

VI WORKFORCE DEVELOPMENT BOARD POLICY DOCUMENT

Workforce System Guidance WIOA 205-15

TO: Virgin Islands Single State Workforce Development Area

SUBJECT: **DISCRIMINATION COMPLAINT PROCEDURES FOR THE VIRGIN ISLANDS SINGLE STATE LOCAL WORKFORCE AREA**

DATE: July 2015

Purpose: To implement the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act of 2014 (WIOA) which are contained in section 188 of WIOA.

References: Workforce Innovation and Opportunity Act of 2014 Section 188

Background: (a) (1) - For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975; on the basis of disability under section 504 of the Rehabilitation Act of 1973; on the basis of sex under title IX of the Education Amendments of 1972; or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving Federal financial assistance.

- (2) Prohibition of Discrimination regarding Participation, Benefits and Employment
- (3) Prohibition of Assistance for facilities for Sectarian Instruction or Religious Worship
- (4) Prohibition on Discrimination on Basis of Participant Status
- (5) Prohibition on Discrimination against Certain Non-citizens

Policy: Any individual covered by any of the groups as stated in Section 188 (a) (1) or with paragraphs (2) (3) (4) or (5) of WIOA who believes that he or she has been discriminated against, has the option of filing a written complaint either by him/herself or through a representative with VI Department of Labor – Administrative entity for WIOA, or directly with the Director of the Civil Rights Center (CRC), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

Procedures: Discrimination complaints under WIOA should be filed as directed. All vendors are required to display this information.

If you think that you have been subjected to discrimination under WIOA section 188 (a) (1) – financially assisted programs 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);

- The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 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.

Action of the Secretary

Whenever the Secretary finds that a State or other recipient of funds under this title has failed to comply with a provision of law referred in subsection (a) (1) or with paragraph (2), (3), (4) or (5) of subsection (a), including an applicable regulation prescribed to carry out such provision or paragraph, the Secretary shall notify such State or recipient and shall request that the State or recipient comply. If within a reasonable period of time, not to exceed 60 days, the State or recipient fails or refuses to comply, the Secretary may:

- (1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or
- (2) Take such other action as may be provided by law.

Action of the Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b) (1), or whenever the Attorney General has reason to believe that a State or other recipient of funds under this title is engaged in a pattern or practice of discrimination in violation of a provision of law referred to in subsection (a) (1) or in violation of paragraph (2), (3) (4) or (5) of subsection (a), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

Recordkeeping: all discrimination complaint procedures will be maintained and kept confidential for a period of three years.

LOCAL LEVEL COMPLAINT PROCEDURES

1. From the date of receipt, the State EO Officer has ninety (90) days to formally resolve the complaint.
2. The EO Officer will notify the charged party of the allegations filed by the complainant. The respondent has five (5) days to respond to the notice.
3. Within five (5) days of the EO Officer's acceptance of the response, the EO Officer must investigate the allegations by requesting additional information, reviewing files, and conducting on-site visits and interviews.
4. A period during which the recipient attempts to resolve the complaint and the methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in 29 CFR Part 37.76.
5. A hearing will be held with the EO Officer, a Hearing Officer appointed by VIDOL, the complainant, and the respondent to attempt to resolve the allegations filed by the complainant within ten (10) days of the close of the investigation. The Hearing Officer/EO Officer will render a determination within five (5) days of the hearing.
6. If the complainant is not satisfied with the decision, he or she may file an appeal with the Assistant Commissioner of Employment and Training or the Director of Training requesting an additional investigation or hearing. The Assistant Commissioner will render a decision within twenty-five (25) days.
7. If the complainant rejects the final decision, he or she will again be informed of the right to file with the CRC within thirty (30) days. The EO Officer will assist the complainant in preparing and submitting the Complaint Information Form to the CRC.

Upon receipt of the complaint, the Department of Labor will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed.

8. The following must be included:
 - (a) A written notice to the complainant acknowledging receipt of the complaint, and notice that the complainant has the right to be represented in the complaint process.
 - (b) A written statement of the issue(s) to the complainant which provides a list of the issues raised in the complaint and a statement of whether the DOL will accept the issue for investigation or reject the issue, and the reasons for each rejection.
9. A period for fact-finding or investigation of the circumstances underlying the complaint will occur.

10. A period during which the recipient attempts to resolve the complaint and the methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in 29 CFR Part 37.76.
11. A written Notice of Final Action will be provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:
 - (i) For each issue raised in the complaint, a statement of either the DOL'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
 - (ii) Notice that the complainant has a right to file a complaint with the 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.

These procedures must allow for alternative dispute resolution (ADR) and further provide that:

- The choice whether to use ADR or the customary process rests with the complainant;
- A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached.

In the event that an agreement is breached, the following rules apply:

- (i) The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach;
- (ii) The CRC must evaluate the circumstances to determine whether the agreement has been breached. If he/she determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the time deadline for filing such a complaint will be waived.
- (iii) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC as described in 29 CFR Part 37.71

These procedures must be published by all entities and service providers receiving funding under title I of the Workforce Innovation and Opportunity Act, including One-Stop partners.

PROCEDURES FOR FILING A COMPLAINT

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIOA or 29 CFR Part 37, may file a written complaint, either by him/herself or through a representative.

1. A complaint may be filed with either the Department of Labor (DOL)/WIOA or the Director, Civil Rights Center (CRC).
2. The complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the CRC Director may extend the filing time.
3. Each complaint must be filed in writing and must contain the following information:
 - (a) The complainant's name and address (or another means of contacting the complainant);
 - (b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
 - (c) A description of the complainant's allegations. This description must include enough detail to allow the CRC or the Department of Labor, as applicable to decide whether:
 - CRC or the Department of Labor, as applicable, has jurisdiction over the complaint;
 - The complaint was filed in time;
 - The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA or this part; and

The complainant's signature or the signature of the complainant's authorized representative must appear on complaint.

4. Complaints are filed by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the Department of Labor's EO Officer or from the CRC.
5. Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.
6. If a complaint is not within the jurisdiction of the Office of Equal Opportunity or the CRC, in not timely filed, or does not have apparent merit, the complainant will be notified in writing the reason(s) for the lack of jurisdiction, to include:
 - the basis for the complaint is not covered by the prohibitions set by 29 CFR Part 37;
 - The complaint was not filed within the prescribed 180-day time limit;or

The complaint is against an entity that is not a recipient of WIA Title I financial assistance as defined by 29 CFR Part 37