

DIRECTIVE NO: Supersedes 21-07

TO: WIA Service Providers

EFFECTIVE: January 2011

SUBJECT: Noncriminal and Discrimination Complaints Procedures

REFERENCES:

- Workforce Investment Act of 1998 (WIA), Section 188
- WIA Regulations, Title 20 Code of Federal Regulations (CFR), Subpart F, Section 667.00
- 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
- Title 29 CFR Parts 31, 32 and 37
- Title 41 CFR Subpart 101-19.6

PURPOSE:

The purpose of this directive is to give guidance on the process customers should follow when if they are the Workforce Investment Act (WIA Act) Complaint Resolution Procedure pursuant to Title 20 CFR, [Subpart F-Grievance Procedures, Complaints, and States Appeal Processes, Section 667.600-667.330; and, 29 CFR Part 37, [Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act, 1998, Final Rule]. The City's Workforce Investment Act WIA, Title I programs are administered by the Office of Economic and Workforce Development (OEWD).

POLICY:

The principles and procedures set forth in this WIA Title I Complaint Resolution Procedure shall be used by all One Stop Centers, subgrantees and service providers delivering WIA services within the City and County of San Francisco to resolve complaints which arise in connection with programs operated under WIA Title I grant-funded programs.

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 WIA 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.

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

WIA Service Provider Requirements:

All WIA service providers shall have the duty and responsibility to ensure that they are in compliance with the provisions of the WIA complaint resolution procedure and shall work cooperatively with OEWD’s EEO/ Compliance Officer to process all complaints filed with their agency involving WIA Title I-funded customer activities.

At orientation, each customer in the WIA Title I program will be provided a copy of the WIA Title I 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 WIA Title I funds, customers in an employment activity operated with WIA funds, service providers and subgrantees of OEWD, entities and individuals who are applicants for WIA program funding, labor unions, community-based organizations, education agencies, private employers and other interested parties.

TYPES OF WIA COMPLAINTS:

There are three (3) distinct procedures for filing WIA 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)

Complaint Issues which are covered under WIA Title I:

Displacement [20 CFR 667.270] - A customer in a program or activity authorized under Title I of WIA 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 WIA 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 WIA customer. A WIA 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 667.274] - 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 WIA.

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 WIA 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 667.272] - Individuals in On-the-Job Training or employed in activities under Title I of WIA 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), [WIA Section 188(a)];

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

Complaints filed under this section relate only to the terms and conditions of WIA 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 WIA, WIA 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).

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 WIA programs and services.

Only a complaint which alleges a violation of WIA, 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: WIA 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 WIA.

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 deficiencies at any time up to the time of the hearing. **Complaints may not be amended to add new issues.** The one year time period in which a complaint may be filed is not extended for complaints that are re-filed with statement of the facts and dates describing the alleged violation(s);
- The provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;
- The remedy to the complaint which would satisfy the Complainant.

Complaints may be amended to correct technical amendments. 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:

Program Issues Complaint

It is the policy of OEWD that complaints under WIA should be resolved at the lowest level possible. Therefore, under the WIA complaint resolution procedures, complaints under WIA (with the exception of that 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 WIA complaint.** The notification should be sent to:

Office of Economic and Workforce Development
50 Van Ness Avenue
San Francisco, CA 94102
Attn: EEO/Compliance Officer

Telephone Number: (415)-581-2335
Fax Number: (415) 581-2317

OEWD reserves the right to intervene in the processing of any WIA 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 WIA regulations.

Service providers or subgrantee has **ten (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 WIA 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.

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 WIA 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 WIA 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 (LWIA) within 60 days of the filing of the complaint.

CONDUCT OF HEARINGS:

The hearing will be conducted by an impartial hearing officer appointment 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., WIA service provider/subgrantee) it may be considered a breach of the Respondent's WIA 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 LWIA 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 **30 days** of the receipt of the decision, a review of the decision by the State Review Panel (SRP).

