

(C) evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part;

(D) information reflecting the extent to which Equal Opportunity training, including training called for by §§ 37.25(f) and 37.26(c), is planned and/or has been carried out;

(E) reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and

(F) copies of any notices made under §§ 37.29 through 37.36.

§ 37.55 When must the Governor carry out his or her obligations with regard to the Methods of Administration?

(a) Within 180 days of either the date on which this interim final rule is effective, or the date on which the Department gives final approval to a State's Five-Year Plan, whichever is later, a Governor must:

(1) Develop and implement a Methods of Administration consistent with the requirements of this part, and

(2) Submit a copy of the Methods of Administration to the Director.

(b) The Governor must promptly update the Methods of Administration whenever necessary, and must notify the Director in writing at the time that any such updates are made.

(c) Every two years from the date on which the initial MOA is submitted to the Director under § 37.55(a)(2), the Governor must review the Methods of Administration and the manner in which it has been implemented, and determine whether any changes are necessary in order for the State to comply fully and effectively with the nondiscrimination and equal opportunity provisions of WIA and this part.

(1) If any such changes are necessary, the Governor must make the appropriate changes and submit them, in writing, to the Director.

(2) If the Governor determines that no such changes are necessary, s/he must certify, in writing, to the Director that the Methods of Administration previously submitted continues in effect.

Subpart D—Compliance Procedures

§ 37.60 How does the Director evaluate compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

From time to time, the Director may conduct pre-approval compliance reviews of grant applicants for, and post-approval compliance reviews of recipients of, WIA Title I financial assistance, to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part. Reviews may focus on one or more specific programs or activities, or one or more issues within a program or activity. The Director may also investigate and resolve complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIA and this part.

§ 37.61 Is there authority to issue subpoenas?

Yes, section 183(c) of WIA authorizes the issuance of subpoenas. A subpoena may direct the individual named on the subpoena to take the following actions:

(a) To appear:

(1) Before a designated CRC representative,

(2) At a designated time and place;

(b) To give testimony; and/or

(c) To produce documentary evidence.

The subpoena may require the appearance of witnesses, and the production of documents, from any place in the United States, at any designated time and place.

COMPLIANCE REVIEWS

§ 37.62 What are the authority and procedures for conducting pre-approval compliance reviews?

(a) As appropriate and necessary to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA or this part, the Director may review any application, or class of applications, for Federal financial assistance under Title I of WIA, before and as a condition of their approval. The basis for such review may be the assurance specified in § 37.20, information and reports submitted by

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the grant applicant under this part or guidance published by the Director, and any relevant records on file with the Department.

(b) Where the Director determines that the grant applicant for Federal financial assistance under WIA Title I, if financially assisted, might not comply with the nondiscrimination and equal opportunity requirements of WIA or this part, the Director must:

(1) Notify, in a timely manner, the Departmental grantmaking agency and the Assistant Attorney General of the findings of the pre-approval compliance review; and

(2) Issue a Letter of Findings. The Letter of Findings must advise the grant applicant, in writing, of:

(i) The preliminary findings of the review;

(ii) The proposed remedial or corrective action under Section 37.94 and the time within which the remedial or corrective action should be completed;

(iii) Whether it will be necessary for the grant applicant to enter into a written Conciliation Agreement as described in §§ 37.95 and 37.97; and

(iv) The opportunity to engage in voluntary compliance negotiations.

(c) If a grant applicant has agreed to certain remedial or corrective actions in order to receive WIA Title I-funded Federal financial assistance, the Department must ensure that the remedial or corrective actions have been taken, or that a Conciliation Agreement has been entered into, before approving the award of further assistance under WIA Title I. If a grant applicant refuses or fails to take remedial or corrective actions or to enter into a Conciliation Agreement, as applicable, the Director must follow the procedures outlined in §§ 37.98 through 37.100.

§ 37.63 What are the authority and procedures for conducting post-approval compliance reviews?

(a) The Director may initiate a post-approval compliance review of any recipient to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part. The initiation of a post-approval review may be based on, but need not be limited to, the results of routine program monitoring by other Depart-

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mental or Federal agencies, or the nature or frequency of complaints.

(b) A post-approval review must be initiated by a Notification Letter, advising the recipient of:

(1) The practices to be reviewed;

(2) The programs to be reviewed;

(3) The information, records, and/or data to be submitted by the recipient within 30 days of the receipt of the Notification Letter, unless this time frame is modified by the Director; and

(4) The opportunity, at any time before receipt of the Final Determination described in §§ 37.99 and 37.100, to make a documentary or other submission that explains, validates or otherwise addresses the practices under review.

