Subpart E—Federal Procedures For Effecting Compliance

§37.110 What enforcement procedures does the Department follow to effect compliance with the non-discrimination and equal opportunity provisions of WIA and this part?

(a) Sanctions; judicial enforcement. If compliance has not been achieved after issuance of a Final Determination under §§37.99 and 37.100, or a Notification of Breach of Conciliation Agreement under §§37.102 through 37.105, the Secretary may:

(1) After opportunity for a hearing, suspend, terminate, deny or discontinue the WIA Title I financial assistance, in whole or in part;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(3) Take such action as may be provided by law.

(b) Deferral of new grants. When proceedings under §37.111 have been initiated against a particular recipient, the Department may defer action on that recipient’s applications for new WIA Title I financial assistance until a Final Decision under §37.112 has been rendered. Deferral is not appropriate when WIA Title I financial assistance is due and payable under a previously approved application.

(1) New WIA Title I financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New WIA Title I financial assistance does not include assistance approved before the beginning of proceedings under §37.111, or increases in funding as a result of changed computations of formula awards.

§37.111 What hearing procedures does the Department follow?

(a) Notice of opportunity for hearing. As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director must include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) Complaint; request for hearing; answer. (1) In the case of noncompliance that cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement is considered the Department’s formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges, 800 K Street N.W., Suite 400, Washington, DC 20001.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer must specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement will have the effect of a denial. Findings of fact not denied are considered admitted. The answer must separately state and identify matters alleged as affirmative defenses, and must also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights Division, Room N-2464, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington DC 20210.

(4) (i) The failure of a grant applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, waives the right to a hearing; and

(ii) Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement are
§37.112

What procedures for initial and final decisions does the Department follow?

(a) Initial Decision. After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties by certified mail, return receipt requested.

(b) Exceptions; Final Decision. (1) Final decision after a hearing. The initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Secretary serves notice that he or she will review the decision.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Secretary within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Secretary no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Secretary may, within 30 days of the expiration of the time for filing exceptions, on his or her own motion serve notice on the parties that the Secretary will review the decision.

(vii) Final Decision and Order.

(A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary has served notice on the parties that he or she will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) Any case reviewed by the Secretary under this paragraph must be decided within 180 days of the notification of such review. If the Secretary fails to issue a Final Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.

(2) Final Decision where a hearing is waived.

(i) If, after issuance of a Final Determination under §37.100 or Notification
of Breach of Conciliation Agreement under §37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in §37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient’s failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

(3) Final agency action. A Final Decision and Order issued under §37.112(b) constitutes final agency action.

§ 37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?

Any action to suspend, terminate, deny or discontinue WIA Title I financial assistance must be limited to the particular political entity, or part thereof, or other recipient (or grant applicant) as to which the finding has been made, and must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIA Title I financial assistance will become effective until:

(a) The Director has issued a Final Determination under §37.100 or Notification of Breach of Conciliation Agreement under §37.104;

(b) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or under the nondiscrimination and equal opportunity provisions of WIA or this part;

(c) A Final Decision has been issued by the Secretary, the Administrative Law Judge’s decision and order has become the Final Decision of the Secretary, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Decision of the Secretary, under §37.112(b); and

(d) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

§ 37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?

When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

(a) The ability to comply with these regulations; and

(b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIA.

§ 37.115 What procedures does the Department follow for post-termination proceedings?

(a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §37.112(b) will be restored, where appropriate, to full eligibility to receive WIA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

(b) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §37.112(b) may at any time petition the Director to restore its eligibility to receive WIA Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this
section are pending, sanctions imposed by the Final Decision and Order under § 37.112(b) (1) and (2) must remain in effect.

(c) The Director must issue a written decision on the petition for restoration.

(1) If the Director determines that the grant applicant or recipient has not brought itself into compliance, he or she must issue a decision denying the petition.

(2) Within 30 days of its receipt of the Director’s decision, the recipient or grant applicant may file a petition for review of the decision by the Secretary, setting forth the grounds for its objection to the Director’s decision.

(3) The petition must be served on the Director and on the Office of the Solicitor, Civil Rights Division.

(4) The Director may file a response to the petition within 14 days.

(5) The Secretary must issue the final agency decision denying or granting the recipient’s or grant applicant’s request for restoration to eligibility.

PART 42—COORDINATED ENFORCEMENT

Sec.
42.1 General statement.
42.2 Purpose.
42.3 National Committee.
42.4 Structure of the National Committee.
42.5 Policy review.
42.6 Enforcement strategy.
42.7 Complaint/directed action logs.
42.8 Coordination plan.
42.9 Farm Labor Specialist (ESA).
42.10 Farm Labor contact persons and regional coordinators (OSHA).
42.20 Regional Farm Labor Coordinated Enforcement Committee.
42.21 Data collection.


SOURCE: 45 FR 39489, June 10, 1980, unless otherwise noted.

§ 42.2 Purpose.

(a) These regulations coordinate the activities of ESA, OSHA and ETA, and are intended to:

(1) Ensure effective enforcement efforts under the protective statutes—i.e., the Farm Labor Contractor Registration Act (FLCRA), the Occupational Safety and Health Act (OSHA), and the Fair Labor Standards Act (FLSA) (protective statutes).

(2) Ensure that the enforcement efforts of DOL agencies are coordinated to maximize their effectiveness, yet minimize unnecessary duplication.

(3) Focus the attention of DOL agencies upon the special employment-related problems faced by migrant farmworkers.

(4) Coordinate DOL enforcement efforts with related activities of farmworker groups, federal and state agencies, and other concerned parties outside the Department of Labor whose operations are related to the employment, housing, and working conditions of migrant farmworkers.

(5) Establish an information exchange which will afford the Department, farmworker groups, and other concerned parties outside the Department of Labor the opportunity to exchange information concerning wages, hours and working conditions.

§ 42.3 National Committee.

A National Farm Labor Coordinated Enforcement Committee (National Committee) is hereby established which shall be responsible for: Reviewing policies, guidelines and enforcement goals and strategies for the Department of Labor with respect to migrant farm labor-related enforcement efforts under the protective statutes; resolving policies which are in conflict between DOL agencies; advising the Secretary on legislative initiatives which would strengthen farm labor-related enforcement efforts; and providing guidance and recommendations to DOL agencies on related enforcement activities.