



## **PROCEDURE FOR RESOLVING COMPLAINTS OF A NON-CRIMINAL AND EQUAL EMPLOYMENT OPPORTUNITY ("EEO")**

### **I. INTRODUCTION**

The Workforce Innovation and Opportunity Act, also known as WIOA, requires every Local Area to establish a Procedure for Resolving Complaints of a Non-Criminal and Equal Employment Opportunity (EEO) Nature. These complaints may be filed by applicants, participants (adult, youth, displaced), service providers or collaborating entities, employees and partners of the Single Management Center and those individuals who understand their rights under WIOA and its regulations have been violated.

The Local Workforce Development Area establishes this procedure to create uniformity in the processes in which complaints alleging discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief may be filed and on the basis of beneficiaries only, citizenship, or participation in programs subsidized under WIOA, pursuant to Section 188(a)(1)(2)(3) and 181(c)(1) of the Act and regulations. subpart 20 CFR part 667.600 and 29 CRF 38; as well as complaints for violations of Contracts or Agreements or those actions taken for negative audits, monitoring reports or investigations and/or violations of the WIOA Act.

### **II. DEFINITION OF TERMS**

For purposes of this proceeding, the following terms shall have the meanings set forth below:

1. **WIOA** – Workforce Innovation and Opportunity Act, signed on July 22, 2014, by President Barack Obama. "Workforce Innovation and Opportunity Act" - (PC 113-128), known in Spanish as the Investment for Workforce Development Act, passed on August 7, 1998.
2. **Local Workforce Development Area** - Geographical area designated by the Governor, comprising the municipalities of the Mayagüez-Las Marías Local Workforce Development Area where WIOA programs are implemented and governed by a Local Investment Board in cooperation with the Board of Mayors of the Mayagüez-Las Marías Local Workforce Development Area.
3. **Mayagüez-Las Marías Local Labor Development Area**, an administrative entity designated by the Board of Mayors to serve as a sub-recipient of WIOA funds and to assist the Board in the implementation and operation of WIOA-funded programs.
4. **Equal Employment Opportunity Officer** - official or employee of the Local Labor Development Area designated by the Executive Director to attend to complaints of a non-criminal nature, for discrimination in the first instance and try to resolve them informally. The Local Employment Development Area may designate an Equal Employment Opportunity Officer to handle complaints filed by employees of the Local Employment Development Area or job applicants and another officer to handle other complaints filed for violation of these provisions.
5. **Examining Officer** - A person appointed by the Board of Mayors to preside over and hold formal hearings related to the complaints filed in accordance with this procedure. Such designation shall not fall on any employee or official of the Mayagüez-Las Marías Local Labor Development Area or of such municipalities and must be licensed by the Puerto Rico Bar Association.

### III. INITIATION OF THE PROCEDURE TO FILE COMPLAINTS

Any individual or entity who believes that he or she or any specific class of individuals has been or is subject to discriminatory actions prohibited under WIOA may file a written complaint, by himself or through a representative with the Local Workforce Development Area or the Director of the DRC in Washington, D.C., within 180 days of the alleged discriminatory act. However, this term is not fatal, so the term could be extended for just cause. This term does not create a defense for the defendant. See attached Notice to Counsel Individuals Who Feel They Have Been Discriminated Against Under WIOA.

#### **IV. CONTENT OF THE COMPLAINT**

The information that the complaints must contain is the following:

1. Complainant's name, telephone number and address
2. Identity of the person or entity against whom the complaint is made.
3. Description of the allegations. This description must include sufficient detail for the Local Workforce Development Area to determine:
  - a. If the Local Workforce Development Area has jurisdiction
  - b. If you filed on time
  - c. Whether the complaint has apparent merit, in other words, to determine whether the allegations in the complaint, if true, would violate any of the WIOA's anti-discrimination and equal opportunity provisions; y
  - d. Signature of the complainant or his authorized representative.