(c) The Director may conduct post-approval reviews using such techniques as desk audits and on-site reviews.

§ 37.64 What procedures must the Director follow when CRC has completed a post-approval compliance review?

(a) Where, as the result of a post-approval review, the Director has made a finding of noncompliance, he or she must issue a Letter of Findings. This Letter must advise the recipient, in writing, of:

(1) The preliminary findings of the review;

(2) Where appropriate, the proposed remedial or corrective action to be taken, and the time by which such action should be completed, as provided in § 37.94;

(3) Whether it will be necessary for the recipient to enter into a written assurance and/or Conciliation Agreement, as provided in §§ 37.96 and 37.97; and

(4) The opportunity to engage in voluntary compliance negotiations.

(b) Where no violation is found, the recipient must be so informed in writing.

§ 37.65 What is the Director's authority to monitor the activities of a Governor?

(a) The Director may periodically review the adequacy of the Methods of Administration established by a Governor, as well as the adequacy of the Governor's performance under the

Methods of Administration, to determine compliance with the requirements of §§ 37.50 through 37.55. The Director may review the Methods of Administration during a compliance review under §§ 37.62 and 37.63, or at another time.

(b) Nothing in this subpart limits or precludes the Director from monitoring directly any WIA Title I recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIA or this part.

§ 37.66 What happens if a recipient fails to submit requested data, records, and/or information, or fails to provide CRC with the required access?

The Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the recipient's failure or refusal to:

(a) Submit requested information, records, and/or data within 30 days of receiving a Notification Letter;

(b) Submit, in a timely manner, information, records, and/or data requested during a compliance review, complaint investigation, or other action to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIA or this part; or

(c) Provide CRC access in a timely manner to a recipient's premises, records, or employees during a compliance review, as required in § 37.40.

§ 37.67 What information must a Notice to Show Cause contain?

(a) A Notice to Show Cause must contain:

(1) A description of the violation and a citation to the pertinent nondiscrimination or equal opportunity provision(s) of WIA and this part;

(2) The corrective action necessary to achieve compliance or, as may be appropriate, the concepts and principles of acceptable corrective or remedial action and the results anticipated; and

(3) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.

(b) A Notice to Show Cause must give the recipient 30 days to show cause why enforcement proceedings under the nondiscrimination and equal opportunity provisions of WIA or this part should not be instituted.

§ 37.68 How may a recipient show cause why enforcement proceedings should not be instituted?

A recipient may show cause why enforcement proceedings should not be instituted by, among other means:

(a) Correcting the violation(s) that brought about the Notice to Show Cause and entering into a written assurance and/or entering into a Conciliation Agreement, as appropriate, under §§ 37.95 through 37.97;

(b) Demonstrating that CRC does not have jurisdiction; or

(c) Demonstrating that the violation alleged by CRC did not occur.

§ 37.69 What happens if a recipient fails to show cause?

If the recipient fails to show cause why enforcement proceedings should not be initiated, the Director must follow the enforcement procedures outlined in §§ 37.99 and 37.100.

COMPLAINT PROCESSING PROCEDURES

§ 37.70 Who may file a complaint concerning discrimination connected with WIA Title I?

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 WIA or this part, may file a written complaint, either by him/herself or through a representative.

§ 37.71 Where may a complaint be filed?

A complainant may file a complaint with either the recipient or the Director. Complaints filed with the Director should be sent to the address listed in the notice in § 37.30.

§ 37.72**§ 37.72 When must a complaint be filed?**

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

§ 37.73 What information must a complaint contain?

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 Director or the recipient, as applicable, to decide whether:
 - (i) CRC or the recipient, as applicable, has jurisdiction over the complaint;
 - (ii) The complaint was filed in time; and
 - (iii) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the non-discrimination and equal opportunity provisions of WIA or this part; and
- (d) The complainant's signature or the signature of the complainant's authorized representative.

§ 37.74 Are there any forms that a complainant may use to file a complaint?

Yes. A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the recipient's EO Officer, or from CRC at the address listed in the notice contained in § 37.30.

§ 37.75 Is there a right of representation in the complaint process?

Yes. Both the complainant and the respondent have the right to be rep-

resented by an attorney or other individual of their choice.

§ 37.76 What are the required elements of a recipient's discrimination complaint processing procedures?

(a) The procedures that a recipient adopts and publishes must provide that the recipient will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed.

