

EQUAL OPPORTUNITY POLICY GUIDE – PI 13-23 - OFFICIAL

PURPOSE

This document contains the nondiscrimination and equal opportunity (EO) management requirements imposed on recipients of federal financial assistance from the Workforce Development Agency State of Michigan (WDA). The policies and procedures outlined in this guide have been incorporated into the WDA's Methods of Administration (MOA) to establish the framework by which the state, local Workforce Investment Areas (LWIAs) and their recipients will meet EO regulatory requirements. The majority of compliance requirements originate from federal regulations implementing Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Section 188 of the Workforce Investment Act and other statutes prohibiting discrimination in federally assisted programs and activities. Other provisions reflect standards adopted by the State of Michigan to ensure EO compliance in programs funded in whole, or in part, through state government agencies. Michigan Works! Agencies (MWAs), their Service Centers, and other recipients must adopt systems and practices and have local written policies and procedures that demonstrate compliance with applicable portions of this guide. Failure to comply with these requirements may jeopardize initial, continued or renewed funding under federal and state supported programs.

PROGRAMS COVERED BY THIS GUIDE

All programs and activities that operate as part of the state's workforce system are covered by the policy requirements outlined in this guide. Such programs include:

- Workforce Investment Act (WIA) Title I Programs
- Partnership, Accountability, Training, Hope (PATH) Program
- Wagner-Peyser (Employment Service) Program
- Food Assistance Employment & Training Program
- Trade Adjustment Assistance (TAA) Program

In compliance with this guide, the WDA has taken measures to institute a universal set of policy standards that are sufficient in assuring recipient compliance with the regulatory provisions issued by each of the federal agencies granting workforce funding to the state. In those instances where substantial regulatory variances exist between the federal programs, users will be directed to comply with the specific regulatory provisions of each grant making agency.

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GUIDE STRUCTURE

The Equal Opportunity Policy Guide (EOPG) consists of ten sections with Parts I through VII covering primary EO compliance requirements and administrative obligations. The remaining portions of the guide, Parts VIII through X, provide MWAs and their recipients with notification regarding the procedures the WDA will use to carry out EO oversight, corrective action, and enforcement proceedings.

UPDATES TO THIS GUIDE

The WDA will periodically update this guide to incorporate changes in applicable federal regulations and/or to reflect revisions to state policy/compliance requirements. Date identifiers in the right hand bottom corner of each page shows the effective date of the referenced policy section. Notification of EO policy changes will be sent to MWA administrative officials and designated local EO Officers via electronic mail.

COMPLIANCE ASSISTANCE

Questions regarding state EO policy standards and/or requests for assistance in implementing the compliance requirements outlined in this guide are to be directed to:

State Equal Opportunity Officer
Workforce Development Agency State of Michigan
Victor Office Center
201 N. Washington Square, 5th Floor
Lansing, Michigan 48913

Voice and electronic messages may be transmitted to the State EO Officer at the telephone/TTY numbers and e-mail address published by WDA for the State designated Officer.

PART I DESIGNATION OF AN EQUAL OPPORTUNITY OFFICER

PURPOSE: To transmit the obligation to designate an Equal Opportunity (EO) Officer.

1.0 POLICY: MWAs must designate an EO Officer to serve as a technical resource and to coordinate management of the LWIA's nondiscrimination and EO responsibilities for all WDA federally-assisted and state funded programs operated through the workforce investment and One-Stop delivery system. The designated officer must be a senior-level employee who, for EO-related matters, reports directly to the recipient's highest-level administrative official.

1.1 EO Officer Duties and Responsibilities

The individual designated to serve as EO Officer must have the knowledge, skills, and ability to effectively administer and promote the MWA's EO program and must at a minimum, be assigned responsibility to:

- Serve as the MWA's liaison to the WDA, the U.S. Department of Labor's (USDOL's) Civil Rights Center, and other federal/state civil rights agencies;
- Implement the MWA's EO management plan (or MOA) for the local workforce system;
- Develop internal and/or MWA-wide EO policies and procedures;
- Review and monitor the EO activities of administrative offices, Service Centers, and other provider agencies to assure compliance with required systems and determine whether policies and practices adopted by recipient agencies are nondiscriminatory;
- Analyze EO statistical data to determine whether differences based on demographic factors have practical or statistical significance; and
- Provide training and compliance assistance to the MWA's provider network to ensure that recipient staff is aware of and can carry out the MWA's EO policies and procedures.

The MWA's EO Officer must further be assigned primary responsibility for implementing, in accordance with the state's uniform discrimination complaint procedures, the MWA's discrimination complaint processing and alternative dispute resolution procedures. This duty includes not only the responsibility for investigating discrimination complaints filed with the MWA, but the obligation to assist, where required, with the review and resolution of any complaints that allege discrimination

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and/or other EO violations within the MWA's service jurisdiction, that may be investigated by federal/state civil rights enforcement agencies.

1.2 LWIA/Grant Recipient Responsibilities

MWAs must assure that the EO Officer's position is filled at all times and is not knowingly vacant and must implement, as part of its EO management plan, a process to document the manner in which the EO Officer carries out assigned duties. The MWA must additionally:

- Develop and maintain on file, a position description that reflects both the EO and non-EO-related job functions assigned to the Officer;
- Make public (via internet notice/poster/and other appropriate means) the name, address, telephone/TTY, or Relay Center number of its EO Officer;
- Include reference to the EO Officer in all internal/external communications and public information materials that describe the MWA's EO program;
- Ensure that the Officer is provided access to training necessary to maintain competency and carry out responsibilities associated with the position, including attendance at EO related training required by the state; and
- Provide the EO Officer with sufficient management, resource, and staffing support and ensure that support personnel receive the training required to assist with assigned EO activities.