#### **V. PROCEDURAL ELEMENTS OF THE COMPLAINT PROCEDURE**

1. A Notice of Final Action (written) will be issued within 90 days of the complaint being filed.
2. The Initial Written Notice to the complainant stating that:

- a. The Local Area of Labor Development has received the complaint;
  - b. You have the right to be represented in the proceedings.
3. Another letter will also be issued (or in the initial one) where the following information is included:
  - a. List of the controversies raised in the complaint;
  - b. For each controversy, the determination to accept or reject and the reason for each rejection.
4. There will be a period of discovery, evidence or investigation into the circumstances in which the complaint arises.
5. The period of time in which the Local Area of Labor Development expects to resolve the complaint will be specified. Methods of resolving it should include "alternative dispute resolution" (ADR).
6. A Notice of Final Action Brief will be issued (within 90 days of the complaint being filed), which must include the following:
  - a. Decision of the Local Workforce Development Area and an explanation of the reasons for the decision.
  - b. Description of how the dispute was resolved.
  - c. The right to file an appeal with the CRC within 30 days of notification of the NAF, if the complainant disagrees with the decision.
7. Alternative Dispute Resolution (ADR):
  - a. The decision to use the "ADR" is up to the complainant. If the complainant elects to resolve his or her grievance using the "ADR" procedure, the Equal Opportunity Officer must immediately forward the grievance to the State Officer with a copy to the Local Area Executive Director.
  - b. The State Officer will assign an intervenor and coordinate a mediation section.
  - c. If the procedure is successful, a mediation agreement will be filed at the end of the session and signed by the parties involved.
  - d. If mediation is unsuccessful, the complainant will be advised of its rights to file its original complaint with USDOL/CRC within thirty

(30) days after the Notice of Final Action is issued.

- e. Likewise, in the event that a mediation agreement is not complied with, the injured party may file a complaint with USDOL/CRC within thirty (30) days of becoming aware of non-compliance, expressly indicating the alleged facts about the non-compliance for the determination of the Director of the CRC.
- f. It should be indicated that in the event that the mediation agreement is not complied with, the defendant may file his or her original claim with the CRC and the Director of the CRC will revoke the filing period in these cases.
- g. The ADR procedure is not appropriate in cases involving legal issues, public policy, novel matters, or impacting protected groups.

## **VI. PROCESSING OF COMPLAINTS OF A NON-CRIMINAL NATURE**

1. It will be the responsibility of each Local Director and/or the Single Management Center and the Service Providers to receive written complaints and forward them to the Executive Director of the Mayagüez-Las Marías Local Labor Development Area within two (2) days of receipt of the same. Each Local Office Director shall prepare and include a report on the relevant facts of the complaint with recommendations for the resolution of the complaint.
2. Once a written complaint is received in the Office of the Executive Director of the Local Labor Development Area, he or she will refer it to the Equal Opportunity Officer (OIO), who will proceed to open a file in the complainant's name and assign a case number.
3. The Equal Opportunities Officer (OIO) will perform the following functions:
  - a. It will ensure that the Service Providers have their own complaint procedure or that they adopt the one established by the Mayagüez-Las Marías Local Labor Development Area.
  - b. If it is a complaint against a Service Provider, you must request the respondent to indicate if you have previously gone to said entity and the action taken in your case.
  - c. If there are complaint procedures by the Service Provider; if the participant has not used it, it will return the case to the Provider

giving it the opportunity to resolve it, following its established complaint procedure.

- i. If the Service Provider has a Collective Agreement, in this case, if there is any violation of labor regulations, the complaint may be submitted to arbitration processes if the collective agreement so establishes.
  - d. He must study the complaint to familiarize himself with the situation involved.
  - e. The Equal Opportunities Officer shall hold an informal hearing with the parties, within five (5) days of receipt of complaints, to discuss the situation and try to reach an agreement or settlement of the case informally.
  - f. If an agreement has been reached with the parties, a report shall be prepared stating, through the signature of the complainant, that he or she agrees with the manner in which his or her complaint was resolved.
  - g. If the complaint is resolved informally, the case will be closed.
  - h. Within twenty-four (24) hours of the informal hearing of the complaint that could not be satisfactorily resolved, the Equal Opportunity Officer shall refer the complaint to the Examining Officer for holding and presiding over a formal hearing in the case.
4. Once the Examining Officer receives the file of the formal complaint, he or she shall notify all parties. The notice will include the following information:
  - a. Date and time of view
  - b. Place of view
  - c. Purpose of the view
  - d. The convenience of attending the hearing

Procedural rights such as: the right to be represented by a lawyer or any other person of their choice, against cross-examination and to present witness and/or documentary evidence in their favor.