(b) At a minimum, the procedures must include the following elements:

(1) Initial, written notice to the complainant that contains the following information:

- (i) An acknowledgment that the recipient has received the complaint, and
- (ii) Notice that the complainant has the right to be represented in the complaint process;

(2) A written statement of the issue(s), provided to the complainant, that includes the following information:

- (i) A list of the issues raised in the complaint, and
- (ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;

(3) A period for fact-finding or investigation of the circumstances underlying the complaint;

(4) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section

(5) A written Notice of Final Action, 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:

(A) The recipient's decision on the issue and an explanation of the reasons underlying the decision, or

(B) A description of the way the parties resolved the issue; and

(ii) Notice 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 issued if he or

she is dissatisfied with the recipient's final action on the complaint.

(c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:

(1) The choice whether to use ADR or the customary process rests with the complainant;

(2) A party to any agreement reached under ADR may file a complaint with the Director in the event the agreement is breached. In such circumstances, the following rules will apply:

(i) The non-breaching party may file a complaint with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach;

(ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If he or 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 Director will waive the time deadline for filing such a complaint.

(3) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in §§37.71 through 37.74.

§37.77 Who is responsible for developing and publishing complaint processing procedures for service providers?

The Governor or the LWIA grant recipient, as provided in the State's Methods of Administration, must develop and publish, on behalf of its service providers, the complaint processing procedures required in §37.76. The service providers must then follow those procedures.

§37.78 Does a recipient have any special obligations in cases in which the recipient determines that it has no jurisdiction over a complaint?

Yes. If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:

(a) A statement of the reasons for that determination, and

(b) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

§37.79 If, before the 90-day period has expired, a recipient issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?

If, during the 90-day period, the recipient issues its Notice of Final Action, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or his/her representative may file a complaint with the Director within 30 days after the date on which the complainant receives the Notice.

§37.80 What happens if a recipient fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?

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 his/her representative may file a complaint with the Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Director within 120 days of the date on which the complaint was filed with the recipient.

§37.81 Are there any circumstances under which the Director may extend the time limit for filing a complaint with him or her?

Yes. The Director may extend the 30-day time limit:

(a) If the recipient does not include in its Notice of Final Action the required notice about the complainant's right to file with the Director, as described in §37.76(b)(5)(ii); or

(b) For other good cause shown.

The complainant has the burden of proving to the Director that the time limit should be extended.

§37.82 Does the Director accept every complaint for resolution?

No. The Director must determine whether CRC will accept a particular complaint for resolution. For example, a complaint need not be accepted if:

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- (a) It has not been timely filed;
- (b) CRC has no jurisdiction over the complaint; or
- (c) CRC has previously decided the matter.

§ 37.83 What happens if a complaint does not contain enough information?

(a) If a complaint does not contain enough information, the Director must try to get the needed information from the complainant.

(b) The Director may close the complainant's file, without prejudice, if:

(1) The Director makes reasonable efforts to try to find the complainant, but is unable to reach him or her; or

(2) The complainant does not provide the needed information to CRC within the time specified in the request for more information.

(c) If the Director closes the complainant's file, he or she must send written notice to the complainant's last known address.

§ 37.84 What happens if CRC does not have jurisdiction over a complaint?

If CRC does not have jurisdiction over a complaint, the Director must:

(a) Notify the complainant and explain why the complaint falls outside the coverage of the nondiscrimination and equal opportunity provisions of WIA or this part; and

(b) Where possible, transfer the complaint to an appropriate Federal, State or local authority.

§ 37.85 Are there any other circumstances in which the Director will send a complaint to another authority?

Yes. The Director refers complaints to other agencies in the following circumstances:

(a) Where the complaint alleges discrimination based on age, and the complaint falls within the jurisdiction of the Age Discrimination Act of 1975, as amended, then the Director must refer the complaint, in accordance with the provisions of 45 CFR 90.43(c)(3).

(b) Where the only allegation in the complaint is a charge of individual employment discrimination that is covered both by WIA or this part and by

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one or more of the laws listed below, then the complaint is a "joint complaint," and the Director may refer it to the EEOC for investigation and conciliation under the procedures described in 29 CFR part 1640 or 1691, as appropriate. The relevant laws are:

(1) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e-17);

(2) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d));

(3) The Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, *et seq.*); and

(4) Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*).

(c) Where the complaint alleges discrimination by an entity that operates a program or activity financially assisted by a Federal grantmaking agency other than the Department, but that participates as a partner in a One-Stop delivery system, the following procedures apply:

(1) Where the complaint alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the Federal grantmaking agency, then CRC and the grantmaking agency have dual jurisdiction over the complaint, and the Director will refer the complaint to the grantmaking agency for processing. In such circumstances, the grantmaking agency's regulations will govern the processing of the complaint.