MWAs must also submit the name of its EO Officer and related EO management/Officer profile information to the WDA upon request and/or immediately (within 30 days) when a reappointment to the position is made.

1.3 Percent of Time Devoted to EO

In complying with this policy, MWAs are not required to establish a full-time position to coordinate the EO function. In most cases, the duties described in the regulations and policy standard 1.1 of this guide may be performed by an individual (or individuals) who is assigned other administrative or program duties as long as:

- Any such additional duties do not create a conflict, or the appearance of a conflict of interest, with EO management functions; and
- The EO Officer is able to give priority to, and adequately accomplish, their EO responsibilities.

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All determinations regarding possible conflict of interest and/or the required minimum percentage of time to be devoted to EO will be based on criteria established by federal funding agencies.

1.4 Assignment of Section 504 Coordinator Responsibilities

The EO Officer appointed in compliance with this policy may, at the MWA's discretion, also serve as the agency's designated 504 Coordinator, responsible for ensuring nondiscrimination and equality of opportunity for persons with disabilities. If the EO Officer does not fulfill this role, the MWA must appoint a Section 504 Coordinator, with the training and experience to perform duties associated with that position. Notice of the person appointed to fulfill Section 504 Coordinator functions, if different than the designated EO Officer, must be submitted to the WDA within 30 days of appointment.

1.5 Establishment of EO Related Positions at Provider Agencies

Agencies that operate Michigan Works! Service Centers or serve as local providers **are not** required to designate an EO Officer. MWAs may, at their option, require their recipients to appoint a liaison to coordinate EO activities or serve as an initial point of contact for EO issues at Service Centers and other provider agencies. MWAs adopting this method of administration must issue policy regarding the specific duties assigned to EO liaisons and develop a strategy to ensure that individuals performing this function have been sufficiently trained to carry out assigned responsibilities. MWAs are reminded, that while establishment of EO liaisons within the local service network is a highly endorsed best practice, such assignment does not relieve the MWA from its obligation to designate an EO Officer and the WDA will hold the MWA/grant recipient accountable for compliance with that requirement.

PART II PROHIBITION AGAINST DISCRIMINATION AND GENERAL EQUAL OPPORTUNITY MANAGEMENT REQUIREMENTS

PURPOSE: To clarify recipient responsibility for ensuring nondiscrimination and to disseminate information regarding administrative obligations and general EO management responsibilities.

2.0 POLICY: MWAs/grant recipients must ensure nondiscrimination in all federally funded and state administered programs operated through its service network and must develop an operational framework for documenting the manner in which the LWIA carries out and manages its EO responsibilities.

2.1 Prohibition Against Discrimination

All recipients are prohibited from discriminating on the grounds of race, color, religion, sex, national origin, age, disability; political affiliation or belief and genetic information. For WIA programs, discrimination on the basis of a beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States or on his/her participation in a WIA Title I financially assisted program or activity is also prohibited.

In operating financially assisted programs or activities, recipients must not directly or through contractual, licensing, or other arrangements, on a prohibited ground:

- Deny any individual aid, benefits, services, or training;
- Provide an individual any aid, benefits, services or training that is different, or is provided in a different manner, from that provided to others;
- Subject an individual to segregation or separate treatment;
- Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others; or
- Treat an individual differently from others in determining whether he or she satisfies any requirement or condition for any aid, benefits, services, or training provided.

Recipients must further ensure that they do not aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground and must comply with the prohibition against other types of discriminatory actions referenced in federal regulations and/or prohibited by state law.

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2.2 Maintenance of Harassment Free Work/Service/Training Environments

MWAs and their recipients must maintain work and training environments free of discriminatory and sexual harassment and must make good faith efforts to prevent harassing behaviors and create work, service, and training atmospheres that foster inclusion and respectful interpersonal relationships. All forms of verbal, written, physical, or graphic conduct that denigrates or shows hostility or aversion toward a person on prohibited bases is strictly prohibited. MWAs are responsible for communicating that allegations of harassment will be taken seriously and that the agency will not condone or tolerate harassing, offensive, or inappropriate behavior, whether committed by MWA administrative staff, personnel of provider/partner agencies, state employees stationed at local facilities, vendors, customers, or others who might be visitors to work, training, or service sites.

To fulfill state policy expectations with regard to this provision, MWAs must:

- Develop and disseminate a discriminatory/sexual harassment policy statement consistent with standards outlined at 3.1 of this guide;
- Train/sensitize administrative staff and the recipient network on issues related to discriminatory/sexual harassment, gender discrimination, and workplace violence;
- Include information related to the topic in employee/participant orientation sessions and in personnel handbooks or similar publications; and
- Thoroughly investigate, in a fair, balanced, and impartial manner any claims of discriminatory harassment (except those excluded by policy standard 7.3) filed with their agency.

WDA is committed to stringent enforcement of this provision. MWAs that fail to take prompt and decisive action upon becoming aware of activities constituting discriminatory harassment within their administrative office or the local service delivery network may be subject to sanctions as outlined in policy standard 9.2 of this guide.

2.3 Equal Employment Opportunity (EEO)

MWAs and their providers are prohibited from discriminating on prohibited bases in their employment practices and in the terms, conditions, and privileges of employment. As part of this obligation, recipients must ensure that job applicants receive fair consideration for employment and that agency hiring decisions are based on valid, objective, and uniformly applied selection criteria that are job-related and necessary to perform the essential functions of the job.