  - e. The right or opportunity to amend the complaint prior to the hearing.
5. Notifications must be made no less than seven (7) days prior to the date

set for the hearing, which must be held within thirty (30) days after the complaint is filed.

6. If any of the parties is interested in the suspension of any hearing, they must file a written request to that effect, at least three (3) days before the date set for the hearing. A copy of such a request shall be sent to the other party.
7. Any party who has requested the suspension of a hearing must appear before the Examining Officer on the date and time set for the hearing, unless he or she has previously received notification from the Examining Officer granting him or her the requested suspension. If the requested suspension has not been granted, the Examining Officer may hold the hearing.
8. At any formal hearing held, the Examining Officer shall guarantee to all parties the following:
  - a. Opportunity for a hearing.
  - b. Written notice of the day, place and time of the hearing.
  - c. The right to attend the hearing, alone, accompanied and/or represented by a lawyer or any other representative of his/her choice.
  - d. The right to hear all witness evidence and to see any documentary evidence presented at the hearing.
  - e. The right to cross-examine and cross-examine witnesses and to refute the evidence presented.
  - f. The right to have any determination made by the Examining Officer written and based on the oral and documentary evidence presented at the hearing.
  - g. The right to present all witness and documentary evidence pertinent to the complaint.
  - h. The right or opportunity to amend the complaint prior to the hearing.
  - i. Notice of Right to Appeal at the Workforce Development Program and Department of Economic Development level
9. For any hearing that takes place before the Examining Officer, there must be a record, whether it is taken in shorthand, by tape recorder or by means of stenotype.

10. The Examining Officer shall begin the hearing by summarizing the disputes involved in the complaint and explaining the manner in which the hearing will be conducted.
11. The complainant shall begin the presentation of evidence at the hearing. Once the presentation of the plaintiff's evidence has been completed, the defendant will present his evidence. It is provided, however, that the Examining Officer may alter this order, whenever he deems it convenient depending on the circumstances of the case.
12. All parties appearing to testify at any hearing shall take an oath before the Examining Officer. Once the witnesses have been sworn, they shall leave the session hall until the time comes for each witness to testify, unless the parties stipulate that the witnesses, or one of them, remain in the session room while others testify.
13. The Examining Officer shall be obliged to issue his decision within fifteen (15) days following the date of the hearing, unless the parties in writing and with just cause, request that said term be extended.
  - a. The complainant may appeal to the State Level (PDL), if a decision was not issued within sixty (60) days from the date of registration of the complaint.
14. It shall be the responsibility of the Examining Officer to send a copy of the decision to the Executive Director, which shall contain the following information:
  - a. Date and place of the hearing, and the parties and witnesses who appeared at the hearing.
  - b. The controversy or controversies that gave rise to the complaint, set out in a clear and concise manner.
  - c. Findings of fact based on the record of sight.
  - d. The conclusions of law.
  - e. Resolution based on the determinations of fact and conclusions of law.
  - f. The Examining Officer's recommendation shall be adopted, modified or rejected by the Board of Mayors and shall constitute a final and final decision of the controversy at the Local Workforce Development Area level.
15. A final decision shall be issued no later than sixty (60) days from the

date on which the complaint was filed.

16. The decision issued by the Board of Mayors, in accordance with the aforementioned alternatives, will be final. **If the parties do not agree with them, they may request a review within ten (10) days following their receipt to the Department of Economic Development (DDEC) through its Labor Development Program (PDL), with a certified copy to the Mayagüez-Las Marías Local Labor Development Area.**

## **VII. CONFIDENTIALITY RULES IN THE PROCESSING OF COMPLAINTS**

The Equal Opportunities Officer (OIO) must guarantee confidentiality in the handling of information, the content of the facts of the complaints and any evidence that is collected during the process of resolving the complaint.

The complaint and its content may not be disclosed to third parties unless there is an authorization from the complainant and/or information is requested from the relevant authority.

