



STATE OF OREGON
METHODS OF ADMINISTRATION
July 2007
For the Workforce Investment Act of 1998
Concerning Non-discrimination and Equal Opportunity

I. PURPOSE AND AUTHORITY

The purpose of this Methods of Administration (MOA) is to provide a reasonable guarantee of Oregon's compliance with the Americans with Disability Act, Section 504 of the Rehabilitation Act of 1973 (amended), Section 188 of the Workforce Investment Act of 1998, and 29 CFR Part 37 as the state implements and executes the Workforce Investment Act (WIA) of 1998. The MOA is supported by the Governor's Executive Order EO-96-38, regarding affirmative action and equal opportunity for Oregonians. Passage by the 1999 Legislative Assembly of HB 2989 authorized implementation of the WIA in Oregon.

The Governor is specifically mandated to develop and issue a Methods of Administration for the WIA at 29 CFR 37.54. The MOA applies to (1) any recipient, (2) programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of the WIA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and (3) the employment practices of a recipient and/or One-Stop partners, as provided in 29 CFR 37.2. The MOA must be renewed every two years, and the state must advise the Department of Labor's Civil Rights Center (USDOL CRC) promptly of updates to the MOA, and of changes of State Equal Opportunity Officer (State EOO). See 20 CFR 37.55(b).

The Education and Workforce Policy Advisor appointed by the Governor may adopt rules necessary to carry out the duties of the advisor, including education and workforce development-related state agencies listed at ORS 660.312. Affirmative Action, Nondiscrimination and Equal Opportunity policies of each mandated partner state agency support the MOA, and are in accordance with OAR 589-020-0110 and OAR 471-010-0070, examples of state policies requiring conformity of state rules with equivalent federal laws, and ORS 659, Enforcement of Civil Rights. WIA financially assisted sub-recipients are subject to these regulations through their state granting agencies.

II. DEFINITIONS (found at 29 CFR 37.4 and Oregon additions)

Definition of those terms considered essential for understanding the Methods of Administration are included for convenience. Recipients are directed to the code for a complete list of applicable definitions. Several Oregon-defined terms appear as well.

Aid, benefits, services or training means WIA Title I-funded financially assisted services, financial or other aid, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipients. (Includes) but is not limited to (1) Core and intensive services; (2) Education or training; (3) Health, welfare, housing, social service, rehabilitation, or other supportive services; (4) Work opportunities; and (5) Cash, loans or other financial assistance to individuals.

Employment practices means a recipient's practice related to employment, including but not limited to (1) Recruitment or recruitment advertising; (2) Selection, placement, layoff or termination of employees; (3) Upgrading, promotion, demotion or transfer of employees; (4) Training, including employment-related training; (6) Deciding rates of pay or other forms of compensation; (7) Use of facilities; or (8) Deciding other terms, conditions, benefits and/or privileges of employment.

LWIA (Local Workforce Investment Area) grant recipient means the entity that receives WIA-Title 1 financial assistance for a Local Workforce Investment Area directly from the Governor and disburses those funds for workforce investment activities.

One-Stop Site means a WIA center designated by a local board, and other certified centers recognized in memoranda of understanding. (State definition)

Participant means an individual who has been determined to be eligible to participate in, and who is receiving aid, benefits, services or training under a program or activity funded in whole or in part under Title I of the WIA. "Participant" includes but is not limited to, applicants receiving any service(s) under state Employment Service programs, and claimants receiving any service(s) under state Unemployment Insurance programs.

Prohibited Ground means any basis upon which it is illegal to discriminate under the nondiscrimination and equal opportunity provisions of the WIA and 29 CFR Part 37 *et seq.*

Recipient means any entity to which financial assistance under WIA Title I is extended, either directly from the 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-funded program or activity.

In addition, 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.

Section 504 means Section 504 of the Rehabilitation Act of 1973, 20 USC 794, as amended, which forbids discrimination against qualified individuals with disabilities in federally financed and conducted programs and activities.

Service provider means (1) Any operator of, or provider of aid, benefits, services or training to: (a) Any WIA Title I-funded program or activity that receives financial assistance from or through any State or LWIA grant recipient; or (b) Any participant through that participant's Individual Training Account (ITA); or (2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

Small recipient means a recipient who: (a) Serves a total of fewer than 15 beneficiaries during the entire grant year, and (b) Employs fewer than 15 employees on any given day during the grant year.

State Partner Agencies means the Oregon Departments of Human Services, Community Colleges and Workforce Development, and Oregon Employment Department, for purposes of the Methods of Administration. Other state agency partners are subject to the MOA by reference in code, and as they become active partners. (State definition)

State Programs means programs financially assisted in whole or in part under Title I of the WIA in which either (1) The Governor and/or State receives and disburses the grant to, or through LWIA grant recipients; or (2) The Governor retains the grant funds and operates the programs, either directly or through a State agency. "State programs" also includes State Employment Security agencies, State Employment Service Agencies, and/or State Unemployment Compensation agencies.

Workforce board means the workforce board that developed and signed the current memorandum of understanding pursuant to Section 121 of the Workforce Investment Act. (state definition)

WIA Title I-funded program or activity means: (1) A program or activity, operated by a recipient and funded, in whole or in part, under Title I of WIA, that provides either: (i) Any aid, benefits, services or training to individuals; or (ii) Facilities for furnishing any aid, benefits, services or training to individuals; (2) Aid, benefits, services or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or (3) Aid, benefits, services or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive WIA Title I financial assistance.

III. POLICY

The preamble to Executive Order 96-38 states that "...The State of Oregon has long recognized the need to eliminate the effects of past and present societal discrimination based on race, religion, national origin, age, sex, marital status, and physical or mental disabilities in which it has played a passive or active role."

Accordingly, no individual shall, on the grounds of race, color, national origin, disability, age, sex, political affiliation or belief, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under federally-assisted programs and activities for which the Governor and the Oregon Workforce Investment Board have responsibility in the implementation and execution of the WIA. In addition, the WIA establishes bases for new protections afforded to beneficiaries only, on the basis citizenship, or participation in WIA-Title I-funded programs or activities.

The Methods of Administration is equally applicable to contractors, vendors, grantees, agents, recipients and providers of services funded in whole or in part with Federal funds. The nondiscrimination and equal opportunity provision of WIA Section 188 prohibits discrimination against applicants, beneficiaries and employees on the same bases listed above. In particular, this policy encompasses in scope and application the civil rights of employees, prospective and terminated employees, applicants/registrants, members of the public and beneficiaries of programs operated to implement and execute the WIA. A person with disabilities is anyone who has a physical or mental impairment, which substantially limits one or more of his/her life activities, or has a record of such impairment, or is regarded as having such impairment.

The Governor must review the MOA and its implementation to determine if any changes are necessary, either to the document or the way in which it is implemented, every two years from the initial date of its submission to DOL. At the time of the review, the Governor must either (1) certify to the Director of the Civil Rights Center, in writing, that no changes are necessary, or (2) provide the Director with any changes that are made.

IV. ELEMENTS OF THE METHODS OF ADMINISTRATION

The required elements of the MOA are:

- (1) Designation of EO Officers;
- (2) EO Notice and Communication;
- (3) Review of Contracts and Agreements;
- (4) Universal Access;
- (5) Compliance with Section 504;
- (6) Data Collection & Record-keeping;
- (7) Monitoring;
- (8) Complaint Processing Procedures;
- (9) Corrective Actions/Sanctions Procedures.

State recipient agencies of WIA funding, which already received other federal funding, have policies and procedures that, while not in the identical required format, include the required elements to comply with the WIA and PL 97-035, the Omnibus Budget Reconciliation Act of 1981.

Examples of State recipient agencies that have adopted this MOA by administrative rule are found at OAR 471-010-0070 and OAR 589-020-0110.

V. Element I: DESIGNATION OF EQUAL OPPORTUNITY OFFICERS

A. Designation of State EO Officer, EO Coordinators and agency EO Officers

The State Equal Opportunity Officer (State EOO) for the purposes of the MOA shall reside in the Oregon Employment Department (OED) and for those duties associated with the administration of the MOA, reports to the Deputy Director of OED. The Director of OED serves in the Governor's Workforce Policy Cabinet. The State EOO is not assigned duties, responsibilities, or activities that constitute a conflict of interest or the appearance of such a conflict with regard to State EOO duties.

Each state-level participating agency shall also name an agency Equal Opportunity Officer (EOO), with access to the agency director. The Department of Human Resources, in addition, shall also name EOOs for the divisions that are active WIA partners.

The Workforce Investment Boards shall name a lead Equal Opportunity Coordinator (EOC) responsible for their region's One Stop System. In addition, if the board so chooses, they may also assign an EO contact for each One-Stop delivery site.

The primary partnership in resolving complaints under the MOA is between the state partner agency EOO and the EOC at the regional level. The Regional Workforce Investment Board chair and executive staff will be notified when a complaint has been filed under the MOA, in terms that describe only the basis of the complaint and the alleged agency named by the complainant.

B. Conflict of Interest

The State EOO and EOCs shall be appointed from qualified staff by each entity as described above, and may not have a conflict of interest with other responsibilities or duties if less than full-time EO officers.

A list of individuals designated as state-agency level EOO's and regional EOC's for the local/regional One Stop System has been developed. The roster describes the EOO/EOC's name, position title, business address (including e-mail if available), and telephone number (including TDD/TTY), and the name of the person to whom the EOO/EOC reports on equal opportunity matters.

C. Training

The annual training conducted by the DOL/CRC will be attended by the State EOO. It is anticipated the State EOO will receive approximately 25-30 hours of training annually regarding equal opportunity and non-discrimination policies, training, compliance and monitoring.

The Governor's Office of Education and Workforce Policy, through the State EOO, will oversee the training and technical support to each designated EOC for recipients that employ at least fifteen persons, and serve more than 15 customers on any given day. In a one-stop setting, "15 customers" will mean customers in the aggregate. The State EOO will coordinate EOC training with other agency EOOs from state-level partner agencies and will maintain the attached roster of trained EOCs.

EOCs designated by recipients are responsible for training service delivery staff on non-discrimination and equal opportunity laws. Agency EOOs/EOCs must monitor compliance with EO requirements by all staff in recipient organizations.

Additional MOA materials will be provided to workshop participants for use at the local level. Regular meetings and training sessions will be conducted at least two (2) times per year to ensure that state agency EOOs, Regional EOCs, and local-level EOCs have current information on the administration of the Methods of Administration. These meetings and training sessions will be offered through in-person meetings, conference calls, and by utilizing various electronic media.