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All recipients must maintain written human resource policies and procedures that reiterate the agency's EEO policy commitment and provide employees with information regarding work rules, expected standards of conduct, wage and benefit compensation, selection/promotion procedures, staff development and training, and the rights and responsibilities of agency employees. MWA and recipient personnel policies must also incorporate provisions that address issues such as reasonable/religious accommodations, discriminatory/sexual harassment, and avenues available for discrimination complaint processing through both internal and federal (Title VI) procedures.

2.4 Workforce Composition/Representative Boards, Planning, and Advisory Groups

MWA and provider agency staff composition and all boards, planning, and advisory groups formed to carry out workforce initiatives, must be diverse and reasonably represent the demographic composition and significant segments of the community in which services are delivered. To demonstrate compliance with this requirement, MWAs and their recipients must maintain and make available to the WDA, upon request, a document that highlights data on agency staffing patterns. This data report must be updated on a routine (biennial) basis, or more frequently as necessary, to coincide with changes in MWA and provider staffing configurations. Data regarding the demographic composition of all boards, planning, and advisory groups must also be readily available.

2.5 Selection of Service Providers/Participation of Faith-Based and Community Organizations

The selection of Service Center operators and other provider/training agencies is to be made on a competitive, nondiscriminatory basis that takes into account the purpose/goals of the program and includes an objective assessment of the provider's ability to meet established program design or training specifications. In soliciting providers, MWAs must ensure that faith-based and community organizations are provided the opportunity to apply and compete, on a nondiscriminatory/equal basis, with other eligible organizations seeking to deliver programs, training, and services receiving federal and/or state financial assistance.

2.6 Pre-Award Compliance Review Process

As part of the local solicitation process, MWAs must develop a process to ensure that each grant applicant, if funded, or training provider, if declared eligible, is able to provide programmatic and architectural accessibility to individuals with disabilities. MWAs must also incorporate into service provider pre-award selection procedures, a specific inquiry to determine whether any administrative actions or lawsuits alleging discrimination on prohibited grounds have been filed against prospective providers during the two-year period prior to their application for assistance. The fact that an entity affirmatively

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responds to this inquiry will not necessarily preclude its eligibility to serve as an eligible provider. MWAs wishing to contract with such entities must consult with ~~DELEG~~ WDA prior to the execution of any agreement committing state or federal funds.

2.7 Assurance of Nondiscrimination in Contracts, Grant Agreements, and Applications for Funding Assistance

All contracts (including TAA contracts and those establishing on-the-job training positions), grants, cooperative agreements, memoranda of understanding, applications for financial assistance or other funding arrangements must contain an assurance of nondiscrimination in the provision of benefits, services and activities, in employment practices and in all terms, conditions and privileges of employment. Contracts and other funding instruments used for WIA must additionally ensure full compliance with Section 188 of the Act and include (or incorporate by reference) the assurance found at 29 CFR§37.20(a) (1) of the WIA EO regulations.

2.8 EO Covenant in Property Transfers

Instruments that effect or record the transfer of real property, structures, or improvements on real property or structures used in conjunction with federally assisted activities must include a covenant ensuring nondiscrimination.

2.9 Procurement Practices

The MWA's commitment to EO must also be applied to purchasing decisions and other agency procurement transactions. Recipients are to implement reasonable measures to obtain written assurance of EO compliance from vendors/suppliers of their EO compliance and must take affirmative steps to foster the participation of small, minority, and female-owned businesses whenever they represent a potential procurement source. Service providers must be required to take comparable steps and all recipients must routinely assess the effectiveness of efforts in promoting increased procurement opportunities for small, minority, and female-owned businesses in the acquisition of goods and services.

2.10 Prohibition Against the Use of Direct Federal Assistance for Religious Activities and Rights of Faith-Based Providers

All agencies/entities, including faith-based organizations that receive federal funding, are prohibited from using "**direct**" federal financial assistance to support inherently religious (i.e., religious instruction, worship, and proselytization) activities. Faith-based providers must offer its inherently religious activities at a time or place that is separate from its programs that receive direct federal support. All participants enrolled in or seeking

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services provided by a religiously affiliated or faith-based provider, must be informed that participation in inherently religious activities is voluntary and that their choice whether or not to participate will not affect the quality of services they receive.

In administering programs, faith-based providers retain their independence from federal, state, and local governments and may continue to carry out their missions and maintain their religious character. This autonomy includes the right to:

- Use the organization’s facilities without removing or altering religious art, icons, or other religious symbols;
- Select board members and govern on a religious basis;
- Utilize federal exemptions under Title VII of the Civil Rights Act, to hire employees on a religious basis, except where the federal statute (i.e., WIA Section 188) prohibits such action; and
- Freely express their religious views.

MWAs and their recipients are urged to review the regulations and other guidance issued by federal funding agencies for additional clarification regarding these provisions.

2.11 Use of Indirect Federal Financial Assistance for Religious Training and Employment

MWAs and their recipients may use federal financial assistance to support training and employment in religious activities in those cases where federal support is “indirect” and provided to customers who are:

- Given a genuine and independent private choice among training providers and program options; and
- Freely elects, from such options, to receive training in religious activities.

Such choice must be offered to customers by means of a voucher, coupon, credit card, certificate, or similar mechanism that permits individuals to choose among a variety of providers or program options. Individual Training Accounts and Personal Reemployment Accounts generally satisfy the indirect support requirement and other workforce activities may, based on program design structure, also qualify. Caution should be taken in extending application of this provision to other workforce initiatives without definitive guidance from state or federal officials.

