

ELEMENT EIGHT-COMPLAINT PROCESSING PROCEDURES (29 CFR § 38.54) – updated as of August 2019

PURPOSE

The State and its recipients are complying with the requirements of 29 CFR § 38.69 through 29 CFR § 38.85 regarding complaint processing procedures. The State has revised and published procedures for processing complaints alleging discrimination by any program or activities funded under the WIOA Title I. These procedures provide the complainant with the option to file in the automated complaint system, or on a paper form (provided in English and Spanish), or directly with the CRC Director, U.S. Department of Labor (DOL). OSPs are required to include complaint procedures which comply with the requirements of 29 CFR § 38.72.

NARRATIVE

Recipients that are required to do so (see 29 CFR § 38.73) have developed and published complaint procedures. (See 29 CFR § 38.72)

The State has issued a WIOA Nondiscrimination and EO policy which sets forth the complaint procedures for all OSPs and sub-recipients, and it includes the State’s Equal Opportunity Nondiscrimination Complaint Form. All recipients must comply with these procedures, which meet the requirements of 29 CFR § 38.70-38.78. Complaints may be filed at the federal level, the state level or at the local level. The agency EO Officers document each complaint filed that alleges discrimination on the bases set forth in 29 CFR § 38.41(c) on an EO Discrimination Complaint Log which is forwarded to the State EO Officer for review.¹ The Discrimination Complaint Log contains the name and address of the complainant, the basis of the complaint, a description of the complaint, the date the complaint was filed, the disposition, the date of the disposition, and any other pertinent information relating to the complaint. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.²

The agency EO Officers inform the State EO Officer about complaint investigations and submit the Discrimination Complaint Logs on a quarterly basis. Upon request from the CRC, the State EO Officer will provide the Discrimination Complaint Logs.

¹ “Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with the recipient that allege discrimination on the basis(es) of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity.” 29 CFR § 38.41(c).

² 29 CFR § 38.41(c)

At a minimum, a recipient's complaint processing procedures must provide for the issuance of a written Notice of Final Action within 90 days of the date on which the complaint is filed. (See 29 CFR § 38.72(a))

The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy provides for written Notice of Final Action within 90 days of the date on which the complaint is filed.

Initial, written notice to the complainant that contains an acknowledgment that the recipient has received the complaint, notice that the complainant has the right to be represented in the complaint process, notice of the rights contained in 29 CFR § 38.35, and notice that complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in 29 CFR §§ 38.4(h) and (i), 38.34, and 38.36. (See 29 CFR § 38.72(b)(1))³

The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy provides for the issuance of a written Notice of Receipt and whether or not the complaint will be accepted. The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy also provides that the complainant will be given notice of their right to be represented in the complaint process, notice of the rights contained in 29 CFR § 38.35, and notice that complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in 29 CFR §§ 38.4(h) and (i), 38.34, and 38.36.

A written statement, provided to the complainant, that contains a list of the issues raised in the complaint and, for each issue, a statement whether the recipient will accept the issue, and the reasons for each rejection. (See 29 CFR § 37.72(b)(2))

The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy ensures the complainant will receive a written statement, which lists the issues raised in the complaint, along

³ Part 38 requires that complaint processing procedures include, at a minimum:

“(iii) Notice of rights contained in § 38.35 [Equal opportunity notice/poster required text]; and

(iv) Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in §§ 38.4(h) and (i), 38.34, and 38.36.”

29 C.F.R. § 38.72(b)(1).

with a statement on each issue from the State EO Officer on whether it will accept the issue or the reasons for rejecting it.

A period of fact-finding or investigation of the circumstances underlying the complaint. (See 29 CFR § 37.72(b)(3))

The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy provides that, upon receipt of a complaint or information alleging discrimination, the recipient EO Officer will initiate an investigation or fact-finding of the circumstances underlying the complaint.

The period during which the recipient attempts to resolve the complaints. The methods available to resolve the complaint must include alternative dispute resolution (ADR). (See 29 CFR § 37.72(b)(4) and (c))

The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy provides that the recipient EO Officer will contact the complainant in writing after receipt of the complaint to determine the complainant's willingness to mediate using Alternative Dispute Resolution (ADR) procedures of recipient.

A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains, for each issue raised in the complaint, either a statement of the recipient's decision on the issue raised in the complaint and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue. (See 29 CFR § 38.72(b)(5)(i))

The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy assures that complainants receive written Notice of Final Action within 90 days of the date on which the complaint was filed. The notice contains, for each issue raised, either a statement of recipient's decision on the issue raised in the complaint and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue.

Notice that the complainant has a right to file a complaint with CRC Director, USDOL, within 30 days of the date on which the Notice of Final Action is received⁴ if the complainant is dissatisfied with the recipient's final action on the complaint. (See 29 CFR § 38.72(b)(5)(ii))

The Idaho WIOA Equal Opportunity and Nondiscrimination Complaint Policy provides that the Notice of Final Action also contains information as to the complainant's right to file a complaint with the CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with recipient's final action on the complaint.

⁴ The pertinent CFR provisions require "[n]otice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is **received** if the complainant is dissatisfied with the recipient's final action on the complaint." 29 C.F.R. § 38.72(5)(ii) (emphasis added). Use of "issued" date is inconsistent with the regulation.

Provide that if, by the end of 90 days from the date on which the complainant filed the complaint, the recipient has failed to issue a Notice of Final Action, the complainant or the complainant's representative may file a complaint with the CRC within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the CRC within 120 days of the date on which the complaint was filed with the recipient. (See 29 CFR 38.76)

29 C.F.R. § 38.76.

The Idaho WIOA Equal Opportunity and Discrimination Complaint Policy provides that if there is no final resolution of the complaint within 90 days of the date the complaint is filed, the complainant or the complainant's representative are notified that a complaint may be filed with the CRC within 30 days of the expiration of the 90 day period.

Recipients follow the established procedures.

Consistent with 29 CFR § 38.69 through 29 CFR § 38.72, the State will maintain compliance according to the Idaho WIOA Equal Opportunity and Discrimination Complaint Policy, which provides for prompt and equitable resolution of complaints and includes the following elements:

- Initial Written Notice;
IDAPA 09.01.60.012(8) – “The State EO Officer shall send written notice to the complainant stating that the complaint has been received.”
- An Acknowledgment of Receipt;
IDAPA 09.01.60.012(8) – “The State EO Officer shall send written notice to the complainant stating that the complaint has been received.”
- Notice of Right to Representation;
IDAPA 09.01.60.012(8)(b) – “The notice must advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice.”
- Issues raised in complaint;
IDAPA 09.01.60.012(8)(a) – “The notice must list the issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection.”
- A period for Fact-Finding that includes ADR; and
IDAPA 09.01.60.012(8)(b) – “The Notice must also give the complainant the right to choose between an ADR process or a hearing.”

- A Written Notice of Final Action.

IDAPA 09.01.60.012(11) – “The Department shall review the recommendation of the hearing officer and shall issue a Notice of Final Action within ninety (90) days from the date the discrimination complaint was filed.”

Each recipient is required to comply with the Equal Opportunity and Discrimination Complaint Policy process for resolving complaints in connection with WIOA Title I programs operated by recipients. Utilizing this complaint procedure, each WIOA Title I recipient shall provide for local level processing of complaints. Recipients will be monitored to ensure they are complying with this requirement.