Each EOC is required to attend training on the Methods of Administration.

The basic training outline includes, but is not limited to:

- definitions and context of the MOA;
- review of responsibilities of the State EOO and EOCs;
- appointing and reporting authority;
- role of the DOL CRC;
- tag line material and its meaning;
- alternative dispute resolution overview and resources;
- ADA/EO in the WIA One-Stop environment;
- overview of federal and state laws and statutes and other guidance;
- the complaint process;
- overview of disability concerns;
- data collection/analysis/monitoring; and
- how to use compliance checklists.

D. Responsibilities

The State EOO serves as the state's liaison with the Civil Rights Center. In addition, the State EOO monitors and investigates recipients' activities, and the activities of the entities that receive WIA Title I funds from recipients, to ensure that recipients and their sub-recipients are in compliance with nondiscrimination and equal opportunity obligations under the WIA.

The State EOO will review the written policies submitted by recipients to ensure the policies are nondiscriminatory, develop and publish complaint

procedures for recipients, ensure complaint procedures are followed, and assist with maintenance of the Methods of Administration for the state and for recipients.

For the State EOO and for each EOC, a position description is available on demand. The position description demonstrates there is not a conflict of interest with other assigned duties and responsibilities. The position description contains an organization chart to illustrate the relationship of the position to others in the organization. The State EOO and EOC must have access to upper level management within their respective organizations. EOC responsibilities that must be included in the description of that position include, but are not limited to:

1. Receiving and processing complaints based on prohibited grounds of discrimination per procedure described in the MOA.
Providing information about nondiscrimination and equal opportunity laws and the complaint process to agency staff, beneficiaries and interested members of the public on request.
Developing and providing compliance reports for review by the State EOO, who submits compliance reports to USDOL CRC.
Ensuring compliance with the MOA by all of its staff and sub-recipients.
Monitoring and reporting required data elements to the State EOO.
Conducting internal self-evaluations of performance in compliance with the MOA and under the guidance of the State EOO.

E. Public Notice

The State EOO will provide, and recipients will post notices advising customers that the State EOO and EOC are available. This notice will include the required language as described in 29 CFR 37.30. In addition, the state has issued a directive to require that all signage and other communication materials for internal and external customers identify agency EO Officers/Coordinators and contain contact information for them, localized as necessary, and including name, position/title, address, phone and TTY or 711 telephone relay numbers.

Information about the organization's nondiscrimination and equal opportunity commitments shall include the "tag lines" (language) "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities". Notice shall also contain information to permit complainants direct access to DOL's CRC.

DOCUMENTATION

1.1 Examples of notice of the identities of EO Officers/Coordinators to internal and external customers

Notice of agency EOOs and EOCs appears in the service delivery areas of recipients who are state partner agencies in compliance with OMB requirements for recipients of any federal funds (i.e. the MOA EOC directory).

Notice of agency EOOs and EOCs within the One-Stop system has been distributed. Regional and local EOCs have been identified

A) Attached – Oregon Workforce Letter No. 2-01

B) Attached – List of regional contacts including EO coordinators

1.2 Notice to the CRC Director of appointment of Statewide Equal Opportunity Officer

C) Attached – Copy of memorandum

1.3 State EOO's position description

D) Attached – State Equal Opportunity Officer Position Description

E) Attached – Copy of agency Organizational Chart showing direct line reporting

1.4 Model language for EOC position description revisions

(See attachment for 1.1A)

1.5 Flow chart illustrating recipient organizations and funding flow in Oregon

The attached document illustrates that the complex funding flow of DOL monies in the state's One-Stop system. This complex flow of funds necessitates the MOA organizational structure Oregon has chosen.

F) Attached – Federal funding streams for WIA and related programs.

1.6 Oregon exceptions and justifications for documentation requirements

Referencing item 1.3, Oregon has appointed a State EOO resident at the Oregon Employment Department. However the One-Stop system also places considerable responsibility on the state partner agency EOOs to provide guidance, technical assistance, and complaint processing support to regional and local level EOCs.

In Oregon, there is no funding specifically earmarked for MOA activities. Training for the State EOO is funded by the Governor's Reserve, Employment Department and the Department of Community Colleges and Workforce Development. Training for Regional and/or local EOC's is funded by the employee agency or workforce entity.

VI. Element 2: NOTICE AND COMMUNICATION OF NON-DISCRIMINATION AND EQUAL OPPORTUNITY POLICIES

By Oregon administrative rule, examples of which are, OAR 589-020-0110 and OAR 471-010-0070, WIA Title I funded recipients must establish and document that they have procedures to notify registrants, applicants, eligible applicants/registrants, applicants for employment, new and existing employees and interested members of the public that they provide equal opportunity and do not discriminate on prohibited grounds. Procedures shall describe how recipients will provide staff and customers information about the recipient's obligations to operate and serve in a nondiscriminatory manner, the extent of the rights of members of the above groups to file complaints of discrimination, and instructions for doing so.

Each workforce agency has its own data collection system in addition to the statewide Performance Reporting Information System (PRISM). Data on customers and applicants to system services will be collected on an annual basis for analysis by the State EOO/EOC and the Governor's Office.

At each location where recipients provide services funded by the WIA, language found at 29 CFR 37.30, notice of the identity of the State EOO and regional/local EOC must be posted publicly. The Notice shall contain the following information: State EOO/EOC name, position/title, address, phone and TTY number. An example of the notice distributed in Oregon is part of the documentation for Element 2.

In accord with 20 CFR 37.31(a), the following bold language shall be made available to all applicants for services initial application and will be part of the applicant's file. Where participant records are maintained electronically, a data field in the initializing screen for a participant's record shall record that a paper copy of the notice has been provided to the participant. Alternative formats for the required language will be available upon request. Compliance with provision of alternative formats will be monitored in accordance with the procedures described in Element 7.

“EQUAL OPPORTUNITY IS THE LAW” (The following bold language is required)

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and 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 program or activity.

WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIA Title I financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either: the recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, D.C. 20210. If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above). If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient). If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

Recipients will disseminate notice of non-discrimination and equal opportunity initially, by all media (brochures, press releases, news stories, etc.) in the manner prescribed in 29 CFR 37.29 and .34(b). Recruitment and other public materials shall contain **“equal opportunity employer/program”** and **“auxiliary aids and services are available upon request to individuals with disabilities,”** along with a TTY/TDD number.

All program information shall be available in alternative formats upon request from individuals with disabilities, or in languages other than English, within the bounds established for reasonable accommodation. If providing reasonable modification or accommodation would result in undue hardship or fundamentally alter the program or activity, the recipient must notify the State EOO and beneficiary in writing of the reasons for refusing to provide accommodation/modification.

Recipients were instructed in Oregon Workforce Letter No. 1-01 of their responsibilities regarding Equal Opportunity notifications, posters, flyers and other communications. Emphasis was placed on the use of tag lines and the proper language to be used. One-

stop partners are responsible for reviewing their own posters, flyers, tag lines, etc., and they must submit an Annual Report of Compliance to the State EOO and Regional EOC confirming their compliance. Confirmation that One-stop partners are in compliance with these requirements will also be verified during annual self-evaluations and On-site reviews.

Training for agency EOOs, and Regional and Local EOCs will be conducted at least two (2) times per year utilizing various modes of training and communication. Training will cover in depth information on specific topics under the MOA such as the use and dissemination of brochures and other materials containing tag lines.

Persons with Limited English Proficiency (LEP)

Oregon and WIA recipients will apply the formula as provided in the Guidance for LEP published in May 2003. (Federal Register/Vol. 68, No. 103/Thursday, May 29, 2003)

Most state agencies already have a significant number of forms available in alternative language formats. Regardless of the availability or non-availability of forms in alternative languages and formats, limited English speaking customers, clients, and applicants will be provided, in a reasonable amount of time, access to information they request. Interpretive services will be provided where forms in the desired language are not available.

The Governor's Office of Education and Workforce Policy (OEWP), through the State EOO, will conduct a thorough assessment of the language needs of the population to be served throughout the state and by workforce area using the most recent census data, will develop and implement a comprehensive written policy that will ensure meaningful communication. This plan will be amended as needed, and OEWP will ask local boards to implement it based on the service population in the local area. OEWP will take steps to ensure that state and local staff understand the policy and are capable of carrying it out. Additionally, OEWP or the State EOO will conduct regular oversight of the language assistance programs to ensure that LEP persons can meaningfully access the program or activity of their choice.

The state, local and regional workforce boards and recipients of WIA Title I federal funds shall:

- a) assist the OEWP in defining the "population eligible to be served;"
- b) Work with OEWP to identify where such a significant number or proportion exists, what actions the recipient/board may wish to take after considering:
 - (i) the scope of the program or activity, and
 - (ii) the size and concentration of the population that needs services or information in a language other than English;
- c) consider the following four factors in determining the nature of the assistance that should be provided;
 - (i) the number or proportion of LEP individuals eligible to participate or likely to be directly or significantly affected by the program or activity;

- (ii) the frequency of contact a participant or beneficiary is required to have with the program or activity;
 - (iii) the nature and importance of the program or activity to the participant or beneficiary;
 - (iv) the resources available to the recipient in carrying out the program or activity.
- d) Based on the considerations above, ask the state and local workforce boards and recipients to take reasonable steps to provide services and information in appropriate languages, as resources allow.

DOCUMENTATION

2.1 Instructions to recipients re: compliance with 29 CFR 37.29 to 37.36

Recipients are required to comply with all elements of the MOA. In that effort, the MOA has been adopted by administrative rule and policy (examples are OAR 589.020.0110 and OAR 471.010.0070).

The MOA contains explicit language from 29 CFR 37.29 to 37.36 to instruct recipients which language to use, where and with whom.

A) Attached – Oregon Workforce Letter No. 1-01

2.2. Samples of posted Notice

Copies of posted Notice are available on demand. See for instance Oregon Employment Department forms AS Pub 57 and AS Pub 57-S, and ES Pub 100 (bilingual). Citations of publication numbers to illustrate compliance with Notice requirements from other state partner agencies and recipients are available on demand.

B) Attached – Copy of Notices sent statewide (English and Spanish)

2.3 Materials used during orientation for services, and for new employees to demonstrate EO has been discussed

C) Attached - Example of Employment Department New Employee Orientation Agenda and new employee checklist

D) Attached – Example of EO team training and expectations

2.4 Examples of policies and procedures re: Section 188, such as sexual harassment, use of tag lines in new media formats, etc.

