enacted:
1. Any recipient of WIA-Title I financial assistance must designate an Equal
Opportunity Officer (EO Officer). The EO Officer's responsibilities
include, but are not limited to, ensuring compliance with the non-
discrimination and equal opportunity requirements of the WIA. The
recipient will notify the Division of Equal Opportunity Development of the
NYS Department of Labor in writing of any changes in the designation of
the EO Officer.

The EO Officer will be required to handle all discrimination complaints when they are filed at the local level. The EO Officer will ensure dissemination of equal opportunity and affirmative action information, materials, guidelines and procedures in accordance with the WIA. The EO Officer will be responsible for recordkeeping and data collection pertaining to discrimination complaints. The EO Officer will maintain a complaint log.

2. Any recipient of WIA-Title I financial assistance must adopt and display the “Equal Opportunity Is The Law” poster. In accordance with 20 CFR Part 37.30, the poster language must contain the following specific wording:

“Equal Opportunity Is The Law”

It is against the law for this recipient, _____
(name of organization)
to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary’s citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIA Title-I financially assisted program or activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration of, or in connection with such a program or activity.

Posters and discrimination complaint procedure items must include recipient's organization name, address, and telephone number. The poster must inform the complainant of their right to file a discrimination complaint at the local, state and federal level. Posters and discrimination complaint publications must be made available in languages other than English appropriate to that of the eligible population the recipient serves.

3. All recipients must adopt a discrimination complaint procedure in accordance with Section 37.79. The recipient must train staff members in these procedures and make the information available to all individuals who apply to participate in a WIA funded program or activity. The complaint procedures must indicate that the complainant may file a written complaint **180** days from the date on which the alleged discrimination occurred by using the US Department of Labor's Complaint Information Form (CIF).

All recipients must issue a notice to the complainant of receipt of the complaint. All recipients must issue notice to the complainant if a determination is made of non-jurisdiction of a complaint.

The procedures must indicate that the recipient will issue a written Notice of Final Action within **90** days of the date on which the complaint is filed.

The Notice of Final Action must inform the complainant of his or her right to file a complaint with the Civil Rights Center – US Department of Labor (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.

4. The procedure the recipient adopts must provide for voluntary use by the complainant of the Alternative Dispute Resolution Through Mediation (ADR) process. The recipient's ADR procedure must provide the following:
 - (a) The choice whether to use ADR or the recipient's customary discrimination complaint procedure.
 - (b) The complainant must be allowed to follow the customary procedure if all parties to the complaint (dispute) do not agree to ADR. Confidentiality must be guaranteed to the level necessary and required and on a need to know basis.
 - (c) The non-breaching party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached within **30** days of the date on which the non-breaching party learned of the alleged breach.

5. The recipient's complaint procedures must state that the recipient will provide such assistance as may be necessary to enable a complainant to understand and participate in the complaint process. This may include sign language interpreters, wheelchair attendants, Braille copiers, sound amplification equipment or foreign language interpreters.
6. In all instances of complaints of discrimination the recipient must attempt to resolve the complaint at the lowest level. However, the recipient must inform the complainant of the right to file a complaint of discrimination at the state or federal level using the information listed below:

State Level – Director

Division of Equal Opportunity Development
NYS Department of Labor
State Office Building Campus
Building 12 Room 540
Albany, NY 12240
Telephone (518) 457-1984
TDD: 1-800-662-1220
Voice: 1-800-421-1220

Federal Level – Director

Civil Rights Center
US Department of Labor
200 Constitution Avenue
N.W. Room N-4123
Washington, DC 20210

Note: Where state and local civil or human rights laws apply, recipients must inform complainants of the right to file a discrimination complaint with the appropriate organization(s)

**NYS Department of Labor
Division of Equal Opportunity Development
Handling of Allegations of Discrimination At The State Level**

- (a) When a written complaint is filed with the Division of Equal Opportunity Development (DEOD), DEOD will determine if the complaint is within DEOD's jurisdiction. DEOD will also determine if the complaint is a program or discrimination complaint.
- (b) DEOD will acknowledge receipt of the complaint to all appropriate parties. DEOD will also send a notice of non-jurisdiction, when necessary to the complainant and the LWIA.

- (c) DEOD's Director or his/her designee may take the actions shown below which may include, but not be limited to the following:
 - 1) On-site visit of recipient's program or activity
 - 2) Desk-Audit of recipient's records (e.g. enrollments, contracts, etc.)
 - 3) Request that complainant visit DEOD for an in-person interview
 - 4) Review of vendor/provider services
 - 5) Review and analysis of EO data collection and reports relevant to allegation of complaint
 - 6) Review of recipients demographics, employment referral, placement and training records

- (d) DEOD will issue a Notice of Final Action within **90** days of the receipt of a written complaint. The timeframe for the issuance of a resolution to the complaint includes the initial time the complainant filed in writing at the local level.

- (e) DEOD will advise complainant of the right to use the Alternative Dispute Resolution Procedure and of the right to file a complaint with CRC if any agreement reached through ADR is perceived to be breached. The complainant will be advised of their right to use DEOD's customary procedure for discrimination complaints if the complainant and/or respondent to a complaint fail to reach an agreement through ADR or any party refuses to participate.

- (f) DEOD will advise the complainant of the right to file a complaint with the Civil Rights Center – US Department of Labor (CRC) within **30** days of receipt of the DEOD's Notice of Final Action.

- (g) DEOD will advise the complainant of their right to file a complaint in accordance with any applicable federal, state and local civil or human rights laws.

Note: The Department of Labor's right to take corrective action and request sanctions from CRC against the recipient will be discussed in a training conference proposed for the WIBs, LWIAs and one-stop operators in the Winter/Spring 2001.

Poster Information: Please be aware that the "Equal Opportunity Is the Law" posters and the Complaint Information Forms (CIF) will be mailed to Local Area Contact persons under separate cover. The posters must then be distributed to the appropriate entities as indicated in the cover letter accompanying the posters.

Additional Information: If you have any questions or if you require additional posters or CIF forms, please contact DEOD by calling (518) 457-1984.