

	<b>West Central Region Local Policy</b>	
	<b>Subject:</b> Nondiscrimination and Equal Opportunity (EO) Corrective Actions/Sanction Policy	<b>Release Date:</b> 9/25/19
	<b>Reference:</b>	<b>Revision:</b>

This policy is written to convey the Workforce Development Board of Western Missouri’s (WDB) standard for corrective actions and sanctions to be applied when violations of the Workforce Innovation and Opportunity Act’s (WIOA) nondiscrimination and equal opportunity provisions, Section 188 or 29 CFR Part 28 are found. These standards apply to any entity to which financial assistance under WIOA Title 1 is extended directly or through another recipient.

The responsibilities of the WIOA Title I-financially assisted entities can be found at 29 CFR Part 28. In compliance with these regulations, Missouri has established and adhered to a Nondiscrimination Plan (NDP), [Missouri Nondiscrimination Plan](#), which further details the responsibilities of Missouri WIOA recipients with regard to equal opportunity and nondiscrimination.

Whenever a compliance report, complaint, or any other information suggest a possible failure to comply with 29 CFR Part 28, the state’s nondiscrimination plan, or WDB local policies, analysis and review will be conducted to determine whether a true violation exists. If the determination of noncompliance is made during an EO monitoring review, every effort will be made to provide technical assistance to correct the violation, including posting EO notices or removing comment from a participant’s file.

Corrective actions that cannot be resolved during the monitoring review will be part of the monitoring report. The subrecipient will have the appropriate amount of time to respond to the findings and correct any violations found. The local Equal Opportunity (EO) Officer will follow up to ensure that corrective action has occurred. Extensions may be granted.

When EO violations are found during the course of a complaint investigation, those issues will become part of the EO Officer’s finding of fact. Depending on the severity and extend of the violation, technical and/or programmatic corrective actions may be suggested. Corrective actions can also include “make-whole” provisions such as retroactive relief (e.g. back wages or benefits) and prospective relief (e.g. change of policy). A recipient’s response must contain assurances and/or plan to attain compliance within thirty (30) days of issuance of investigative report. The EO office will follow up and monitor the corrective action within 30 days. Extensions may be granted.

A Notice to Show Cause may be issued if there is a lack of response to findings of noncompliance or a failure to implement corrective actions indicated in a recipient’s response. The Notice to Show Cause should detail why enforcement proceedings or sanctions should not

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begin. This notice should also include the corrective action required and the ways to correct the noncompliance. The recipient will have 30 days to respond to the notice.

A lack of response or a partial response to the Notice to Show Cause will be sent to the state EO officer for determination of appropriate sanctions. Sanctions can include, but are not limited to, reparation for discriminatory practices, establishment of policies, and removal of participants from sites refusing to implement corrective actions, and legal action.

### **Corrective Actions/Sanctions**

Any recipient who fails to comply with the regulations and provisions as described in WIOA Section 188 and/or 29 CFR Part 28 is subject to corrective action and remedial actions designed to correct each violation. This action is necessary when a violation is identified because of a discrimination complaint, a monitoring review, or both a monitoring review and a discrimination complaint.

The following steps should be completed:

Identify the violation:

- Technical Violations- Examples include failure to include the required language in an assurance or failure to include taglines in communications.
- Discrimination Violations- Examples include findings of disparate treatment, disparate impact, and/or failure to provide reasonable accommodations.

Determine the appropriate corrective action:

- The action taken should be appropriate and reasonable given the violation that has occurred.
- Examples include –
  - Technical Violation
    - Violation – Failing to include the tagline in a communication.
    - Corrective Action – Re-issue the communication with tag lines included.
  - For discrimination violations, the appropriate corrective action would be to provide make-whole relief
    - Make whole relief for back pay- The victim (s) is entitled to be made whole for any loss of earnings suffered because of a discriminatory

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practice. The amount of money received shall be equal to what they would have earned (plus compound interest) had the discrimination not occurred.