- Reference Oregon Employment Department Policy P12-2(2), Reasonable Accommodation and Disability Accommodation – Section 504.
- Reference Oregon Revised Statutes Chapter 659 and Chapter 183.332 (see item 2.6 below) for statewide applicability of requirements for conformance with Section 188.
- Reference Bobbi-approved websites throughout the Oregon state public Internet system.
- Reference the Oregon Department of Administrative Services, Printing Division, state business card form which requires TTY information.

- Reference Oregon Employment Department Communications Form 2003, which addresses the use of tag lines in media formats.

E-1) Attached – Reasonable/Disability Accommodation Policy P12-2(2)

E-2) Attached – Language Assistance Policy COM 2

F) Attached – Examples of web site pages

G) Attached – Employment Department Communications Form 2003

H) Attached – Sample of business card order form

2.5 Examples of recruitment and other public materials illustrating use of tag lines and TDD/TTY telephone numbers

The State of Oregon, Department of Administrative Services, governs public recruitment for state positions. Language addressing this requirement is standard in all recruitment publications. From the instructions to complete the state’s application form, PD-100 and iMatch on-line application, “The State of Oregon is an equal opportunity and affirmative action employer,” and “The State of Oregon has a zero tolerance for substance abuse, harassment or violence in the workplace.” The instructions also direct persons with disabilities to alternative methods of applying.

The Employment Department’s RS Pub 125 (8-02) regarding the Oregon Labor Market Information System web site, states, “Our staff are able to assist you if you need any of our services in a language other than English” in both English and Spanish, and “The Employment Department is an equal opportunity program. Auxiliary aids and services are available on request to individuals with disabilities.”

Examples from other state agency partners and One-Stop system private-sector partners are available on request.

I) Attached – Copy of the State of Oregon Application for Employment – PD 100 and iMatch Application and EO notification form

J) Attached – Employment Department RS Publication 125

K) Attached – Application for UI Benefits - Employment Department Form 2001 (Spanish, No. 359S)

L) Attached – Marketing Information Packet – Employment department

2.6 Oregon state law regarding conformity of state rules with equivalent federal laws and rules

Reference Oregon Revised Statute 183.332 Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregonians by considering local conditions when an agency adopts policies and rules. However, as there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal rules and laws.

M) Attached – ORS 183.332

2.7 Instructions regarding Guidance for Limited English Proficiency provided by USDOL CRC

N) Attached – Oregon Workforce Letter No. 4-01

VII. Element 3: ASSURANCES

The Governor, through the State EOO, EOC and agency EOOs will exercise due diligence to monitor and assure that recipients and grant applicants, including training providers for which they are responsible, include required EO assurances in their applications, grants, cooperative agreements, contracts or other arrangements providing WIA Title I funding.

The Governor and recipients will execute written contracts that clearly establish the grant applicant or recipient's obligations regarding nondiscrimination and equal opportunity. Assurances must specify that recipients and grant applicants are able to provide programmatic and architectural accessibility. Contracts will exclude discriminatory language and include required language in all public documents, including but not limited to job training plans, contracts, assurances, state and local policies in general, and specific to WIA Title 1 nondiscrimination and equal opportunity requirements, and other similar agreements.

As necessary and where feasible, state recipient agencies shall provide guidance to sub-recipients and grantees to establish and issue, or reconcile, localized EO policies prior to award of WIA Title I funds, or shall guide efforts to remedy insufficient policies as needed and in a timely manner.

Staff reviewers of each application for financial assistance under Title I of WIA are provided with a copy of 29 CFR 37.20, Assurances, at the time a review is to occur. The assurance review must check applicant's policies, procedures, and application elements concerning programs and/or activities that address:

- Section 188 of the WIA
- Title VI of the Civil Rights Act of 1964 as amended
- Section 504 of the Rehabilitation Act of 1973 as amended
- The Age Discrimination Act of 1975 as amended
- Title IX of the Education Amendments of 1972 as amended
- All other regulations implementing the laws listed above
- The United States' right to seek judicial enforcement of this assurance
- That the assurance is considered incorporated by operation of law when Title I financial assistance is received, with or without a written agreement to that effect

As part of monitoring responsibilities, the State EOO will review the state's five-year State Plan to continue WIA Title-I financially assisted programs or activities to ensure that programs or activities are or will be conducted in accordance with the law as directed in the MOA.

Each agency EOO will also rely on state agency policies, regarding assurances in the context of the WIA and the MOA.

State contracts require boilerplate language for contracts, job training plans and similar documents that assure the terms of the MOA are met. Boilerplate language reads as follows:

“Compliance with Applicable Law. Contractor will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (I) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (ii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

Agency’s performance under this Contract is conditioned upon Contractor’s compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein. Contractor will ensure that the language “equal opportunity employer/program” and “auxiliary aids and services are available upon request to individuals with disabilities” appear on each work product. Contractor will ensure that it does not discriminate on the basis of any of the protections covered by the Workforce Investment Act and described at 29 CFR part 37.”

Assurances that there will not be discrimination in the form of sexual harassment, on the basis of religious accommodation or other EO-related issues are contained in the several federal and state statutes cited above. As there is no single lead agency for the WIA in Oregon, reliance is placed on the contractual assurances described above.

Monitoring reviews will address compliance with requirements for assurances, notice and communication, agency EO Officers/EO Coordinators responsibilities, data and information collection/maintenance, universal access, complaint processing procedures, and other assigned MOA-related responsibilities, policies and procedures consistent with the processes listed in Element 7: EQUAL OPPORTUNITY MONITORING, of the MOA.

DOCUMENTATION

3.1 Guidance to staff reviewers for assurance

A-1) Attached – Copy of WIA 188 Disability Self-Evaluation Tool

A-2) Attached - Copy of NASWA Guide to Conducting EO Review

A-3) Attached – Copy of on-line Annual Report of Compliance

A-4) Attached - Copy of ADA Checklist

Note: (See copy of CCWD WIA Title 1B Monitoring Guide in Section 5.1A-2)

- 3.2 Sample assurance language from contracts, job training plans and similar documents**
B) Attached – Examples of executed state contracts with assurances
- 3.3 WIA EO policies including those on sexual harassment, religious accommodation and other EO-related issues**
C) Reference boilerplate language stated above
-Attached – Governor’s Executive Order 96-38

VIII. Element 4: UNIVERSAL ACCESS

The State EOO, through Local and Regional Workforce Investment Boards and partner state recipient agencies, will ensure recipients take reasonable steps to include members of varying demographic groups in their programs or activities. This requirement will be communicated to recipients in a timely manner, and recipients will be monitored and evaluated on the basis of customer characteristics by state recipient agencies as part of an annual MOA review schedule.

Once a year, or continuously via the MOA website, the State EOO will distribute to agency EOOs and EOCs the most recent demographic area by county, with details as to the distribution of the several ethnic populations recorded in Oregon. Local level entities and EOCs are encouraged to apply federal statistical formula to determine the need for reasonable accommodation of targeted groups.

The review for universal access will examine plans for targeting and outreach to identified target populations, and samples of publicity materials used to expand the diversity of participants in the One-Stop's programs and activities. Universal access is regulated by 29 CFR 37.42. Local and regional workforce investment areas have established a variety of communication linkages with community and advocacy organizations to increase outreach to target populations.

Recipients are expected to engage in specific outreach efforts targeted to members of various demographic groups by using a variety of media outlets and methods, to assure they provide universal access to services and to employment opportunities. Examples of outreach efforts such as advertising, sending notices about openings in the recipient's programs, and consulting with community service groups are described in 29 CFR 37.42(a)(c).

Priority of services is determined at the local level based on criteria developed by the local or regional workforce investment board. When considering "priority of service" in One-Stop settings, operators must consider the scope of the program or activity, and the size and concentration of the population that needs services, (i.e. information in a language other than English), and based on those considerations, recipients must take reasonable steps to provide services and information accordingly.

The State's Department of Administrative Services and the Governor's Office of Education and Workforce Policy have established work groups composed of several state agencies to develop policies that address LEP issues, and on-going monitoring/improvement of policies and plans to assure a uniform standard of reasonable accommodation is applied.

With regard to serving individuals with disabilities, if a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient. A written justification for a claim of "undue hardship" shall be

provided to the participant requesting accommodation, and the recipient must prove that the accommodation requested would result in a fundamental alteration of the nature of the service, program or activity it delivers.

At the state level, the Department of Administrative Services has established an H.I.R.E. program to increase recruitment and hiring of individuals with disabilities into the state system. All state agencies that are partners in the WIA One-Stop system must comply with the requirements of this program. See <http://www.oregon.gov/DAS/HR/hire.shtml> for further details.

The Employment Department, in cooperation with the Department of Consumer and Business Services, and the Mexican Consulate in Oregon, spearheaded the "Carrousel of Information" information fair. The Carrousel has become a popular and successful way for government agencies and service related organizations to conduct outreach to Oregon's citizens with a special outreach emphasis directed to minority populations. Agency involvement in the Carrousel is one way to evidence our expectation of universal access to agency services under the one stop system. Participation is also part of meeting our farm worker outreach obligation. In the past, front line staff has found the Carrousel to be a good way to become better acquainted with the variety of services provided by other agencies to which any of our clients may be directed based on their individual needs.

DOCUMENTATION

4.1 Target research and recruitment plans at state or local levels

- A) Attached – H.I.R.E program information**
- B) Attached – Agricultural Services Plan for Employment Services to Farm Workers and Agricultural Employers**
- C) Attached – Carrousel of Information**

4.2 Target outreach activities

- D) Attached – Examples of Outreach “Current Outreach Activities”**
- E) Attached – Examples of “Proposed Outreach Activities”**

4.3 Criteria for determining “priority of service” in One-Stop settings

When considering “priority of service” in One-Stop settings, operators consider the scope of the program or activity, and the size and concentration of the population that needs services or other information in a language other than English, and based on those considerations; take reasonable steps to provide services and information accordingly.

With regard to serving individuals with disabilities, if a requested accommodation would result in undue hardship, the recipient must take any other action that

would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient. A written justification for a claim of “undue hardship” must be submitted, and the recipient must prove that the accommodation requested would result in a fundamental alteration of the nature of the service, program or activity it delivers.