## **VIII. COMPLAINT PROCEDURE FOR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, DISABILITY, POLITICAL AFFILIATION OR BELIEF, AND IN THE CASE OF BENEFICIARIES ONLY, CITIZENSHIP OR PARTICIPATION IN SUBSIDIZED PROGRAMS UNDER THE WIOA (SECTION 188 AND 29 CFR PARTS 38 AND 20 CFR 667.600)**

1. The complainant may file a complaint with the Program-level Service Provider, the Equal Opportunity Officer ("EEO"), or at the discretion may file the complaint directly with the Director of the Directorate for Civil Rights (DCR). The Local Workforce Development Area will assist in completing the DCR/DOL complaint information sheet and *Privacy Act consent* and submitting it to DCR.
2. If the complainant wishes to send it directly, he or she may do so to the following address:

**U.S. DEPARTMENT OF LABOR  
DIRECTORATE OF CIVIL RIGHTS  
200 CONSTITUTION AVENUE N.W. ROOM N-4123  
WASHINGTON, D.C. 20210**

3. If you choose to file the complaint in writing with the Opportunity Officer of the Local Workforce Development Area.
  - a. The Equal Opportunities Officer will conduct an investigation of the complaint filed and draw up a report on findings.
  - b. The Equal Opportunities Officer shall hold an informal hearing within thirty (30) days of filing. If not resolved informally, the Equal Opportunities Officer shall immediately refer the complaint to an Examining Officer.
  - c. The Examining Officer shall hold a formal hearing and make a resolution of the complaint within thirty (30) days of filing the complaint.
  - d. The recommendation of the Examining Officer may be notified, amended or rejected by the Board of Mayors.
4. The complainant may appeal the decision to the Director of the Office for Civil Rights (CRC) U.S. Department of Labor, 200 Constitution Ave. N.W. Room 4123, Washington D.C. 20210, immediately if he or she disagrees with the decision or has not received the decision from the Local Workforce Development Area within ninety (90) days of filing the complaint.

**IX. PENALTIES**

The Examining Officer determines a violation of Section 188 WIOA and 29 CFR 38, may recommend the following penalties:

1. Pay lost or lost wages/benefits due to the discriminatory action (federal funds cannot be used)
2. Providing the service that was denied in a discriminatory manner.
3. Remove any discriminatory information from the complainant's file.
4. Development and publication of equal opportunity policies.
5. Equal opportunity training for counselors, interviewers, office staff,

among others.

6. Formal monitoring of follow-up, to guarantee compliance with the commitments of equal opportunity.

**X. POLICY TO ADDRESS COMPLAINTS FOR KNOWN OR SUSPECTED CASES OF FRAUD, MISUSE, ABUSE OF FUNDS OR ANY OTHER CRIMINAL ACTIVITY**

1. Any information or complaints involving fraud, abuse, misuse, or any criminal activity will be reported immediately to the Office of the Executive Director or you may report it directly to the following address:

**DEPARTMENT INCIDENT REPORTING SYSTEM  
DOL OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS ROOM S-5514  
200 CONSTITUTION AVENUE NW  
WASHINGTON DC 20210  
HOT LINE 1-800-347-3756**

**XI. ADMINISTRATIVE PROVISIONS**

**1. Obligations of the Mayagüez~Las Marías Local Labor Development Area**

- a. Make public the name of the "EEO", its position, address, telephone number.
- b. Ensure that EEO identity and contact information appears in all internal and external communications about "EEO."
- c. Allocate sufficient personnel and resources to the EEO and provide necessary support from senior management to ensure compliance with WIOA's anti-discrimination and equal opportunity provisions.
- d. Ensure that the EEO and its personnel have been given the opportunity to receive the necessary and appropriate training to maintain their competence.

**2. Small Recipient Obligations (Less than fifteen employees)**

- a. Although they do not need to designate an EEO, they must designate an individual who will be responsible for developing and publishing the complaint procedures, as well as processing the

complaint, per Federal Regulation 38.32, 38.72-38.75.