APPEAL PROCESS:

The State Review Panel (SRP) will review appeals of decisions issued at the LWIA 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 and mailed to the Compliance Review Division (CRD) within **thirty (30) days** of the receipt of the decision by the appealing party. The request for review should contain the following information:

- Full name, telephone number and mailing address of the appellant;
- Full name, telephone number and mailing address of the respondent;
- A copy of the local hearing officer's decision;



- A copy of the Final Determination issued by OEWD;
- 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/LWIA. 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:

Employment Development Department
 Compliance Review Division, (CRC) MIC-22M
 800 Capitol Mall - MIC 22M
 Sacramento, CA 94280-0001
 Attn: Division Chief

Upon receipt of the Complainant's appeal of the adverse decision, the State shall provide for an independent review by SRP. The CRD will notify the parties concerned and OEWD and its service provider or subgrantee by first class mail of the request of the State review of the local hearing officer's decision. The SRP's decision will be final and issued to both the Complainant and the Respondent by first class mail.

STATE GRIEVANCE COMPLAINT PROCEDURES:

A Complainant may file a grievance complaint with the State if no decision has been issued at the OEWD, service provider or subgrantee level within the **60 day** time limit. A request for an initial State hearing must be filed within **15 days**, or if mailed, postmarked within **15 days** of one of the following dates:

- The date on which OEWD, the service provider or subgrantee should have issued a decision regarding a locally filed grievance complaint.
- The date after the filing of grievance complaint when an instance of restraint, coercion, reprisals or discrimination was alleged to have occurred as a result of filing the grievance complaint.
- A request for a State hearing relating to allegedly deficient OEWD, service provider or subgrantee grievance complaint procedures, and to allegations of



improper actions as a consequence of a grievance complaint, should be filed immediately.

Upon requests for State hearings shall be filed in writing to the Compliance Review Division (CRD), at the address listed below and must include the following information:

- Full name, telephone number and mailing address of the Complainant;
- Full name, telephone number and mailing address of the service provider or sub grantee;
- A statement of the basis of the request;
- Copies of the relevant documents, such as the grievance complaint filed at the OEWD, service provider or subgrantee.

Employment Development Department
Compliance Review Division (CRD)
800 Capitol Mall - MIC 22M
Sacramento, CA 94280-00001

On receipt of the request for a State hearing, an evidentiary hearing before a designated hearing officer will be scheduled. The CRD will notify the concerned parties and OEWD, the service provider or subgrantee by “Certified Mail” of the date, time and place of the hearing within at least **five (5) calendar days** before the scheduled hearing.

The hearing will be recorded electronically or by a court reported. Both parties will have the opportunity to present oral and written testimony under oath, to call and question witnesses in support of their position, to present oral and/or written arguments, to examine records and documents relevant to the issues, and to be represented.

The hearing officer will issue a written decision that will be forwarded to the SRP for final determination. The SRP may accept, reject or modify the hearing officer’s recommendation and will issue a written decision to the concerned parties within 30 days of the receipt by the State of the request for hearing.



DISCRIMINATION GRIEVANCES:

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

POLICY:

The City and County of San Francisco Local Workforce Investment Area (LWIA) in its WIA 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 WIA program will be discriminated against because of race, creed, color, national origin, age, sex (including sexual harassment), sexual orientation, disability, citizenship, or political affiliation or belief. This means that:

- No benefits may be denied a WIA customer because of race, creed, color, national origin, sex, sexual orientation, age, disability, citizenship, or political affiliation or belief while being registered, interviewed, counseled, tested, or while working, engaged in a work activity or attending class as part of the program;
- WIA 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. Acts 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 WIA 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
50 Van Ness Avenue
San Francisco, CA 94102
Attn: EEO/Compliance Officer

Telephone Number: (415)-581-2335
Fax Number: (415) 581-2317

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 WIA.

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 that the complainant received notice of OEWD's proposed resolution. If the complainant has not received notice of resolution within 90 days of filing, the complainant may file the complaint with CRC.

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].

Complaints filed with the Civil Rights Center (CRC), should be mailed directly to:

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

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.

Actions by CRC:

The CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 37.30. 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.

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 **15 days** of the receipt of such request, 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 WIA or Title 29 CRF Section 34.43; 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 an 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 LWIA 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 34.40 34.41 or 34.43, respectively, shall include the steps and the specific time period it will take the LWIA 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 WIA 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 LWIA 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.

ACTION:

The OEWD and its service providers shall follow this policy. This policy shall remain in effect until such time that a revision is required.

INQUIRIES:

Inquiries should be addressed to the WIA Program Manager at 581-2314 or marc.majors@sfgov.org.

Rhonda Simmons
Director of Workforce Development
Office of Economic and Workforce Development

