

## SOUTH CENTRAL OKLAHOMA WORKFORCE BOARD, INC.

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### COMPLAINT PROCESSING PROCEDURES

**IMPORTANT!** This document contains important information about your rights, responsibilities and/or benefits. It is critical that you understand the information in this document, and we will provide the information in your preferred language at no cost to you. **Call Lafonda Crowder (580) 357-3500** for assistance in the translation and understanding of the information in this document.

**¡IMPORTANTE!** Este documento contiene información importante sobre sus derechos, responsabilidades y/o beneficios. Es importante que usted entienda la información en este documento. Nosotros le podemos ofrecer la información en el idioma de su preferencia sin costo alguno para usted. **Llame al Lafonda Crowder (580) 357-3500** para pedir asistencia en traducir y entender la información en este documento.

#### Complaint Processing Procedures:

The SCOWB EO Officer must do the following:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the SCOWB for noncompliance with applicable nondiscrimination and equal opportunity provisions.
- Develop and publish procedures for resolving allegations against service providers and subrecipients/subgrantees for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures.
- Establish a logging system to record discrimination complaints.

The SCOWB complaint processing procedures must specify the following:

- Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIOA may file a written complaint by using the Equal Opportunity and Nondiscrimination Complaint Form, which was developed to assist clients, participants, and service providers. This form is available for use by SCOWB in an effort to provide more consistent information when processing discrimination complaints. SCOWB is encouraged to personalize the form with the name of the area and use the form for any and all discrimination complaints that may be received.
- The complaint may be filed either with SCOWB's EO Officer (or the person designated for this purpose), the State EO Officer, or directly with the CRC at:
  - o DOL, 200 Constitution Avenue N.W., Room N 4123, Washington, D.C. 20210.
- A complaint filed, pursuant to 29 CFR Section 38.69, must be filed within 180 days of the  
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alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.

- Complaints must be filed in writing by completing the Equal Opportunity and Nondiscrimination Complaint Form. If the Equal Opportunity and Nondiscrimination Complaint Form is not used, the complaint must include the following information:
  - o Complainant's name, address, or other means of contacting him or her.
  - o Identity of the respondent.
  - o A description of the complainant's allegation(s) in sufficient detail to allow the CRC, State EO Officer, or SCOWB EO Officer, as applicable, to determine whether (1) the CRC, State EO Officer, or SCOWB has jurisdiction over the complaint, (2) the complaint was filed timely, and (3) the complaint has apparent merit (i.e., whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA).
  - o Signature of the complainant or his or her authorized representative.
- Finally, both complainant and respondent have the right to be represented by an attorney or other individual of his or her choice. Also, a representative may file a complaint on behalf of a person who believes that they have been subjected to discrimination.
- The complainant must be offered an Alternate Dispute Resolution (ADR) immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant.

#### **An Alternative Dispute Resolution (ADR):**

The preferred form of ADR is mediation. Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicates their concerns, and comes to an agreement about how to resolve a dispute. The mediator does not make decisions, rule as to who is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

At any point in the investigation of the complaint, the complainant, respondent, SCOWB EO Officer, or State EO Officer may request that the parties attempt to use ADR. The State EO Officer shall facilitate these efforts. The choice to use ADR rests with the complainant.

The State or SCOWB shall be allowed 90 days to issue a Notice of Final Action from the date on which the complaint was filed. If, during the 90-day period, the State or Local Area issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.

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If the 90 days expire and the complainant does not receive a Notice of Final Action or the State or SCOWB fails to issue a Notice of Final Action, the complainant or his/her 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 SCOWB.

The CRC may extend the 30-day time limit if the complainant is not notified, as provided in 29 CFR Section 38.77, or for other good cause shown.

The State or SCOWB shall notify the complainant in writing immediately upon determining it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of the WIOA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.

During the resolution process, the State EO Officer or SCOWB EO Officer shall assure that all parties involved are given due process. These due process elements include the following:

- A notice to all parties of the specific charges;
- A notice to all parties of the responses to the allegations;
- The right of both parties to representation;
- The right of each party to present evidence, and to question others who present evidence; and
- A decision made strictly on the evidence on the record.

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

- The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
- The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint. If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in 29 CFR Sections 38.69 through 38.72.

### **State Level Discrimination and Complaint Process**

Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIOA may file a written complaint by using the Equal Opportunity and Nondiscrimination Complaint Form, which was developed to assist clients, participants, and service providers.