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2.12 EO Management Plan/Publication of Local Policies and Procedures

MWAs must develop a management plan that documents the manner in which the LWIA carries out each element of its EO responsibilities. As part of this plan, MWAs must adopt and disseminate written EO policy directives to Service Centers, the local recipient network and agency staff that outline federal/state EO compliance requirements and the MWA's operational procedures and service protocols. In meeting this requirement, MWAs may at their option, elect to prepare a written Methods of Administration (MOA) that comprehensively addresses the agency's EO systems and practices. If this option is not selected, the MWA's EO Officer/other management officials must be able to articulate, in a definitive manner, the established systems, policies, and procedures relied on by the LWIA in assuring agency compliance with federal and state nondiscrimination and EO requirements.

2.13 EO Training

MWAs have an obligation to ensure that all agency staff, personnel of local Service Centers, and other providers/partners within its recipient network are provided EO training that at a minimum includes:

- A basic orientation to the nondiscrimination and EO provisions of Title VI of Civil Rights Act of 1964 and Section 188 of WIA;
- An overview of Section 504 of the Rehabilitation Act of 1973 and other federal disability (Americans with Disabilities Act [ADA]) requirements; and
- A component highlighting the prohibitions against discriminatory/sexual harassment, gender discrimination and workplace violence.

Additional training on specific facets of the agency's EO management program and service protocols must be provided, as appropriate, to those staff whose positions bring them in contact with customers with special needs, or who are responsible for administering the agency's EEO/human resource functions.

MWAs have considerable latitude in structuring their EO training strategy and may rely on a variety of delivery formats encompassing both formal and informal training in meeting this requirement. Evidence which documents EO and diversity-related training and access to resources/tools necessary to carry out EO responsibilities must be retained on file for review during the compliance review process.

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2.14 Monitoring and Evaluation

MWAs must periodically monitor and document internal EO compliance and the performance of providers in meeting EO obligations. The MWAs' monitoring process must, at a minimum, include:

- A review of policy issuances to ensure that they are nondiscriminatory;
- A system for reviewing contracts, assurances, and similar funding agreements to ensure that they are nondiscriminatory and contain required EO provisions;
- An assessment to determine whether recipients have fulfilled administrative obligations and WDA policies and procedures;
- A review of the effectiveness of their language assistance plan;
- Procedures for assessing compliance with Section 504 of the Rehabilitation Act;
- A statistical or other quantifiable analysis of performance data to determine whether any differences based on race/ethnicity, sex, age, and disability status have practical or statistical significance; and
- Periodic reports chronicling the MWAs'/service providers' efforts to maintain a representative workforce.

MWAs must issue written reports of monitoring findings and maintain records of all EO compliance assessment activities. MWAs must also develop internal mechanisms for initiating prompt and appropriate corrective action in response to findings of EO noncompliance and must establish local procedures for applying sanctions in the event compliance cannot be secured through voluntary means.

2.15 Notification of Administrative Enforcement/Lawsuits

MWAs must promptly notify WDA of any administrative enforcement actions or lawsuits alleging discrimination on prohibited grounds filed against it and/or any of its recipients/provider agencies while administering local workforce programs. If the pending litigation or enforcement action is filed against a program receiving federal financial assistance from the USDOL, a copy of the notice must simultaneously be filed with the Director of the Civil Rights Center. The notice must include:

- The names of the parties to the action or lawsuit;
- The forum in which each case was filed, and
- The relevant case numbers.

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Provisions requiring service providers to comply with these notification requirements must be incorporated into MWA policies and procedures.

2.16 Prohibition Against Discriminatory Job Orders

MWAs must ensure that job orders posted by agency staff on Michigan Talent Connect do not contain any discriminatory specifications, unless such specifications are being applied in compliance with an affirmative action court order or represent a bona fide occupational qualification (BFOQ). MWAs are urged to adhere to operational procedures outlined in the Employment Service Manual and to follow other applicable guidelines related to the servicing of Affirmative Action Job Orders and the approval of a BFOQ to ensure compliance with state requirements.

2.17 Statement of Liability for EO Noncompliance

Federal regulations hold the Governor responsible for ensuring compliance with EO requirements and negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found. The state's MOA establishes a complementary standard, holding the MWA/grant recipient accountable for actions taken, directly or indirectly, through its service provider network. As such, the state will direct all findings of EO noncompliance and other adverse determinations to the MWA/grant recipient and will rely on the MWA/grant recipient to take a leadership role in negotiating voluntary compliance arrangements and implementing corrective action to resolve technical violations and findings of discrimination that occur below the administrative agency level. There are no provisions that will not allow affected Service Centers, provider agencies, or other entities under contract with the LWIA to contest findings issued by the WDA to the MWA/grant recipient through an independent action or appeal to the Agency. MWAs must develop pre-established procedures to afford recipient agencies due process and a means to respond to findings of discrimination or other adverse determinations made by the state, in response to a discrimination complaint or special investigation.

PART III

NOTICE AND COMMUNICATIONS

PURPOSE: To highlight recipient responsibility to issue notices of nondiscrimination and to clarify the information that must be disseminated, posted, and included on publications, electronic communication networks, and other materials distributed to the general public.

3.0 POLICY: MWAs and their recipients must provide initial and continuing notice that they do not discriminate on any prohibited ground and that agency programs, services, and activities operate in full compliance with the nondiscrimination and EO provisions of applicable laws.

3.1 Adoption and Publication of EO Policy Statements

MWAs, as part of the process of providing initial and continuing notice of EO compliance, must adopt and publish:

- A general nondiscrimination policy statement expressing commitment to the principles of EO and the prohibition against discrimination on any prohibited ground in both the provision of services and in access to employment, and
- A discriminatory harassment policy statement that conveys zero tolerance for discriminatory and sexual harassment within both the administrative organization and within agencies with whom the MWA contracts for the delivery of workforce and related training and services.

