

§ 37.93

represents the Department's final agency action on the complaint.

§ 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

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level, he or she must notify the Governor 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. 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;