F) Example of targeting, marketing, and “Priority of Service” evaluations

4.4 Copies of One-Stop operator’s universal access plans

G) Examples of WIA Universal Access Planning efforts

4.5 Samples of brochures and other printed materials, and public service announcements used for outreach purposes

H) Orientation for Immigrants and Disability Resources/Services

IX. Element 5: COMPLIANCE WITH DISABILITY REQUIREMENTS

Recipients shall demonstrate that persons with disabilities are assured of participation in programs and activities in as integrated a setting as possible. Programs and activities shall be architecturally and programmatically accessible to individuals with disabilities, through reasonable accommodation and reasonable modification, free of discrimination on the basis of disability. In addition, communication about programs and activities shall be as effective as communication with others.

State recipient agencies will conduct programmatic and architectural accessibility compliance site reviews for their own and sub-recipient sites (at least once every two years), and training for recipient and sub-recipient staff, on an on-going basis. Recipients are expected to provide reasonable modification of policies, practices and procedures to comply with Section 504 as described at 29 CFR 37.8, and to establish and maintain a schedule for regular evaluation of job qualifications to ensure qualifications are not discriminatory on the basis of disability.

In providing case management services, recipients shall comply with federal law to limit pre-employment/employment medical inquiries to those permitted by and in accordance with WIA section 188, Section 504 of the Rehabilitation Act of 1973 (amended) and the Americans with Disabilities Act of 1990. In addition, recipients shall ensure confidentiality of all medical records of participants, employees and applicants for employment per 29 CFR 37.8.

The MOA requires recipients to provide reasonable accommodation to employees and participants and that all programs and activities are accessible to persons with disabilities. Compliance checklists and monitoring by the State EOO, state partner agency EOOs and regional/local EOCs contain elements addressing this requirement and are available on demand. Recipients and individuals with disabilities are referred to Section 37.8 for criteria and process to assess reasonable accommodation and alternatives to reasonable accommodation and the process to resolve disputes.

The MOA requires recipients to communicate with and provide program access to individuals with disabilities in a manner that is equivalent to provision of same to individuals without disabilities. Recipients and individuals with disabilities are referred to Section 37.9 for criteria and process to assess responsibilities for communication with individuals with disabilities, and the processes to ensure that program access and communication are provided on an equitable basis to individuals with disabilities.

Recipients and individuals with disabilities are referred to the General Services Administration publication based on the Architectural Barriers Act at 41 CFR 101-19.6 for information about criteria for determining physical and program access to individuals with disabilities. This includes a requirement that recipients provide signage at a primary entrance to any inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. Recipients and individuals with disabilities are referred to Section 37.9 for criteria and process to assess responsibilities for

communication with individuals with disabilities, and the processes to ensure that program access and communication are provided on an equitable basis to individuals with disabilities.

The Office of Community Colleges and Workforce Development use their Quality Assurance Self-Assessment Guide as guidance for ADA compliance. Regular assessment is required of all WIA Title IB recipients. The State EOO will coordinate One-Stop and affiliate site inspections with those done by CCWD.

The Oregon Disabilities Commission is the lead agency for conducting assessments of public entities in Oregon regarding architectural and programmatic access. Working through the Governor's Office, the Commission also provides technical assistance for all state and federally funded programs. The areas of technical assistance includes, but is not limited to, employment of people with disabilities, cultural diversity, training, employer rights, communications (in alternative formats), cost and benefits of accommodations, and reasonable accommodation.

Through WorkSource Oregon, an MOA Website has been created for assistance to all parties who must comply with WIA Title I requirements. The web address is: http://www.worksourceoregon.org/index.php?option=com_content&task=category§ionid=4&id=97&Itemid=43

Additionally, the Oregon Employment Department maintains a resource library with training videos and other instructive and informational resources on ADA regulations and disability awareness that WIA partners may check out to use for staff training.

DOCUMENTATION

5.1 Guidance regarding reasonable accommodation for recipients and individuals with disabilities

A-1) Attached – Copy of Oregon Seniors and People with Disabilities Technical Assistance webpage which includes Tools and Resources, Advocacy, Advisory Groups, etc.

A-2) Workforce Investment Act Title 1-B Monitoring Guide, Department of Community Colleges and Workforce Development (CCWD).

Additional compliance evaluation - see monitoring reports and guides at Element 3 (A-1 through A-4).

5.2 Guidance regarding equality of program access and communication for recipients and individuals with disabilities

B) Attached – Governor's Executive Order 99-14 – Employment of Individuals with Disabilities

C) Attached - H.I.R.E. Program policy statement, goals and objectives (for employers)

5.3 Guidance regarding programmatic and architectural access for recipients

**D) Attached – Copy of Vocational Rehabilitation website with guidance
Attached – Copy Seniors and People with Physical Disabilities website with
abstract of technical assistance and guidance. (Used as Attachment for
Element 5.1)**

**5.4 Evaluation of compliance with accessibility and corrective actions taken by
non-compliant recipients**

E) Attached – Copy of ADA Self-assessment instrument

5.5 Disability awareness and ADA regulations training

**F) Attached – Understanding & Serving People with Disabilities
G) Attached – 2 Webinars: Learning Disorders & Disability Employability**

X. Element 6: DATA AND INFORMATION COLLECTION AND MAINTENANCE

Participant data is used by the Governor and the U.S. Department of Labor to monitor recipient equal opportunity performance, to identify patterns of discrimination, and to identify individuals or groups of individuals who have been discriminated against on a basis prohibited by WIA section 188 and 29 CFR part 37.

The Governor's Education and Workforce Policy Advisory has statutory rulemaking authority to coordinate policy for the various partners in the WIA One-Stop system in Oregon.

All state recipient workforce agencies collect their own data on program participants and job applicants, do analysis of the data, and create reports. For the purposes of data collection¹, an applicant for services is:

"...an individual who is interested in being considered for WIA Title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient."

The four critical mandated data elements are race/ethnicity, sex, age, and disability status. The four data elements must be collected (as much as possible) for each registrant, applicant, eligible applicant, participant, employee and applicant for employment and collected in a manner to permit cross-reference of aggregate and individual records. The confidentiality of information related to these data elements is described at 29 CFR 37.37(b)(2):

"Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law."

Through administrative rule, examples of which are OAR 589-020-0110 and OAR 471-010-0070, the State Agencies implementing the MOA and Governor's Education and Workforce Policy Advisor, through the State EOO, has prescribed the following responsibilities for recipients of WIA Title I funds:

- (1) Collect and maintain data in the aggregate for each registrant, applicant, eligible applicant/registrant, participant, employee, trainee and applicant for employment;

¹ The State of Oregon will use the definitions for "eligible applicant/registrant," "participant," "participation," and "application for benefits," as defined in 29 CFR 37.4 for all data collection purposes.

- (2) Cross reference and evaluate aggregate data to individual records about race/ethnicity, sex, age, and disability status for the purposes of determining compliance with statute and within the constraints of confidentiality;
- (3) Treat confidentially any records containing medical information;
- (4) Log complaints filed that allege discrimination on one or more of the prohibited bases, and that they be maintained for a period of three years; and
- (5) Notify the State EEO at the Oregon Employment Department and the appropriate, associated state partner agency EEO, when administrative enforcement actions and lawsuits have been filed on the bases of prohibited actions as required by 29 CFR 37.38(a).

Data for the Employment Services program is collected through the statewide Performance Reporting Information System (PRISM). Aggregate data on agency-specific programs are available not only to the Employment Department but to partner workforce agencies that are part of PRISM. Aggregate demographic data can be downloaded and reported, but most state recipient agencies use their own data systems, which feed into PRISM, for their own federal reporting purposes. Confidentiality of the data in PRISM is protected by state statute.

A report of data on the four required elements under the MOA may be accessed on a quarterly basis from the Performance/Accessibility section of the MOA website. State recipient agencies will be responsible for the collection of the data from their own systems and the compilation of that data into reports for the State EEO when required.

DOCUMENTATION

6.1 Instructions to the recipient within Oregon regarding information collection, access to records, and the maintenance of records

A) Attached – OAR 151-010-0015

B) Attached – Oregon Workforce Letter No. 3-01

6.2 Sample Reporting Forms and First Year Aggregate Reports

A performance measurement system has been developed and implemented that will also collect the MOA-required data elements in a manner so that a uniform report can be generated.

C) Attached – Sample of PRISM reports

6.3 Sample Complaint Log

D) Attached – Employment Department Complaint Log

E) Attached – WIA - MOA Complaint Log

6.4 Confidentiality of Data

F) Attached – Shared Information System Report to 72nd Legislature

G) Attached – Example - Interagency Agreement on access to Employment Department records (See Element 3 Exhibit 3.3C)

XI. Element 7: EQUAL OPPORTUNITY MONITORING

The Governor is responsible for monitoring all WIA -financially assisted programs in the state for compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIA. The State EOO and agency EOOs shall collaboratively conduct recipient MOA reviews on a regular schedule.

In Oregon, reviews will address compliance with requirements for assurances, notice and communication, agency EOOs and EOCs, data and information collection/maintenance, universal access, complaint processing procedures, and other assigned MOA-related responsibilities, policies and procedures.

Recipients will provide, in a timely manner, any information the State EOO and agency EO Officer's and/or the USDOL CRC considers necessary and will permit access during normal business hours to premises, employees, and participants, to the extent that such individuals are on the premises during the course of a complaint investigation, compliance review, or other EO monitoring activities. Emphasis will be placed on review of data and records from programs and activities to determine whether discrimination is occurring. State agency recipients are responsible for the collection and analysis of data from their programs and will report this information to the State EOO on a regularly scheduled basis. If initial data review indicates statistical significance, further follow-up review and investigation may occur. If necessary, the Governor will negotiate with a recipient to secure compliance when noncompliance is found under 29 CFR 37.95(b).

Data Analysis and Self-Evaluations

Through the Governor, as described in Oregon Administrative Rules exemplified in OAR 589-020-0110 and OAR 471-010-0070, each state recipient agency is responsible for equal opportunity monitoring of its sub-recipients and itself, and each state recipient agency has procedures to:

- Determine whether a grant applicant is able and likely to conduct its WIA Title-1 funded programs and activities in a nondiscriminatory manner; and
- Periodically monitor its compliance on the basis of aggregate data on race/ethnicity, sex, age, disability status and other requirements within the Methods of Administration, and the laws and regulations upon which it is based; and
- Where significant differences or deviations are found, conduct follow-up investigations to determine whether differences are due to discrimination.

In addition to self-evaluations, at the direction of the State EOO, each state recipient agency will conduct equal opportunity monitoring/evaluation reviews of applicants for, and sub-recipients of, WIA financial assistance. Any and all reviews will contain the names, titles, and organizational affiliation of those persons conducting and reporting on the results of the review. State recipient agencies are also responsible for monitoring recipient policies and procedures to ensure that the policies and procedures do not violate the prohibitions contained in 29 CFR 37.5 through 37.10.