The discriminatory/sexual harassment policy must clearly define those actions/behaviors that constitute harassing conduct within the work and training environment; express a commitment to take quick and decisive measures in response to such complaints; and to protect from retaliation any individual who reports harassing conduct or otherwise participates in an investigation or review of such charges.

All policy statements must be signed by the MWA's highest-level administrative official and/or be adopted by action of the local Workforce Development Board. The MWA's Service Centers and other recipients must be required to adopt and disseminate comparable nondiscrimination and discriminatory harassment policy provisions.

While not required by state policy, MWAs with significant populations of diverse religious groups that are likely to participate in agency programs are encouraged to adopt policy statements and written guidelines on religious accommodations. Other EO-related policy statements, Codes of Conduct, and similar procedural guidelines, as deemed locally appropriate, should also be incorporated into the MWA's EO management plan.

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3.2 Notice Requirements for Customers, Consumers, and Workforce Partners

All individuals, partners, and entities seeking to access programs administered through the state's workforce investment system must be provided written notice that highlights the grounds on which discrimination is prohibited; summarizes the process for filing a complaint; and lists the name of the person(s) designated by the recipient to receive complaints and/or complaint-related inquiries. Such notice must be disseminated to:

- All registrants, applicants, and eligible applicants/registrants;
- Participants;
- Employees and applicants for employment;
- Service Centers, provider agencies, vendors, and other entities that receive or submit an application to receive state or federal contract or grant funding;
- Unions and professional organizations holding collective bargaining and/or professional agreements; and
- Members of the general public, including individuals with impaired vision and hearing.

For programs funded under Title I of WIA, **the notice must contain the exact wording** specified by USDOL at 29 CFR§37.30. Recipients may use downloadable versions of the WIA notice format to customize the document for local use and are encouraged to utilize available multi-media tools to communicate the USDOL notice to individuals with disabilities and customers who may be limited English proficient. For other state/federal initiatives, recipients are to develop a general notice that contains required compliance elements and is, to the extent practicable, specific to the bases on which the funding agency prohibits discrimination.

3.3 Documentation of Participant Receipt of the Notice

The program files of individuals who are enrolled as participants in workforce initiatives must include verification of receipt of the EO notice. Recipients may comply with this provision by including in each participant file:

- A signed copy of the full text of the notice; or
- An agency designed acknowledgment form, signed by the participant, confirming receipt of the notice.

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In cases where the notice is disseminated in an alternative format to meet the needs of participants with visual impairments, recipients must develop a means by which to document that notice was provided in an alternative format. Such documentation must be maintained in the participant file.

3.4 Notice Requirements for Public Presentations and Orientation Sessions

Orientation sessions held for program participants, new employees, and others must include a discussion of the universal access features of the state's workforce investment system and the recipient's commitment to EO in all aspects of service delivery. Such sessions must additionally reference rights extended under the EO and nondiscrimination provisions of programs, including the right to file a complaint of discrimination at the MWA, state, and/or federal level.

3.5 Required State and Federal EO Posters

All recipients must post the "*Michigan Law Prohibits Discrimination*" poster issued by the Michigan Department of Civil Rights and must comply with the posting requirements of each of the federal agencies granting workforce funding to their agency by displaying as appropriate the:

- "*Equal Opportunity is the Law*" poster produced by WDA to meet regulatory requirements imposed by USDOL,
- "*And Justice for All*" poster required by the USDA, and
- "*Equal Employment Opportunity is the Law*" poster published by the EEOC or a locally developed notice to meet the posting requirement established by HHS.

Recipients of funding from USDOL are also strongly encouraged to post the supplemental notice "*Discrimination is Against the Law*" disseminated by the Civil Rights Center to ensure that individuals are fully informed of their right to file discrimination complaints under WIA.

3.6 Posting Requirements

All required posters must be:

- Displayed prominently and in reasonable numbers in administrative offices and all agencies where training and/or services are provided;
- Hung in areas where employee notices are regularly posted; and

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- Posted in languages other than English, where significant portions of the eligible population need information in alternative language formats.

Required posters must be displayed in regulation size (13x17½) in all public-viewing areas. For administrative offices and employee bulletin boards, the standard size (8½x11) version of the notice may be utilized. To meet the USDOL posting requirements, WDA has published the state’s version of the “Equal Opportunity is the Law” poster in Arabic, Chinese, English, Hmong, Russian, Serbo-Croatian, Spanish, and Vietnamese. The WDA will also provide the “Equal Opportunity is the Law” posters in other languages based upon needs identified by the local MWAs.

3.7 Other Required Methods of Notice Dissemination

In addition to displaying the posters, MWAs and their service providers must assure that a general statement of nondiscrimination is:

- Disseminated in internal memoranda and other written communications;
- Included in handbooks and manuals;
- Included on all recruitment brochures, media messages, and other materials distributed to the public to describe agency programs, activities, and/or participation requirements;
- Posted on internet sites and other electronic communication networks; and
- Referenced on all employment notices, application forms, and related pre-employment documents.

Where space permits, it is recommended that recipients use an appropriate full statement of EO compliance and are encouraged to use language from their agency mission or official EO policy statement in complying with this requirement.

3.8 Notice Requirements for Public Documents, Publications, and Media Messages

Where space is limited on program promotion and other selected agency publications, the notice requirement may be met through the use of EO taglines stating that the agency is an:

- “Equal opportunity employer/program,” and that
- “Auxiliary aids and services are available upon request to individuals with disabilities.”