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- The complaint may be filed either with the State EO Officer, or directly with the CRC at:
  - DOL, 200 Constitution Avenue N.W., Room N 4123, Washington, D.C. 20210.
- A complaint filed, pursuant to 29 CFR Section 38.69, must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.
- Complaints must be filed in writing by completing the Equal Opportunity and Nondiscrimination Complaint Form. If the Equal Opportunity and Nondiscrimination Complaint Form is not used, the complaint must include the following information:
  - The complainant's name, address, or other means of contacting him or her.
  - Identity of the respondent(s).
  - A description of the complainant's allegation(s) in sufficient detail to allow the CRC or State EO Officer, as applicable, to determine whether (1) the CRC, State, or SCOWB has jurisdiction over the complaint, (2) the complaint was filed timely, and (3) the complaint has apparent merit (i.e., whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA).
  - The signature of the complainant or his or her authorized representative.
- Both complainant and respondent have the right to be represented by an attorney or other individual of his or her choice. Also, a representative may file a complaint on behalf of a person who believes they have been subjected to discrimination, per 29 CFR § 38.72
- The complainant must be offered mediation within 7 days of receiving the Nondiscrimination Complaint Form or written complaint. The choice whether to use ADR rests with the complainant. The Complainant may request ADR at any time after the complainant has filed a written complaint with the recipient, but before the Notice of Final Action has been issued, per 29 CFR § 38.72(c).
- When a Nondiscrimination Complaint Form or written discrimination complaint is received by the State EO Officer, the State EO Officer issues an Initial Written Notice, consistent with 29 CFR § 38.72(b) or a notice explaining lack of jurisdiction within 5 business days, consistent with 29 CFR § 38.74.
- When the State EO Officer determines there is jurisdiction, an Initial Written Notice, including an offer for mediation, is sent to the complainant within 5 business days. (29 CFR § 38.72). The complainant has 7 days to agree to mediation.
- When the complainant elects to participate in mediation, the State EO Officer will coordinate the mediation process within 45 days of the Initial Written Notice and complete a signed settlement agreement. Once there is a signed settlement agreement, the State EO Officer will issue the Notice of Final Action within 90 days.
- When the complainant does not agree to mediation or it is unsuccessful, the State EO Officer will complete fact-finding within 45 days of receipt of the Initial Written Notice or 30 days from unsuccessful ADR.

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- A Notice of Final Action will be sent within 90 days from the date the written discrimination complaint was received by the State EO Officer. If the State issues its Notice of Final Action before the 90-day period ends, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or the complainant's representative may file a complaint with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 within 30 days after the date on which the complainant receives the Notice. (29 CFR § 38.75).
- The Notice of Final Action will include the following:
  - o Jurisdiction;
  - o The issues accepted for review;
  - o Findings of fact;
  - o Analysis;
  - o Conclusion; and
  - o Remedies and corrective actions

**Conciliation:**

At any point in the investigation of the complaint, the complainant, respondent, or the SCOWB EO Officer may request that the parties attempt conciliation. The SCOWB EO Officer shall facilitate such conciliation efforts.

Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.

If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legal binding contract and falls under contract law.

SCOWB shall be allowed 90 days to issue a Notice of Final Action from the date on which the complaint was filed. If, during the 90-day period, SCOWB issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.

If the 90 days expire and the complainant does not receive a Notice of Final Action from SCOWB, or SCOWB failed to issue a Notice of Final Action, the complainant or his/her 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 SCOWB.

The CRC may extend the 30-day time limit if the complainant is not notified, as provided in 29 CFR Section 38.77, or for other good cause shown.

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SCOWB shall notify the complainant in writing immediately upon determining it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of the WIOA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.

During the resolution process, SCOWB EO Officer shall assure that all parties involved are given due process. These due process elements include the following:

- A notice to all parties of the specific charges;
- A notice to all parties of the responses to the allegations;
- The right of both parties to representation;
- The right of each party to present evidence, and to question others who present evidence; and
- A decision made strictly on the evidence on the record.

#### **Actions by the CRC:**

The CRC determines acceptance of a complaint filed pursuant to 29 CFR Section 38.78. When the CRC accepts a complaint for investigation, it shall do the following:

- Notify SCOWB and the complainant of the acceptance of the complaint for investigation.
- Advise SCOWB and complainant on the issues over which the CRC has accepted Jurisdiction.

SCOWB, the complainant, or a representative may contact the CRC for information regarding the complaint filed. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address (29 CFR Section 38.79).

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

- Because mediation is voluntary, both parties must consent before the mediation process proceeds.
- The mediation will be conducted under the guidance issued by the CRC.
- If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under 29 CFR Sections 38.82 through 38.88.

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After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and SCOWB, in writing, of the following:

- The specific findings of the investigation;
- The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- Whether it will be necessary for the SCOWB to enter into a written agreement; and
- The opportunity to participate in voluntary compliance negotiations.

Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and SCOWB. The Final Determination represents U.S. DOL's final agency action on the complaint.

**Complaint Determinations:**

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to 29 CFR Sections 38.86 or 38.87, 38.88 and 38.89, or 38.90, respectively, must include the steps and the specific time period it will take SCOWB to achieve voluntary compliance. See Section 38.90 for corrective action steps. Monetary corrective action shall not be paid from federal funds.

If SCOWB receives a finding of noncompliance, the following sections of 29 CFR Part 38 may be referred to for detailed information:

- "Final Determinations," Sections 38.96 through 38.97
- "Breaches of Conciliation Agreements," Sections 38.98 through 38.100
- Subpart E – "Federal Procedures for Effecting Compliance," Sections 38.110 through 38.115