One-stop partners are responsible for reviewing their own posters, flyers, tag lines, contract assurances, etc., and they must submit an Annual Report of Compliance to the State EOO and their Regional/local EOC confirming their compliance. Confirmation that One-stop partners are in compliance with these requirements will also be verified during annual self-evaluations and On-site reviews.

Compliance reviews include desk audit compliance reviews and on-site compliance reviews. The findings and written report from all compliance reviews will be made available to each reviewed recipient within 30 days from the date of the review.

The State EOO conducts and/or coordinates three types of compliance reviews: Intensive on-site review, ADA self-evaluation, and Annual Reports of Compliance. At a minimum, five Oregon One-stop-centers will be scheduled for intensive reviews per year. All of the 40 One-stop centers will be reviewed in turn, and in addition each center must complete an ADA self-evaluation once every two years. The third review is the Annual Report of Compliance; a report that all One-stop-center partners (MOU signatories) must complete assuring on-going compliance with the 9 MOA Element requirements. Intensive on-site review schedules may be developed using complaint records and analysis of data output reports. Should a region or One-Stop center have an unusually high number of complaints or the appearance of non-compliance with equal opportunity or non-discrimination regulations, then the responsible agency EOO will schedule reviews. After the review, a report will be sent to the State EOO for follow-up if it is determined to be necessary.

Other compliance reviews will be strategically scheduled for auditable facilities according to staff availability, time constraints, and budgetary limitations.

Agency EOOs and the State EOO will coordinate the review process and make a report to the Governor's Office and state agency recipients. Any violations will be noted in the report. State recipient agencies may impose sanctions or corrective actions for MOA violations noted during monitoring, as specified in administrative rules, contracts or memoranda of understanding. Any and all corrective actions will be reported to the State EOO and recipients will use the Corrective Action Report as they work toward compliance.

The Governor's Office of Education and Workforce Policy, through the State EOO will provide MOA training and communicate policies on behalf of state recipient agencies regarding monitoring and compliance under 29 CFR 37.

Desk Audit Compliance Review Detail

A desk audit review analyzes program summary materials to ensure that no discrimination is occurring. The NASWA Guide to Conducting Equal Opportunity Monitoring Reviews and/or the Workforce Investment Act Section Disability Self-Evaluation Tool and the Americans with Disabilities Checklist, One-Stop Center Self-Evaluation tools, may be distributed to all reviewed offices/facilities to serve as a training tools and monitoring devices. Incomplete or incorrect responses to the self-evaluations will trigger consideration for further monitoring and/or training.

Desk audit compliance reviews will be performed using statistical data, which will analyze services to distinct applicant and claimant groups. All significant statistical disparities identified in programs, activities, or employment provided by the recipient will be investigated using all available documentation and determination will be rendered as to whether or not they appear to be caused by discrimination. Samples of applications taken by the recipient will be requested and reviewed for use of key words, use of partial applications, and discriminatory comments. Samples of job orders taken by the recipient will be requested and reviewed for discriminatory specifications, gender-biased job titles, and specifications that could have an adverse impact on any group.

All significant statistical disparities identified in the programs, activities, or employment provided by the recipient will be investigated using all available documentation and a determination will be rendered as to whether or not they appear to be caused by discrimination. Previous desk audit or on-site compliance reviews will be analyzed to determine whether corrective actions have previously occurred to address deficiencies.

On-Site Compliance Review Detail

The on-site compliance review will combine a review of summary materials as completed in a desk audit compliance review with an architectural accessibility review of the recipient's offices/facilities, operations, and procedures. Physical review of each facility may be done in collaboration with programs such as the Disabilities Commission, Seniors and People with Physical Disabilities, or CCWD which have developed checklists for accessibility.

Before conducting an on-site compliance review, the State EOO and EOC will notify the Local or Regional Investment Board, agency EOOs and the One-Stop Operator. The regional/local EOC/EOO then notifies all pertinent sub recipients, suppliers, and service providers of the visit. A letter confirming arrangement of the compliance review will be sent as soon as possible after notification. Statistical analysis of aid, benefit, services or training to distinct applicant, claimant and participant groups will be accomplished using

all available source documents. Prior desk audit compliance reviews, on-site compliance reviews, complaint files, and the self-evaluation monitoring instrument will also be reviewed for previous findings or to determine discriminatory trends.

Areas to be reviewed include, but are not limited to:

- Policies and procedures, to ensure that they do not violate the prohibitions contained in 29 CFR 37.5 through 29 CFR 37.10;
- Contracts and other similar agreements, to ensure they are both non-discriminatory and contain the required language regarding non-discrimination and equal opportunity;
- Accessibility of services to persons with disabilities and other applicants with special needs;
- Equal opportunity posters and bulletin boards to determine if the name of the local EOC is posted and if the required EO posters (including the required notice, assurances, EO policy statement, and tag lines) are displayed in the waiting area of the One-Stop center;
- The local-level complaint log for thorough documentation and proper maintenance;
- Each recipient's designated complaint takers for knowledge of complaint-taking procedures;
- Staff training records to assure that staff have received EO/civil rights-related training from the local EOC or other designated representative;
- The reception and switchboard areas to ensure all applicants are treated professionally and courteously and are provided with the same information and opportunities for service; and
- Employees to determine their knowledge of EO/civil rights laws and the laws' impact on the day-to-day operations of the center.

Immediately following the on-site compliance review, the State EOO will conduct an exit interview with the local EOC/agency EOO, One-Stop manager, and other pertinent one-stop center staff to discuss findings and clarify areas in question. At this time, an explanation of the forthcoming recommendations to bring the One-Stop center into compliance will be made.

Subsequent to the on-site compliance review, the State EOO will distribute a written report to the Governor's Officer, agency EOO, Regional Workforce Investment Board Chair, regional/local EOC, and One-Stop center manager. The report will detail those areas in which the center is in compliance and those areas in which the center is not in compliance. The report may also make recommendations for corrective actions to occur within 30 working days of the report date.

The State EOO, agency EOO, and regional/local EOC will maintain monthly communication until all findings have been corrected. Sanctions for uncorrected findings are addressed in Element 9 of this document.

DOCUMENTATION

7.1 Monitoring review schedule for data

A) Attached – Template outlining monitoring review schedule (includes 2007 and 2008 schedules)

7.2 Procedure for establishing recipient review schedules

B) Attached – Memorandum template detailing review procedures

7.3 Monitoring instruments for the designated reviewer

C) Attached – On-site compliance review checklist

7.4 Periodic compliance monitoring for the MOA in general

D) Attached – Used as an attachment in 7.2

E) Attached – Samples of review notification and final evaluation report

3.1A-1 Attached – Copy of WIA 188 Disability Self-Evaluation Tool

3.1A-2 Attached - Copy of NASWA Guide to Conducting EO Review

3.1A-3 Attached – Copy of on-line Annual Report of Compliance

3.1A-4 Attached - Copy of ADA Checklist

Note: (See copy of CCWD WIA Title 1B Monitoring Guide in Section 5.1A-2)

7.5 Policies for appointment of EOO/EOCs, and their training and communication procedures to assure adequate EOO/EOC performance

F) Attached – Oregon Workforce Letter No. 2-01

Please refer to information used in Element 1

7.6 Procedure for obtaining prompt corrective action

H) Copies of Corrective Action Reports

See Element 9

XII. Element 8: COMPLAINT PROCESSING PROCEDURES

State agencies with oversight responsibilities for Oregon’s One-stop system have adopted administrative rules or internal procedure that addresses the complaint process relevant to the MOA.

DHS/OVRS Exemption

The Department of Human Services (DHS) administers programs that may be responsible for meeting requirements specified in the MOA, such as Jobs Programs funded through the Temporary Assistance to Needy Families program and vocational rehabilitation services provided to WIA participants/beneficiaries. 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 29 CFR part 37, to the extent that they participate in the One-Stop delivery system. (See 29 CFR 37.4, definition of WIA Title I funded program or activity). DHS utilize the discrimination complaint processes described in OAR 407-005-0000 (disability); OAR 582-020-0005 (OVRS ADR- Mediation and Hearing requests); and DHS Policies DHS 010-005 (Non-Discrimination on the Basis of Disability for Programs, Services and Activities) and DHS-010-005-01 (Client Complaint or Report of Discrimination) and are therefore exempt from the requirement of applying the Methods of Administration (MOA) Element 8 complaint processes to the extent that those processes comply with the requirements of 29 CFR 37.76.

However, complainants or staff who alleges discrimination involving a WIA financially-assisted program or activity may utilize the MOA complaint process to request Alternative Dispute Resolution (ADR), if ADR is not provided through the DHS complaint process (**OVRS does provide ADR**). The costs for ADR will be paid by the recipient agency against whom the complaint of discrimination is alleged.

As recipients of USDOL funds and/or mandated one-stop-center partners per ORS 660.330(2), DHS shall notify customers and applicants of one-stop programs in ORS 660.330(2) and WIA financially-assisted programs or activities, and staff employed in connection with those programs or activities about the option to file a complaint directly with the USDOL Civil Rights Center as required by 29 CFR Part 37.30 using the following language:

If you think that you have been subjected to discrimination under WIA financially-assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with . . . the Director, Civil Rights Center (CRC) U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

In addition, when a complaint is filed with DHS alleging discrimination in connection with a WIA financially-assisted program or activity, DHS shall provide a complainant with an initial written notice and a written statement of the issues raised in the complaint. The written notice and written statement will contain the elements required in MOA Element 8, Section D. Complaint Processing Roles and Responsibilities, **Written Notification**. DHS will also provide complainants with a written Notice of Final Action within 90 days of the filing of the complaint, which will contain the elements required in MOA Element 8, Section D. Complaint Processing Roles and Responsibilities, **Notice of Final Action**.

The complaint process is defined in considerable detail in the body of the MOA.

Where joint jurisdiction exists (the recipient is subject to WIA nondiscrimination requirements and other non-discrimination regulations) recipients must comply with the procedures identified in the MOA and referred to in OAR 589-020-0110 and OAR 471-010-0070 in the event a complaint is filed against a WIA-financially assisted program or activity on the basis of prohibited grounds of discrimination or lack of equal opportunity. All other complaints filed in One-Stop settings on the basis of grounds not described herein and where sole jurisdiction exists (such as food stamp eligibility), are not subject to this complaint procedure and are resolved by the state partner agencies using their own established complaint processes. Most federal contractors have complaint processing procedures that meet federal standards, and must assure that their subcontractors also comply with federal standards.