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Documents that must carry an EO notice or the tagline(s), as appropriate, include, but are not limited to:

- Agency Letterhead,
- Request for Proposals,
- Brochures and Pamphlets,
- Meeting Notices,
- Customer Program Application Forms,
- Employment Application Forms,
- Participant/Employee Recruitment Materials,
- Locally Developed Training Materials,
- PowerPoint Presentations Used for Public Presentations,
- Public Service Announcements/Advertising/Press Releases/Media Messages/Broadcasts, and
- Other routine agency communications ordinarily released to the general public.

Where publications, program promotion materials, or other routine documents lists a telephone number where the recipient may be contacted for information regarding agency programs and services, the recipient must also provide a TTY or the Michigan Relay Center toll-free (1-800-659-3777) or 711 number.

3.9 Notice Requirements for Internet and Electronic Communications

For internet and other electronic communication sites, recipients have the option of using either the EO taglines or a customized statement that complies with the intent of the regulation. It is recommended that such notice be placed on a page or web link where general information regarding agency services is posted or where agency contact information is provided.

3.10 People First Language

All policies, publications, and other forms of both written and spoken communications, used in conjunction with programs and services offered through the state's workforce investment system, must use "people first" language that is inclusive and respectful of the disability community. Use of the term "handicapped" is unacceptable and may not be used.

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3.11 Publication Standards for Photographs and Visual Illustrations

MWAs and their recipients must ensure that publications, which include photographs and other visual illustrations, portray positive images of women, minorities, and individuals with disabilities engaged in a variety of workplace and skill training capacities.

Recipients must also ensure that nothing suggests by text or illustration that the recipient treats any employee, applicant for employment, beneficiary, applicant or participant differently on any prohibited ground.

PART IV UNIVERSAL ACCESS AND SERVICE PROVISION TO INDIVIDUALS
LIMITED ENGLISH PROFICIENCY

PURPOSE: To disseminate state standards for ensuring universal access, effective outreach efforts, and promoting inclusion practices within the state’s workforce investment system.

4.0 POLICY: MWAs and their recipients must provide universal access to local programs, implement practices to ensure effective outreach, honor diversity and inclusion, and take reasonable measures to ensure meaningful access to programs and services by individuals with limited English proficiency.

UNIVERSAL ACCESS SERVICE REOUIREMENTS

4.1 State Standards for Diversity, Inclusion and Universal Access

The State of Michigan recognizes the value of diversity and is committed to developing a statewide culture that continuously promotes access, equity, and respect for the differing customs, abilities, and beliefs of people who seek workforce services. All partners in the statewide delivery network are expected to create service environments that are welcoming and responsive to the cultural values of the communities we serve. MWAs and their recipients, as part of the obligation to provide universal access, must ensure that members of both sexes, the various racial, ethnic, age groups, and individuals with disabilities are made aware of, and encouraged to participate in, agency sponsored programs and activities.

In administering workforce initiatives, recipients are further encouraged to:

- Embrace an overall philosophy and implement, as locally deemed appropriate practices for ensuring a universally accessible service system;
- Incorporate into all local programs, plans, policies, and practices language that is reflective of our shared vision for inclusiveness; and
- Host or participate in special observances designed to enhance cultural awareness and celebrate the workforce contributions and achievements of protected and ethnic group communities.

4.2 Respect for Religious Beliefs

MWAs and their recipients must ensure that all prospective/active program participants and agency employees are not treated differently because of their religion, religious beliefs or lack thereof, and must:

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- Permit individuals to freely express their views and exercise their right to religious freedom; and
- Provide reasonable accommodations for religious practices or beliefs, unless to do so would result in undue hardship.

The reasonableness of a religious accommodations request is to be determined on a case- by-case basis, taking into consideration the particular circumstances involved.

4.3 Development of an Outreach and Recruitment Plan

To ensure that proactive measures are being taken to reach out to all eligible population groups, MWAs are required to develop and maintain an outreach and recruitment (marketing) plan. The plan must:

- Describe and provide a timetable for activities (such as letter campaigns, community presentations, job fairs, speaking engagements, public service announcements, billboards, etc.) that will be initiated to ensure that all substantial segments of the population are reached with information concerning WIA and other workforce services;
- Identify all media outlets and any minority, female, aging, disability, community or faith-based publications, newspapers, radio broadcasts, and/or television programs that will be used to advertise programs and services;
- List agency memberships or associations with organizations serving minority, female, aging, disability, community/faith-based, or other target group populations; and
- Provide the names and addresses of community/faith-based organizations and other agencies/entities serving minority, female, aging, youth, and disability populations, which the MWA maintains referral linkages, shares information, periodically solicits input from, and/or includes on mailing lists to receive Request for Proposals and related program recruitment, marketing, and informational materials.

The outreach/recruitment plan must be updated on a periodic basis and efforts must be taken to assess the effectiveness of the strategy in meeting protected group program participation goals and other program planning/marketing objectives.

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SERVICE PROVISION TO CUSTOMERS WITH LIMITED ENGLISH PROFICIENCY

4.4 State Standards for LEP Service Provision

As part of the continuing obligation to provide universal access, MWAs, their Service Centers, and other recipients must provide language assistance services and implement reasonable measures to ensure meaningful access to programs and activities by individuals with limited English proficiency (LEP). To achieve this standard, MWAs and their recipients must ensure that customers, who have limited ability to read, write, speak or understand English, are:

- Able to receive adequate information about programs and services;
- Understand the benefits of the programs and services available;
- Receive the benefits of programs and services for which they are eligible, free-of-charge; and
- Effectively communicate the relevant circumstances of their situation to the MWA and/or provider agency.

Failure to ensure that LEP persons are provided effective means to participate in and benefit from federally assisted programs and activities may violate the Title VI prohibition against national origin discrimination.