- Make whole relief for discrimination for failing to place an individual in a training program – the victim is entitled to an immediate and unconditional offer of placement into a training program that he/she would have been placed in had it not been for the discrimination.
- Document all corrective actions and make sure prospective relief plans are being maintained.
  - Where a technical violation has been (or can be) corrected immediately, a written agreement or assurance will be provided to document the corrective action taken and the prospective relief that is planned. The following shall be included:
    - Corrective actions must be designed and documented to correct each violation.
    - For each corrective action, a timeframe must be established by the EO Officer to determine the minimum time necessary to correct the violation.
    - For each corrective action, a timeframe will be established by the EO Officer for a follow up monitoring to ensure that the corrective and remedial actions are being taken.
- Example corrective action plan for failing to include a tag line:
  - Explanation that the communication did not have the tag line.
  - Time frame for reissuing the communication if it has not yet been reissued.
  - Example of prospective relief planned to ensure that all future communication will include the required tagline as follows: changing the policy, practice, or procedure that allowed for the violation; and developing a new policy communicating the change in the policy.
  - Educating those responsible for implementing the revised procedures.
- In the case of a more serious violation, or of a deficiency that cannot be corrected immediately, a detailed written assurance, or Conciliation Agreement shall be negotiated. This agreement must be in writing, contain a description of each violation, specify the corrective action or remedial action needed to come into compliance, be sufficient in scope to ensure the violation(s) will not reoccur, institute periodic reporting by the recipient on the status of the corrective or remedial action, and institute enforcement procedures to be applied if the agreement is breached.

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### Impose Sanctions

- When all attempts have been made to provide assistance to achieve voluntary correction of a violation have failed, or it is apparent that the recipient failed or refused to correct the violation within the timeframe established, sanctions will be imposed. Sanctions are the judicial enforcement actions taken, including suspending, terminating, or denying funding, when appropriate corrective actions are not taken to comply with WIOA regulations.
- The following procedures will be taken:
  - List the measures taken to achieve voluntary compliance up through the point when sanctions are imposed.
  - Explain that the severity of the noncompliance will determine the sanctions imposed.
  - Provide a table or listing of the potential sanctions that may be imposed.
  - Detail the notification process including the rights of the respondent, time frames involved, and provisions for a hearing.
  - Identify the individuals who have the responsibility for carrying out various steps in the sanction process and the role of the State EO Officer, Local EO Officer, and the WDB Executive Director in the process.

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**Non-Compliance, Corrective Action, and Sanction Guidelines**

<b>Area of Non-Compliance</b>	<b>Corrective Action</b>	<b>Pre-Sanction/Sanction</b>
Policies or procedures which 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 WIOA	Technical Assistance  Elimination or modification of policies, practices, and procedures, which have been found to be discriminatory.	Pre-Sanction: Warning of noncompliance; Recommendation of reduction in funding  Sanction: Reduction of Funding
Programs, activities, or services that are inaccessible to disabled or limited English-speaking individuals	Technical Assistance  Identification of inaccessible features and medication of inaccessible features within a time frame specified by the WDB/EO Officer	Pre-sanction: Warning of noncompliance Reduction in funding; Disallowance of costs in inaccessible programs, activities, or services.  Sanction: Elimination of funding
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	Acquisition of technical assistance materials.  Production of such a document within a time period specified by the WDB/EO Officer.	Pre-Sanction: Warning of noncompliance  Sanction: Reduction of Funding
Policies, practices, or procedures which are not in compliance with Section 188, 29 CFR Part 38, or other civil rights legislation	Acquisition of technical assistance materials.  Prompt elimination or modification of non-compliant policies, practices, and procedures within a time period specified by the WDB/EO Officer.	Pre-Sanction: Warning of noncompliance; Reduction of Funding  Sanction: Elimination of Funding
Non-existence of a staff analysis by race, sex, age, and other categories specified by the WDB	Completion of staff analysis within 1 month of receipt of noncompliance notice.	Pre-Sanction: Warning on noncompliance  Sanction: Recommendation of reduction of funding

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Lack of implementation of procedure for resolving complaints alleging a violation of the WIOA, or relating to terms and conditions of employment	Obtain technical assistance and take necessary steps to achieve compliance per timeframe set by WDB/EO Officer.	Pre-Sanction: Warning on noncompliance Suspension of federal financial assistance. Sanction: Discontinue federal financial assistance.
Service provider procedures which are not in compliance with 20 CFR Part 38	Obtain technical assistance and take necessary steps to achieve compliance per timeframe set by WDB/EO Officer	Pre-Sanction: Warning on noncompliance Suspension of federal financial assistance. Sanction: Discontinue federal financial assistance.
Failure to comply with equal opportunity directives issued by Governor's liaison, the state EO Officer or the local EO Officer or WDB Executive Director as designees, in regard to applicable laws and regulations.	Take prompt action to comply within a time frame specified by the state and local procedures	Pre-Sanction: Warning of noncompliance Sanction: Discontinue federal financial assistance
Failure to carry out oversight responsibilities by monitoring equitable service performance of its subcontractors	Requires immediate implementation of oversight and written report of the results to the state EO officer within 3 months of the receipt of noncompliance	
Failure to collect and maintain records as required in 29 CFR Part 38	Take prompt action to comply within a time frame specified by the state and local procedures.	Pre-Sanction: Warning of noncompliance; suspension of federal financial assistance Sanction: Discontinue federal financial assistance