Complaints may be filed under this MOA on these bases: allege discrimination on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief, and for beneficiaries only, citizenship and WIA Title I participation.

In addition to the bases described above, complaints may also be filed if an individual believes they have been intimidated, retaliated against, threatened or coerced because they have:

- filed a complaint under WIA Section 188;
- opposed a practice prohibited by the non-discrimination and equal opportunity provisions of WIA;
- furnished information to, or assisted or participated in any manner, an investigation, review, hearing, or any other activity related to the provisions under 29 CFR 37; or
- exercised any rights and privileges under WIA Section 188.

A. Elements of the Complaint Process. The complaint process includes five general elements:

- jurisdiction,
- methods of resolution or disposition,
- notice of final disposition,
- processing timeframes, and
- recordkeeping.

At the local service level, the designated (EOC) oversees the complaint process, which may progress to the state recipient agency's EOO and on to DOL's CRC through the State EOO. When a complaint is filed against a partner in a One Stop setting, the EOC must notify all co-located partners and Executive Staff and Chair of the Workforce Board that a complaint has been received and the basis for the complaint without revealing confidential information.

B. Who May File Complaints and When. Complaints may be filed by an applicant/registrant for aid, benefits, services or training; eligible applicants/registrants; participants; employees; applicants for employment; eligible service providers; and service providers that may be attributed a characteristic protected under the WIA.

Generally, there are three types of complaints: (1) Individuals filing on their own behalf; (2) Individuals or a group filing on a class basis; or (3) A third party complaint authorized by the complainant in writing.

All complaints must be submitted in writing within 180 days of the alleged incident, and must contain standard information as described in 29 CFR 37.73 as printed in the Department of Labor's Civil Rights Center's (CRC) Complaint Information Form. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

C. The Complaint Process. On receipt, the One Stop site or lead EOC reviews complaints for jurisdiction, timeliness and the basis of the complaint. Complaints may be received from individuals who are employed by, or who seek services from local, state, or federal entities that receive WIA Title I funds. The One-Stop site or lead EOC notifies the complainant of options of (1) using alternative dispute resolution; (2) filing directly with the USDOL CRC, and (3) that a written Notice of Final Action is due 90 days after the complaint is filed.

The One Stop site or lead EOC logs the complaint. The One-Stop site or lead EOC notifies other state recipient partners in the One-Stop that a complaint has been filed against a specific recipient, and the alleged basis for the complaint. The One-Stop site or lead EOC works with the recipient assigned jurisdiction (the

state recipient partner's EOO, for example) to investigate and prepare the Initial Response.

If there is no jurisdiction, or joint-jurisdiction, the local EOC must notify the complainant immediately in writing of the reason(s) why, and note the right to file a complaint with the CRC within 30 days of the date on which the complainant receives the notice. Lack of jurisdiction may be based upon untimely filing of a complaint that is filed more than 180 days from the alleged incident. Should the complainant appeal a decision based on late filing with the CRC, the complainant has the burden of proving to the Director that the time limit should be extended as described at 29 CFR 37.81.

Responsible parties have up to 20 days from receipt of the complaint to prepare the Initial Response, which includes acknowledgement that the recipient has received the complaint, that the complainant has the right to be represented in the complaint process, a statement of issues accepted or denied and reasons for denial, among other required elements specified at 20 CFR 37.70 *et seq.* If the complaint falls outside the scope of the MOA, the recipient assigned jurisdiction processes the complaint through its appropriate complaint policies and procedures.

If the complaint is not resolved within the first 20 days of filing, the Initial Response is issued and the state recipient agency's EOO continues to investigate and attempt to resolve the complaint for up to 20 additional days. The state recipient agency's EOO prepares a draft Final Notice for review by the State EOO residing at the Oregon Employment Department.

The State EOO takes up to 30 days to provide technical support to those preparing the Final Notice to assure that it contains the required elements per CFR, before the local EOC returns the Final Notice to the complainant. The written Final Notice explains for each issue raised: the recipient's decision and basis for it; or a description of the way the parties resolved the issue; and appeal rights. The State EOO logs the complaint, informs the Governor and US DOL CRC of its resolution, and recommends to the Governor or Governor's representative corrective action and/or sanctions that may be needed to cure the complainant. If corrective actions are required, the State EOO monitors them and reports to the Governor and USDOL CRC on their satisfactory completion, within the remaining 20 days remaining in the 90 day complaint process.

The Final Notice is due 90 days from the date of initial filing of the complaint. If the complainant is dissatisfied with the Final Notice, or there is no Final Notice issued timely, the complainant has the right to file a complaint with the USDOL CRC within thirty (30) days from the issue of the Final Notice, or the date the Final Notice was due.

- C. Complaint Processing Roles and Responsibilities: The regional/One-Stop site EOC is responsible for receiving written complaints filed at the local level, and determining the jurisdiction for complaints. In addition, the regional EOC must notify the Workforce Board Chair and Executive Staff that a complaint has been filed against a named partner, and the basis for the complaint (which protected class protection has been violated).

The regional/One-Stop site EOC works with the assigned state agency EOO (the funding source for the named partner against whom the complaint is alleged), to investigate and prepare an Initial Response to the complainant. The regional/One-Stop site EOC offers alternative dispute resolution to the complainant and arranges it using local resources if the complainant so chooses.

- The regional/One-Stop site EOC and state agency EOO prepare a Final Notice. The regional/One-Stop EOC returns the Final Notice to the Complainant.
- The state agency EOO provides the technical expertise to support the regional/One-Stop site EOC in resolution of complaints. The state agency EOO may facilitate provision of alternative dispute resolution if complainants select to use it. In addition, the state agency EOO conducts regular monitoring of its own and its contractor's complaint logs, data collection and other MOA compliance-related items.
- The agency EOO reports this data on a regular basis as specified by the State EOO to enable the State EOO to monitor recipients for patterns of discrimination.

In the complaint process, the State EOO is responsible for providing technical support to state partner EOOs and regional/local One-Stop EOCs. If corrective actions are required as a result of the findings in a Final Notice, the State EOO monitors them to their satisfactory conclusion based on timelines established by administrative rule. The State EOO maintains a complaint log and notifies the Governor and USDOL CRC of complaints and their outcomes.

Complaint Processing Detail

Ideally, complaints and other issues will be resolved at the local level where they are received. Immediately upon notification that someone wishes to lodge a complaint, the staff member shall attempt to discover the reason for the complaint and try to resolve the issue. This may necessitate the involvement of a supervisor, manager or local/regional EOC. The issue may be the result of miscommunication or misunderstanding and may not involve discriminatory acts. Every attempt will be made to resolve the complaint or issue at the local level.

If the complainant wishes to file a written complaint, staff must assist them and advise them of the availability of Alternative Dispute Resolution.

The complaint must be filed in writing. A modified USDOL CRC complaint form will be used in Oregon. In all cases, the complaint process of the respondent will also be used. For example, the Employment Department will use ETA Form 8429, Employment Service Complaint/Referral Record for all complaints directed to that agency.

The written complaint must contain the following information:

- The complainant's name and address (or another means of contacting the complainant);
- The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
- A description of the complainant's allegations. This description must include enough detail to allow the Director of the recipient, as applicable, to decide whether:
 - 1) USDOL CRC or the recipient, as applicable, has jurisdiction over the complaint;
 - 2) The complaint was filed in time; and
 - 3) The complainant 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 this part; and
- The complainant's signature or the signature of the complainant's authorized representative.

Each complaint must be entered in the local Complaint Log and a copy of the written complaint shall also be forwarded to the State EOO, local/regional EOC and agency EOO within 5 days of the filing of the written complaint.

Alternative Dispute Resolution (ADR)

It is the policy of the State that Alternative Dispute Resolution programs exist in every state agency, for use internally and with external customers. In addition, Oregon Revised Statutes Chapter 36, Mediation and Arbitration, state that it is the intent of the State to foster the development of community based programs to assist citizen in resolving disputes and developing skills in conflict resolution.

To facilitate this intent, the Oregon Dispute Resolution Commission operates a clearinghouse to point disputants towards ADR resources. ADR activities are authorized at Oregon Revised Statutes 183.502. The ODRC website can be found at: www.odrc.state.or.us. ADR services are now offered through the Oregon Consensus Program as established by the 2003 Oregon Legislature.

The elements of ADR are a component of all training for EOO/EOCs. All One-Stop sites have been encouraged to identify and use local ADR resources. The local EOC will initiate the ADR process with the complainant and contact the agency EOO if necessary.

The complainant must be offered alternative dispute resolution immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant; the preferred form of ADR is mediation.

What is Mediation?

Mediation is a voluntary process during which a neutral party assists both parties (complainant and respondent) communicate their concerns and come to an agreement about how to resolve a dispute.

The mediator does not make decision, rule as to who is right or wrong, take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If ADR fails, the complaint will be processed through the recipient's standard complaint resolution process.

A party to any agreement reached under ADR may file a complaint with the Director, USDOL CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

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

If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director, Civil Rights Center.

Complainants who utilize the ADR process will receive notifications about complaint processing and closure at the state level, and about the right to file a complaint with USDOL CRC. The notifications include: Initial Written Notice with a statement of the

issues, Jurisdiction and Authority, and a Notice of Final Action disclosing that the ADR process was utilized and the results of that process.

Written Notification

Immediately upon receipt of a written complaint the EOC or other person designated to attempt to resolve the complaint must send written notice to the complainant. This written notice must contain:

- A complaint process timeline;
- References to ADR options
- Option of direct filing with USDOL CRC;
- An acknowledgment that the recipient has received the complaint; and
- Notice that the complainant has the right to be represented in the complaint process.

Within 20 days, Initial Notice is sent that must contain:

- A statement of the issue(s), including;
 - 1) A list of the issues raised in the complaint, and
 - 2) 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.

Jurisdiction

Any complaint alleging discrimination must meet the following criteria to be considered under this policy:

- That the individual making the complaint believes that he/she, or any class of individuals, has been subjected to discrimination on a basis prohibited by Workforce Investment Act Section 188 and/or 29 CFR 37.
- That the individual or entity against which the complaint is filed receives financial assistance under the Workforce Investment Act (refer to 29 CFR Part 37.4 for definitions of recipient, etc.);
- That the written complaint is filed within 180 days of the alleged discriminatory act. If received later than 180 days from when the discriminatory action took place, the office may close the complaint as being untimely (The Director, Civil Rights Center may extend the filing time if good cause is shown); and
- That the complaint is filed in writing, is signed by the complainant or their authorized representative, contains the complainant's name and address (or gives other specific means of contact), identifies the respondent, and describes the

complainant's allegations in sufficient detail to allow the recipient to determine if the complaint has merit.