4.5 Assessment of Language Assistance Needs

MWAs must make a thorough assessment of the language assistance needs of the LEP population within their service area by conducting an analysis that balances the following four factors:

- The number or proportion of LEP individuals/groups eligible to participate or likely to be directly affected by MWA/recipient programs or activities;
- The frequency with which LEP individuals/groups come in contact with MWA/recipient programs, activities, and services;
- The nature and importance of the MWA/recipient programs, activities and services; and
- The resources available to the MWA/recipient and the estimated costs required to provide LEP access.

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In completing the four-factor analysis, MWAs are encouraged to utilize resources prepared by the USDOL/other federal agencies and are to rely on state/local data sources and other readily available agency self-assessment/compliance assistance tools. Consultation and networking with community-based organizations and other entities within their service area that are familiar with the language needs of local LEP populations is strongly recommended.

4.6 Written Policy on Language Access and Assistance

Based on results identified in the four-factor analysis, MWAs and/or their recipients must develop a written language assistance plan that describes the protocols and procedures that will be implemented to ensure program access by LEP customers. At a minimum, the language assistance plan must:

- Articulate an organizational/policy commitment to the provision of meaningful access and equitable service provision to LEP individuals;
- Outline, in summary fashion, demographic information identified in the four-factor analysis relative to the LEP language groups likely to be encountered in delivering area programs, services and activities;
- Describe the range/mix of language assistance services available and the methods to be relied on in providing oral interpretation services (i.e., bilingual staff, staff interpreters, contract interpreters, community volunteers, telephonic interpreter services); the manner in which the recipient will respond to in-person LEP contact, LEP callers, written correspondence from LEP customers, and the internal mechanisms to be relied on in guiding staff in the selection of the appropriate type(s) of interpreter/language assistance services required to meet LEP customer needs within a reasonable standard of promptness;
- Describe the plan developed to provide vital documents and other written materials in regularly encountered non-English languages;
- Outline the methods that will be used to proactively notify LEP persons, in their primary language, of their right to receive language assistance services, free of charge, and the means by which the general public will be made aware of the availability of both oral and written translation services;
- Identify the training plan developed to ensure that staff, at all levels within the service network, is aware of the state's LEP service standards and the Title VI prohibition against national origin discrimination. The training plan must additionally outline the advanced/specialized training to be provided to managerial/front-line staff, community agencies, and other resource providers who

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will be responsible for implementing the agency's LEP service strategy or performing oral interpretation and written translation services; and

- Describe the assessment/monitoring process that will be implemented to annually review and implement continuous improvement elements into the local LEP service strategy.

In designing the language assistance plan, MWAs and their recipients have considerable latitude in choosing the specific language assistance measures that will be incorporated. Relevant components of the plan, however, must be in compliance with state policy requirements referenced in this section and are to be consistent with guidance issued by federal civil rights enforcement agencies regarding the preparation of such plans. Recipients may, at their option, incorporate measures implemented to meet the needs of individuals with visual, hearing, and speech impairments, as required by 5.6 and 5.7 of this guide, into the local language assistance strategy.

4.7 Standards for Oral Translation Services

MWAs and their recipients must ensure that oral interpretation services are readily available, during all hours of agency operations, and that only trained and qualified interpreters are used to provide such services. The requirement to be "qualified" encompasses more than the interpreter's self-identification as a bilingual speaker. To be qualified, the interpreter must have:

- Demonstrated ability to accurately convey information in English and the target language;
- Fundamental knowledge, in both languages, of any specialized terms or concepts particular to the provision of program services and activities provided by the agency;
- Orientation and training on the skills and ethics of interpretation (i.e., issues of confidentiality); and
- Knowledge of, and sensitivity to, the culture of the LEP population(s) for which translation services are provided.

MWAs and their recipients must include in their language assistance plans a discussion of the means by which the agency assesses and/or documents the competency status of staff and other persons used to provide oral translation services.

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4.8 Use of Community Volunteers for Oral Translation Provision

MWAs electing to incorporate the use of community volunteers into their language assistance strategy must ensure that formal arrangements are made; that volunteers are qualified (as defined in 4.7 of this guide) and understand their role and obligations to maintain impartiality and customer confidentiality.

4.9 Use of Family/Friends and Minor Children as Interpreters

MWAs and their recipients are prohibited from requiring, suggesting or otherwise encouraging LEP persons to use family members or friends to aid in facilitating communications with agency or provider staff. MWAs and their recipients may, however, include in their local service strategy provisions that would allow an LEP person who **voluntarily chooses** to provide his or her own interpreter to do so if:

- The MWA, Service Center, or provider agency has informed the LEP person of their right to free interpreter services;
- The LEP person declines such services and specifically requests the use of an adult family member or friend; and
- The MWA, Service Center, or provider agency determines that use of the requested interpreter will not compromise the effectiveness of the services provided or violate the LEP person's confidentiality.

When using a family member or friend, the MWA and/or their providers must document the offer of free interpreter services and the LEP person's decision to decline the offer in the customer's file. Local guidelines regarding this process must be detailed in the language assistance plan or agency internal procedures. **Under no circumstances are minor children to be used to provide oral translation services.**

4.10 Use of State Employees as Interpreters

In developing LEP policies, MWAs are reminded that WDA Agricultural Employment Specialists and other bilingual state employees stationed at Service Centers and other facilities that provide public workforce services, are prohibited by state policy from serving as a primary resource for the provision of language assistance services. State employees may, however, assist recipient agencies on a limited basis in responding to initial customer service needs when agency bilingual staff is unavailable and/or in emergency situations that require immediate intervention and language assistance support.