### **3. Obligations of EEO Service Providers**

- a. Service Providers will be governed by this procedure in accordance with the Federal Civil Rights Act. The obligation to ensure compliance by service providers rests with the Governor and the Local Workforce Development Area. CFR 38.33

### **4. Dissemination and Communication**

- a. The Local Workforce Development Area must provide ongoing notice that it will not allow discrimination on any basis or ground prohibited by law and on equal opportunity, as provided in sections 38.36 and 38.34. The notification must be provided to:
  - i. Applicants, Participants
  - ii. Job Seekers and Employees
  - iii. Professional unions or organisations with collective agreements or professional agreements with the Local Labour Development Area.
  - iv. Sub-Vessels
  - v. Members of the general public, including the specific wording that the anti-discrimination notice must contain (29 CFR 38.34).
  - vi. Service Providers.

### **5. EEO POLICY PUBLICATION (CFR 38.34 – 38.39)**

- a. Prominently in public places (e.g., Edict Boards, "website").
- b. Disseminate in internal memos and other written and electronic communications.
- c. Participant and employee handbooks, either paper or electronic
- d. Make them accessible to each participant and make them part of the participant's file.
- e. The "policy" shall provide effective communication in appropriate formats for those with disabilities and persons with limited language understanding. Provide information in multiple languages and in different forms, including formatting for those

who are visually impaired. In such cases, it must be part of the participant's record.

- f. The notification (poster) must contain the specific language described in the regulation (38.35).

## **6. DISPOSITION OF FILES**

- a. The files will be arranged as follows:
  - i. For a period of not less than five (5) years from the close of the applicable program year:
    1. The records of eligible and eligible registered applicants, completed participants, employees, and applicants by employment and;
    2. Any other documents required under Section 38.43 or by the Director of Civil Rights.
    3. Records generated by complainants and actions taken on the complaints shall be maintained for a period of not less than three (3) years from the date of resolution of the complaint.

## **7. ELIGIBILITY TO SERVE AS AN EEO**

- a. The designated Officer shall be required to meet the following requirements:
  - i. High-level employee in the company;
  - ii. Depending on the size of the business, the number of Title I-B programs and activities of applicants/participants, the EEO may be assigned other responsibilities. However, the other responsibilities may not create a conflict of interest or appearance of conflict with the responsibilities of the "EEO".

## **8. RESPONSIBILITIES OF AN EEO**

- a. The EEO Officer shall have the following responsibilities:
  - i. Coordinate the obligations of the recipient on anti-discrimination and equal opportunity.
  - ii. Liaison with the Center for Civil Rights in Washington, DC.

- iii. Monitor and investigate the activities of the recipient and entities that receive Title I-WIOA funds from the recipient, to ensure that the recipient and subrecipients do not violate anti-discrimination and equal opportunity obligations under WIOA.
- iv. Review the recipient's policies to make sure they do not discriminate.
- v. Develop and publish procedures for processing anti-discrimination complaints and ensure that they are complied with.
- vi. Report directly to the Executive Director of the Local Workforce Development Area on this matter.
- vii. Receive training, through the Local Area of Labor Development Mayagüez-Las Marías to maintain their competence.
- viii. Ensure the development and implementation of the Nondiscrimination *Plan*

## XII. VALIDITY

This procedure will come into force immediately after its approval.

Approved by:

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José A. Justiniano Rodríguez  
Local Board President

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Date



## ANNEX

### WHAT TO DO WHEN YOU FEEL YOU HAVE BEEN DISCRIMINATED AGAINST UNDER WIOA~TITLE I-B

File a complaint within 180 days from the date of the alleged violation with the EEO; or file it at the following address:

**The Director Civils Right Center  
U.S. Department of Labor  
200 Constitution Avenue NW  
Room N-4123  
Washington, DC 20210**

If you have filed a complaint with the Local Workforce Development Area, you must wait until the Notice of Final Action (NAF) is issued or until 90 days have passed since the complaint has been filed, without the Local Workforce Development Area having issued the NAF (no exhaustion). However, it must be filed with the CRC within 30 days from the 90-day deadline, that is, within 120 days from the filing of the original complaint with the Local Area of Labor Development.

If the Local Workforce Development Area issues a NAF of the complaint, but the complainant disagrees with the resolution, it may file the complaint with the CRC within 30 days from the date it received the NAF.