Notice of Lack of Jurisdiction

If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:

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

If the complaint that does not involve a recipient as defined under 29 CFR Part 37.4, the EO officer will assist the complainant in forwarding the complaint to the most appropriate agency for resolution.

Fact Finding/Investigation

The local/regional -level EOC has 30 days in which to resolve the complaint. During this time the EOC should gather all available information relating to the alleged discriminatory actions. At a minimum this fact finding should include:

- Discussion with the complainant in order to record all elements of the complaint;
- Interviews with any witnesses or others who have knowledge of the issue involved;
- Review of written and electronic files and records which pertain to the complainant and the alleged discrimination; and
- Interviews with the person(s) accused of the act (the respondent).

The investigator should take extensive notes during this process to assure nothing is missed and to help with the resolution of the complaint.

Resolution

Resolution means that legitimate complaints (those complaints with merit) are resolved to the satisfaction of the complainant. If the complaint is determined not to have merit the complainant must be notified immediately as explained under *Notice of Lack of Jurisdiction*. If the local/regional-level EOC is unable to reach resolution within 30 days the complaint and all information gathered during the local-level investigation must be passed to the State EOO responsible for resolution. An extension may be requested by the local/regional EOC, with the permission of the agency EOO and in consultation with the State EOO, to facilitate resolution.

Resolution may include such actions as:

- Disciplinary action against the party found responsible for discriminatory action(s);
- Corrective actions required by the recipient; and
- Sanctions against the recipient of WIA funding, including the withdrawal of WIA funding.

Notice of Final Action

Within 90 days of the receipt of a complaint, a written Notice of Final Action must be provided to the complainant. The Notice must contain the following information:

For each issue raised in the complaint, a statement of either:

- The recipient's decision on the issue and an explanation of the reasons underlying the decision, or
- A description of the way the parties resolved the issue; and
- Notice that the complainant has a right to file a complaint with USDOL 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.

Due Process

During the process of attempting to come to resolution of the complaint, the State EOO shall assure that all parties involved are given due process. These due process elements include:

- notice to all parties of the specific charges
- notice to all parties of the responses to the allegations
- the right of both parties to representation
- the right of each party to present evidence and to rebut evidence presented
- a decision made strictly on the evidence on the record

Determinations

At the conclusion of the investigation of the complaint, the investigating authority must take the following actions:

- Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37; and
- Notify the complainant and respondent, in writing, of that determination.

Violation Found

If the investigating authority finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37, an Initial Determination must be issued. The Initial Determination must include:

- the specific findings of the investigation;

- the corrective or remedial action that the Governor’s Office and State EOO’s proposes to the respondent, under Element Nine of this MOA and 29 CFR Part 37.94;
- the time by which the respondent must complete the corrective or remedial action;
- whether it will be necessary for the respondent to enter into a written agreement under Element Nine of this MOA and 29 CFR Part 37.95 and 37.96; and
- the opportunity to engage in voluntary compliance negotiations.

Violation Not Found

If the investigating authority determines that there is no reasonable cause to believe that a violation has taken place, a Final Determination must be issued. The Final Determination represents the Governor’s Office and State EOO’s final action on the complaint.

The Final Determination must:

- Be issued within the 90 day complaint resolution period;
- Give the investigating authority’s decision on the issue and an explanation of the reasons underlying the decision; and
- Notice that the complainant has the right to file the complaint with the Director, Civil Rights Center.

Corrective Actions

If, during the course of investigating the complaint, discriminatory actions are discovered, corrective action will be taken immediately, regardless of whether the complaint is resolved at the state level or is filed with USDOL CRC. This process of corrective actions and sanctions is described in Element Nine.

Record Maintenance

The EOC shall maintain records regarding complaints and actions taken for at least *three* years. Such records shall be maintained in a secure area and made available only to those with authorization. The complaint and any information gathered during the investigation may not be discussed or revealed to anyone not legitimately entitled to access (29 CFR 37.41).

Investigators from the USDOL CRC will have access to any information collected by each recipient as outlined in 29 CFR 37.40.

DOCUMENTATION

8.1 Oregon Administrative Rules 589-020-0110 and 471-010-0070

- A) Attached – Oregon Administrative Rules 589-020-0110 and 471-010-0070**
- B) Attached – Governor’s Executive Order No. 00-09**

8.2 Memoranda Informing Recipients of the Complaint Filing Process

- C) Attached – Oregon Workforce Letter 03-01**

8.3 Complaint Information Form

Oregon’s One-Stop system uses a modified USDOL CRC Complaint Information Form, revised in 2005 (OMB Control Number 1225-0077, expires 1/31/03). Copies of the form are available from the State EOO and will be posted on the state’s WIA/One-Stop website for downloading at One-Stop sites and field office locations.

- D) Attached – Copy of Complaint Information Form (both English and Spanish)**

8.4 Initial Response Template

- E) Attached – Initial Response to Complaint**
- F) Attached – Notice of Filing Rights**

8.5 Notice of Lack of Jurisdiction

- G) Attached – Notice of Lack of Jurisdiction**

8.6 Final Notice Template

- H) Attached – Final Notice Template**

8.7 Complaint Process Timelines

- I) Attached – Flowchart of complaint process timelines**

8.8 Complaint Process training evidence

Complaint processing has been a part of the agenda whenever the MOA has been presented to public audiences.

- J) Attached – Copy of training agenda showing ADR discussion and training**
- K) Attached – Copy of New Employee Orientation Agenda – Employment Department**

XIII. Element 9: CORRECTIVE ACTIONS AND SANCTIONS

The State of Oregon will comply with all requirements of 29 CFR 37.97 related to corrective actions and sanctions. Authority for corrective actions and sanctions can be found at OAR 589-020-0110 and OAR 471-010-0070 and is based on 29 CFR 37.54. Findings of noncompliance may result from investigation of a complaint or a recipient compliance review.

Corrective actions and sanctions are intended to guarantee equal access to programs, activities, and employment opportunities provided by WIA financially assisted recipient organizations. Corrective actions must be appropriate for the violation identified and serve to end the discrimination or redress specific violation(s).

Local/regional level EOC's are instructed to notify the State EOO and agency EOO if they are contacted directly by USDOL CRC regarding an alleged violation. Any corrective actions, if necessary, will be reported to USDOL CRC.

Where a compliance review or complaint investigation results in a finding of noncompliance, the State EOO must notify the:

- (a) Grant applicant or recipient;
- (b) Grant making agency; and
- (c) Governor's Office.

Sanctions may include termination of funding (partial, offset, and/or temporary suspension). Recipients acknowledge notice that corrective actions and sanctions may be imposed to move recipients into compliance with the requirements of the WIA and these Methods of Administration.

Violations may range in seriousness from technical violations, such as failure to post EO notices, to discrimination violations based on the prohibited grounds of discrimination or equal opportunity protections afforded by the law. Corrective actions must correct the specific violation and/or make whole the complainant. The appropriate state agency will provide guidance and/or technical assistance to a non-complying sub-recipient, will obtain written agreement or assurance to document the correction of the violation, and provide reports on corrective actions taken and follow-up monitoring.

Standards for Corrective and Remedial Actions

Oregon reserves to the Governor accountability for implementation of the Methods of Administration, including complaint processing and resultant corrective or remedial action. The Governor also reserves the right to sanction grantees for failure to comply with the terms and conditions of grant contracts. The State EOO, acting in cooperation with the state agency EOOs, will monitor corrective action determined against a respondent in a Notice of Final Action for a specific complaint. See Element 8 of Oregon's MOA for further details.

Corrective Actions and Corresponding Timeframes (Table 9-A)

<i>Area of Non-Compliance</i>	<i>Corrective Action</i>	<i>Pre-Sanction and Sanction</i>
<p><i>I. Practices and Policies</i></p> <p>A. Policies or procedures that discriminate, or have the effect of excluding identifiable groups of individuals or denying the administration of benefits, participation in, employment, or other activities in connection with the Workforce Investment Act.</p>	<ol style="list-style-type: none"> 1. Technical Assistance and Training 2. Elimination or modification of policies, practices and procedures that have been found to be discriminatory within a time period specified by State EOO and Governor’s Office. 	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Recommendation of reduction of funding 3. Legal action under applicable State or Federal laws
<p>B. Programs, activities, or services that are inaccessible to disabled or limited English-speaking individuals</p>	<ol style="list-style-type: none"> 1. Technical Assistance 2. Identification of inaccessible features, and modification of inaccessible features, within time frame given by the State EOO and Governor’s Office. 	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Proposed reduction of funding 3. Disallowance of costs in inaccessible programs, activities, or services 4. Proposed elimination of funding 5. Legal action under applicable laws
<p>C. Non-existent, incomplete, or inadequate accessibility assessment tool on file as required by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.</p>	<ol style="list-style-type: none"> 1. Acquisition of technical assistance materials 2. Production of such a document within a time period specified by the State 	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Proposed reduction of funding 3. Legal Action under State law, based upon the recipient’s assurance of compliance with WIA, Federal Regulations and State Directives
<p>D. Policies, practices, or procedures which are not in compliance with 29 CFR 37 or other civil rights legislation</p>	<ol style="list-style-type: none"> 1. Acquisition of technical assistance materials 2. Immediate modification or elimination of non-compliant policies, practices, and procedures within a time specified by the State 	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Proposed reduction of funding 3. Proposed elimination of funding 4. Legal action under State law, based upon the recipient’s assurance of compliance with WIA, Federal Regulations and State Directives
<p>E. Non-existence of a staff analysis by race, sex, age or disability</p>	<ol style="list-style-type: none"> 1. Completion of staff analysis within 30 days of receipt of written report of non-compliance 	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Recommendation of reduced funding
<p><i>II. Methods of Administration</i></p> <p>A. Non-provision of services to individuals or substantial segments most in need</p>	<p>Determine substantial segments which are most in need. Prepare a plan detailing the methods that will be used to achieve and maintain compliance. Submit the plan to the State EOO within 30 days. Take</p>	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Propose termination of Federal financial assistance

<i>Area of Non-Compliance</i>	<i>Corrective Action</i>	<i>Pre-Sanction and Sanction</i>
	immediate actions towards achieving compliance during the preparation of the plan. Upon submission of the plan, implement the plan in order to achieve compliance.	
C. Maintaining complaint procedures not in compliance with 29 CFR 37	Obtain technical assistance and take necessary steps to achieve compliance	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Propose suspension of Federal financial assistance 3. Propose termination of Federal financial assistance
D. Failure to comply with equal opportunity directives issued by the State EOO or Governor's Office and with applicable laws and regulations	Take immediate action to comply within time frame specified by the State EOO	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Propose termination of Federal financial assistance
E. Failure to carry out oversight responsibilities by monitoring equitable service performance of its service providers	Require immediate implementation of oversight and written report of the results to the State EOO within 30 days of the receipt of the written report of non-compliance	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Propose suspension of Federal financial assistance 3. Propose termination of Federal financial assistance
F. Failure to collect and maintain records as required in 29 CFR 37	Take immediate action to comply within the time frame specified by the State EOO	<ol style="list-style-type: none"> 1. Written warning of non-compliance 2. Propose suspension of Federal financial assistance 3. Propose termination of Federal financial assistance

Provisions for retroactive relief and prospective relief

Corrective actions for technical violations are tailored specifically to each finding and designed to correct the problem completely. When appropriate, the corrective actions also include training for the staff responsible for its implementation. For each corrective action, a time frame is established by the recipient and the Governor's Office that sets the minimum time necessary to correct the violation completely.