(2) Where the complaint alleges discrimination on a basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the Federal grantmaking agency, then CRC has sole jurisdiction over the complaint, and will retain the complaint and process it pursuant to this part. Such bases generally include religion, political affiliation or belief, citizenship, and/or participation in a WIA Title I-financially assisted program or activity.

(d) Where the Director makes a referral under this section, he or she must notify the complainant and the respondent about the referral.

§ 37.86 What must the Director do if he or she determines that a complaint will not be accepted?

If a complaint will not be accepted, the Director must notify the complainant, in writing, about that fact, and provide the complainant his/her reasons for making that determination.

§ 37.87 What must the Director do if he or she determines that a complaint will be accepted?

If the Director accepts the complaint for resolution, he or she must notify the complainant, the respondent, and the grantmaking agency. The notice must:

- (a) State that the complaint will be accepted,
- (b) Identify the issues over which CRC has accepted jurisdiction; and
- (c) Explain the reasons why any issues were rejected.

§ 37.88 Who may contact CRC about a complaint?

Both the complainant and the respondent, or their authorized representatives, may contact CRC for information about the complaint. The Director will determine what information, if any, about the complaint will be released.

§ 37.89 May the Director offer the parties to a complaint the option of mediation?

Yes. The Director may offer the parties to a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

- (a) Mediation is voluntary; the parties must consent before the mediation process will proceed.
- (b) The mediation will be conducted under guidance issued by the Director.
- (c) If the parties are unable to reach resolution of the complaint through mediation, CRC will investigate and process the complaint under §§ 37.82 through 37.88 of this part.

DETERMINATIONS

§ 37.90 If a complaint is investigated, what must the Director do when the investigation is completed?

At the conclusion of the investigation of the complaint, the Director must take the following actions:

- (a) Determine whether there is reasonable cause to believe that the respondent has violated the non-discrimination and equal opportunity provisions of WIA or this part; and
- (b) Notify the complainant, the respondent, and the grantmaking agency, in writing, of that determination.

§ 37.91 What notice must the Director issue if he or she finds reasonable cause to believe that a violation has taken place?

If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or this part, he or she must issue an Initial Determination. The Initial Determination must include:

- (a) The specific findings of the investigation;
- (b) The corrective or remedial action that the Department proposes to the respondent, under § 37.94;
- (c) The time by which the respondent must complete the corrective or remedial action;
- (d) Whether it will be necessary for the respondent to enter into a written agreement under § 37.95 and 37.96; and
- (e) The opportunity to engage in voluntary compliance negotiations.

§ 37.92 What notice must the Director issue if he or she finds no reasonable cause to believe that a violation has taken place?

If the Director determines that there is no reasonable cause to believe that a violation has taken place, he or she must issue a Final Determination under § 37.100. The Final Determination represents the Department's final agency action on the complaint.

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§ 37.93 What happens if the Director finds that a violation has taken place, and the recipient fails or refuses to take the corrective action listed in the Initial Determination?

Under such circumstances, the Department must take the actions described in § 37.99 of this part.

§ 37.94 What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIA or this part?

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91 respectively, must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.

(b) Such steps must include:

(1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIA or this part;

(2) Make whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a compliance review) or other monetary relief; hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and

(3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to outreach, recruitment and training designed to ensure equal opportunity.

(c) Monetary relief may not be paid from Federal funds.

§ 37.95 What procedures apply if the Director finds that a recipient has violated the nondiscrimination and equal opportunity provisions of WIA or this part?

(a) *Violations at State level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred at the State level, he or she must notify the Governor through the issuance of a Letter of Findings, Notice to Show Cause or

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Initial Determination, as appropriate, under § 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement, under paragraph (d) of this section.

(b) *Violations below State level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred below the State level, the Director must so notify the Governor and the violating recipient(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively.

(1) Such issuance must:

(i) Direct the Governor to initiate negotiations immediately with the violating recipient(s) to secure compliance by voluntary means;

(ii) Direct the Governor to complete such negotiations within 30 days of the Governor's receipt of the Notice to Show Cause or within 45 days of the Governor's receipt of the Letter of Findings or Initial Determination, as applicable. The Director reserves the right to enter into negotiations with the recipient at any time during the period. For good cause shown, the Director may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance must not exceed 60 days.

(iii) Include a determination as to whether compliance must be achieved by:

(A) Immediate correction of the violation(s) and written assurance that such violations have been corrected, under § 37.96;

(B) Entering into a written Conciliation Agreement under § 37.97; or

(C) Both.