Discrimination violations may include, but are not limited to, findings of disparate treatment, disparate impact, and failure to provide a reasonable accommodation. Corrective actions involving discrimination may include, but are not limited to, corrective, curative, or preventive requirements designed to prevent a recurrence of the discrimination; nondiscriminatory referral; cessation provisions; and make whole relief.

As described in 29 CFR 37.94 (b)(2), make whole relief for discrimination violations includes, as appropriate: back pay (which must not accrue from a date more than two years before the filing of a complaint or the initiation of a compliance review or other

monetary relief); hire or reinstatement; retroactive seniority; promotions; benefits or other services discriminatorily denied; and such other remedial or affirmative relief as the Governor's Office and/or the USDOL CRC deems necessary, which may include but is not limited to, outreach, recruitment and training designed to ensure equal opportunity. Monetary relief may not be paid from federal funds.

Where the agency EOO or EOC determine that a violation of the nondiscrimination and equal opportunity provisions of WIA has occurred below the state level, the agency EOO and/or EOC must notify the State EOO and the violating recipient(s) through the issuance of a Letter of Findings, Notice to show Cause or Initial Determination, as appropriate, under 37.62 or 37.63, 37.66, and 37.67 respectively.

- (1) Such issuance must:
 - (i) Direct the agency EOO to initiate negotiations immediately with the violating recipient(s) to secure compliance by voluntary means;
 - (ii) Direct the agency EOO to complete such negotiations within 30 days of the agency EOO's receipt of the Notice to Show Cause or within 45 days of the agency EOO's receipt of the Letter of Findings or Initial Determination, as applicable. The Governor's Office, through the State EOO, reserves the right to enter into negotiations with the recipient at any time during the period. For good cause shown, the Governor's Office, through the State EOO, may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance must not exceed 60 days.
 - (iii) Include a determination as to whether compliance must be achieved by:
 - (A) Immediate correction of the violation(s) and written assurance that such violations have been corrected, under 37.96; or
 - (B) Entering into a written Conciliation Agreement under 37.97; or
 - (C) Both A and B.
- (2) If the Governor's Office, through the State EOO, determines, at any time during the period described in paragraph (b) (1) (ii) of this section, that a recipient's compliance cannot be achieved by voluntary means, the Governor's Office/State EOO must so notify the EOC and agency EOO.
- (3) If the Governor's Office/State EOO is able to secure voluntary compliance under paragraph (b) (1) of this section, the Governor's Office/State EOO must submit to the EOC for approval, as applicable: Written Assurance that the required action has been taken, as described in 37.96; a copy of the Conciliation Agreement, as described in 37.97; or both.
- (4) The Governor's Office, through the State EOO, may disapprove any written assurance or Conciliation Agreement submitted for approval under paragraph (b) (3) of this section that fails to satisfy each of the applicable requirements provided in 37.62 or 37.63, 37.66 and 37.67, or 37.91 respectively. The Governor's Office/State EOO may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement under 37.96 or 37.97, as applicable.

A written assurance must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

The required elements of a Conciliation Agreement for the Governor's Office are the following:

- (a) Must be in writing;
- (b) Address each cited violation;
- (c) Specify the corrective or remedial action to be taken within the stated period of time to come into compliance;
- (d) Provide for periodic reporting on the status of the corrective and remedial action;
- (e) Provide that the violation(s) will not recur; and
- (f) Provide for enforcement for a breach of the agreement.

Procedures for Effective Compliance

When it becomes known to the Governor's Office that a Conciliation Agreement has been breached, the State EOO may issue a Notification of Breach of Conciliation Agreement.

A Notification of Breach of Conciliation Agreement must:

- (a) Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;
- (b) Identify the specific provisions of the Conciliation Agreement violated;
- (c) Determine liability for the violation and the extent of the liability;
- (d) Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the CRC to file suit;
- (e) Advise the violating party of the right to request a hearing, and reference the applicable procedures in Section 37.52.

In such circumstances, the Governor's Office/State EOO must notify: (a) the grant making agency; and (b) the recipient or grant applicant, as applicable.

Sanction procedures when voluntary compliance cannot be achieved

The State will conclude that compliance cannot be secured by voluntary means under the following circumstances:

- (a) The grant applicant or recipient fails or refuses to correct the violation(s) within the time period established by the Letter of Findings, Notice to Show Cause, Initial Determination, Corrective Action Report ; or
- (b) The Governor's Office has not approved an extension of time for agreement on voluntary compliance, under 37.95(b)(1)(ii), and the Governor's Office:

- (1) Has not been notified, under 37.95(b)(3), that the grant applicant or recipient has agreed to voluntary compliance;
- (2) Has disapproved a written assurance of Conciliation Agreement, under 37.95(b)(4); or
- (3) Has received notice from the State EOO under 37.95(b)(2), that the grant applicant or recipient will not comply voluntarily.

If the Governor's Office concludes that compliance cannot be secured by voluntary means, the State must either:

- (a) Issue a Final Determination;
- (b) Refer the matter to the State of Oregon, Attorney General's Office with a recommendation that an appropriate civil action be instituted; or
- (c) Take such other action as may be provided by law.

A Final Determination must contain the following information:

- (a) A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- (b) A statement of those matters upon which the grant applicant or recipient and the State continue to disagree;
- (c) A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;
- (d) A statement of the grant applicant's or recipient's liability, and, if appropriate, the extent of that liability;
- (e) A description of the corrective or remedial actions that the grant applicant or recipient must take to come into compliance;
- (f) A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
 - (1) After the grant applicant or recipient is given the opportunity for a hearing, its WIA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
 - (2) The Governor's Office may refer the case to the CRC with a request to file suit against the grant applicant or recipient; or
 - (3) The Governor's Office may take any other action against the grant applicant or recipient that is provided by law;
- (g) A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in 37.112 through 37.115; and
- (h) A determination of the Governor's Office liability, if any, under 37.52.

DOCUMENTATION

9.1 Standards for corrective and remedial action when violations of WIA Section 288 or 29 CFR 37 are found

Refer to narrative under Standards for Corrective and Remedial Action

9.2 Corrective actions and corresponding time frames, including minimum time necessary to correct violations completely

The scope of the corrective action required will determine the duration of the period for the corrective action to take place, ending with restorative or prospective relief to the complainant. Respondents will be given not less than thirty days nor more than sixty days to carry out corrective actions voluntarily. Additional standards for establishing the scope and duration of corrective actions will be developed not later than June 30, 2001.

[Refer to Table 9-A.](#)

9.3 Provisions for retroactive relief (such as back pay) and prospective relief (such as training, communication, policy development) without use of federal funds in event of monetary relief requirement

Examples of provisions for retroactive and prospective relief are presented in administrative rule OAR 589-020-0110 and OAR 471-010-0070. Inability to use federal funds to accomplish either retroactive or prospective relief is provided for in the rules. Rules are based on current statute, as cited above and federal standards as defined at 29 CFR 37 and OMB circular A-87.

The basis for repayment without use of federal funds is based on WIA Section 184(d)(1):

(d) REPAYMENT OF AMOUNTS

- (1) **IN GENERAL** – Each recipient of funds under this title shall be liable to repay the amounts described in subsection (c)(1), from funds other than funds received under this title, upon a determination by the Secretary that the misexpenditure of funds was due to willful disregard of the requirements of this title, gross negligence, failure to observe accepted standards of administration, or a pattern of misexpenditure as described in paragraphs (2) and (3) of subsection (c). No such determination shall be made under this subsection or subsection (c) until notice and opportunity for a fair hearing has been given to the recipient.

9.4 Template for violators to report corrective actions taken

The State EOO in cooperation with the EOC and agency EOO with jurisdiction in a complaint of discrimination, shall require regular written reports of corrective actions taken by a respondent, as required by Notice of Final Action for a complaint. At a minimum, the report must contain the following information:

- Dates of the Initial Response, Notice of Final Action, any conference to negotiate retrospective or prospective relief, interim reporting dates (as

negotiated) and the date certain by which corrective action is to be completed

- Identify events of discrimination based on WIA Section 188 and the MOA
- Identify what corrective action has been identified to remedy the discriminatory behavior, program or procedure
- Identify what steps are being taken, will be taken, or have been taken to accomplish the goals of the corrective action
- State what elements of corrective action have not or will not be accomplished and the reasons

A) Attached – Template for Correction Actions Taken report

9.5 Sanction procedures (in steps and stages) and a table of sanctions to use when voluntary compliance cannot be achieved

Provisions for sanction procedures are established by administrative rule. The Governor reserves the right to impose monetary sanctions against a non-compliant respondent. The inability to use federal funds to accomplish either retroactive or prospective relief are provided for in the rules. Rules are based on current statute, as cited above and federal standards as defined at 29 CFR 37.

Refer to Table 9-A.

9.6 Copies of memoranda and other means of informing recipients of procedures for corrective action and sanctions in the event of non-compliance

B) Attached - Oregon Workforce Letter No. 3-01

XIV. GOVERNOR'S ASSURANCE

The Methods of Administration herein contained are designed to give a reasonable guarantee that all Oregon recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIA and CFR 29 Part 37.

Signed:

Theodore R. Kulongoski, Governor of Oregon