(2) If the Governor determines, at any time during the period described in paragraph (b)(1)(ii) of this section, that a recipient's compliance cannot be achieved by voluntary means, the Governor must so notify the Director.

(3) If the Governor is able to secure voluntary compliance under paragraph (b)(1) of this section, he or she must submit to the Director for approval, as applicable:

- (i) Written assurance that the required action has been taken, as described in § 37.96;
- (ii) A copy of the Conciliation Agreement, as described in § 37.97; or
- (iii) Both.

(4) The Director may disapprove any written assurance or Conciliation Agreement submitted for approval under paragraph (b)(3) of this section that fails to satisfy each of the applicable requirements provided in §§ 37.96 or 37.97.

(c) *Violations in National Programs.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred in a National Program, he or she must notify the Federal grantmaking agency and the recipient by issuing a Letter of Findings, Notice to Show Cause, or Initial Determination, as appropriate, under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement under §§ 37.96 or 37.97, as applicable.

§ 37.96 What are the required elements of a written assurance?

A written assurance must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

§ 37.97 What are the required elements of a Conciliation Agreement?

A Conciliation Agreement must:

- (a) Be in writing;
- (b) Address each cited violation;
- (c) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
- (d) Provide for periodic reporting on the status of the corrective and remedial action;
- (e) Provide that the violation(s) will not recur; and

(f) Provide for enforcement for a breach of the agreement.

§ 37.98 When will the Director conclude that compliance cannot be secured by voluntary means?

The Director will conclude that compliance cannot be secured by voluntary means under the following circumstances:

(a) The grant applicant or recipient fails or refuses to correct the violation(s) within the time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or

(b) The Director has not approved an extension of time for agreement on voluntary compliance, under § 37.95(b)(1)(ii), and he or she either:

(1) Has not been notified, under § 37.95(b)(3), that the grant applicant or recipient has agreed to voluntary compliance;

(2) Has disapproved a written assurance or Conciliation Agreement, under § 37.95(b)(4); or

(3) Has received notice from the Governor, under § 37.95(b)(2), that the grant applicant or recipient will not comply voluntarily.

§ 37.99 If the Director concludes that compliance cannot be secured by voluntary means, what actions must he or she take?

If the Director concludes that compliance cannot be secured by voluntary means, he or she must either:

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

§ 37.100 What information must a Final Determination contain?

A Final Determination must contain the following information:

(a) A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;

(b) A statement of those matters upon which the grant applicant or recipient and CRC continue to disagree;

(c) A list of any modifications to the findings of fact or conclusions that

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were set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;

(d) A statement of the grant applicant's or recipient's liability, and, if appropriate, the extent of that liability;

(e) A description of the corrective or remedial actions that the grant applicant or recipient must take to come into compliance;

(f) A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:

(1) After the grant applicant or recipient is given the opportunity for a hearing, its WIA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;

(2) The Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the grant applicant or recipient; or

(3) the Secretary may take any other action against the grant applicant or recipient that is provided by law;

(g) A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in §§ 37.112 through 37.115; and

(h) A determination of the Governor's liability, if any, under § 37.52.

§ 37.101 Whom must the Director notify of a finding of noncompliance?

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director must notify:

- (a) The grant applicant or recipient;
- (b) The grantmaking agency; and
- (c) The Assistant Attorney General.

BREACHES OF CONCILIATION AGREEMENTS

§ 37.102 What happens if a grant applicant or recipient breaches a Conciliation Agreement?

When it becomes known to the Director that a Conciliation Agreement has been breached, the Director may issue

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a Notification of Breach of Conciliation Agreement.

§ 37.103 Whom must the Director notify about a breach of a Conciliation Agreement?

The Director must send a Notification of Breach of Conciliation Agreement to the Governor, the grantmaking agency, and/or other party(ies) to the Conciliation Agreement, as applicable.

§ 37.104 What information must a Notification of Breach of Conciliation Agreement contain?

A Notification of Breach of Conciliation Agreement must:

(a) Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;

(b) Identify the specific provisions of the Conciliation Agreement violated;

(c) Determine liability for the violation and the extent of the liability;

(d) Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request from the Department to file suit;

(e) Advise the violating party of the right to request a hearing, and reference the applicable procedures in Section 37.111; and

(f) Include a determination as to the Governor's liability, if any, in accordance with the provisions of § 37.52.

§ 37.105 Whom must the Director notify if enforcement action under a Notification of Breach of Conciliation Agreement is commenced?

In such circumstances, the Director must notify:

- (a) The grantmaking agency; and
- (b) The Governor, recipient or grant applicant, as applicable.