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4.11 Guidelines for Written Translations/Safe Harbor Provisions

MWAs and their recipients must ensure that essential program materials or vital documents (as defined in policy standard 4.12) are translated into each regularly encountered language spoken by groups eligible to be served or likely to be directly affected by the MWA's programs or activities. In complying with this standard, MWAs and their recipients should, as applicable, rely on the general guidelines or safe harbor provisions established in federal LEP guidance. The safe harbor provisions suggest that recipients:

- Provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1000 persons (whichever is less) of the population of persons eligible to be served or likely to be directly or significantly affected by the provider's program or activity; and
- Issue written notice of the right to receive competent oral interpretation of written materials, free of charge, in the primary language of affected LEP groups, when the language group reaches the 5 percent trigger, but constitutes fewer than 50 persons.

The safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed to facilitate communications.

4.12 Vital Documents

A document will be considered vital if it contains information that is critical for obtaining federally assisted services and/or benefits, or if it is required by law. Such documents may include, but are limited to:

- Applications to participate in a recipient's program/activity or to receive recipient benefits or services;
- Consent and complaint forms;
- Notices of rights;
- Lists or resources identifying partners at a One-Stop Service Center/other provider agencies and the nature of workforce services offered;
- Letters or notices that require a response from a beneficiary or client;

- Letters concerning important information regarding participation in a program or activity;
- Notices pertaining to the reduction, denial or termination of services;
- Information on the right to file a complaint of discrimination;
- Information on the provision of services to individuals with disabilities;
- Written tests that do not assess English language competency, but rather competency for a particular skill, job, or license for which English competency is not required;
- Notices advising LEP persons of the availability of free language assistance; and
- Program outreach and marketing materials.

To ensure compliance with state LEP service standards, recipient agencies should periodically assess the nature of the documents it routinely produces to determine which materials are vital to the meaningful access and participation of the LEP populations they serve.

4.13 LEP Accessibility to Website Information

LEP access requirements also apply to materials posted on MWA and provider websites. Entire websites need not be translated; however, recipients must ensure that if an English language version of vital information or a vital document is posted, that the same information is available in appropriate languages other than English. If a website includes translated documents, the Home Page must direct users to the location of such information.

4.14 Staff Training

MWAs must implement measures to ensure that its administrative staff and agencies, within its recipient network, have an awareness of, and have been provided information about, federal language access requirements. Local training must include:

- A strategy for ensuring that staff, at all levels, have been informed of the Title VI prohibition against national origin discrimination and the state's customer service standards for ensuring meaningful access to LEP populations;
- A plan for management personnel and all staff having direct public/customer contact to obtain thorough knowledge of the LEP service plan and interpreter/translator resources for both commonly and rarely encountered languages; and

- A system for ensuring that staff and others involved in the provision of oral interpretation/written translation services meet established competency standards and are appropriately trained in the skills and ethics of interpretation and culturally appropriate service delivery.

The manner in which training is provided to MWA and provider staff is at the MWA/recipient's discretion. The agency must, however, be prepared to justify, based on outcomes identified in the four-factor analysis, that the scope and content of their training strategy is appropriate in meeting local needs.

4.15 Monitoring of the Local Language Assistance Plan

MWAs and their providers must conduct an assessment of the effectiveness of their language assistance plan on an annual basis to ensure that LEP persons continue to have meaningful access to programs and activities. The annual assessment must:

- Review any changes in LEP demographics in the service area,
- Determine if the scope and nature of existing language assistance services is meeting the communication/service needs of the LEP population, and
- Determine if staff is knowledgeable about policies and procedures and how to implement them.

Recipients with significant LEP populations are encouraged to include in their monitoring approach, mechanisms for obtaining customer feedback, and staff assessments on the progress/issues encountered in LEP service provision. A means to solicit, on an on-going basis, input from advocacy and community-based organizations that serve LEP communities is also recommended.

4.16 Notification Requirements

MWAs and their recipients must provide public notification of its language access policy and must be prepared to disseminate the local language assistance plan in languages other than English. To assist the state's service network in providing a general notice of free language assistance services, WDA uses the multilingual "We Speak Your Language/Notice of Interpreter Services." Recipients must post the state's notice and display/disseminate other locally developed signage or materials developed to meet public notification requirements.

4.17 State Practices for Assessing Recipient Compliance with LEP Requirements

The nature and scope of language assistance services an MWA or provider agency offers will depend on a variety of local factors. In assessing MWA and recipient compliance with the state's LEP service standard, WDA will review local documentation to determine whether the recipient has incorporated into its language assistance plan reasonable measures for achieving equal and meaningful access by LEP groups based on projected needs and the level of resources identified in the four-factor analysis. In completing this assessment, WDA acknowledges that, in some cases, full implementation of the local language assistance plan will be achieved over time. Recipient's good faith efforts toward compliance will be a major component of the department's initial compliance measurement efforts.

MWAs and their recipients are encouraged to review the full text of the LEP guidance issued by the USDOL and other federal agencies granting funding to their agencies and are urged to review resources available on <http://www.lep.gov/>; <http://www.dol.gov/oasam/programs/crc/> and <http://www.census.gov/#> for possible replication and use in designing and implementing continuous improvement elements to their local LEP service plans.

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5.3 Separate Programs

Separate programs for individuals with disabilities are permitted, where necessary, to ensure that the training, benefits, and services provided to qualified individuals with disabilities are as effective as those provided to others. Separate programs cannot be used to restrict the participation of persons with disabilities in general integrated programs and individuals with disabilities must retain the right to participate in other available training if they elect to, and meet the selection criteria established for program entry. Where separate programs are offered, MWAs must maintain written documentation outlining the rationale utilized for establishing each separate program, activity, or service.

5.4 Reasonable Accommodations

MWAs and their recipients must make “reasonable accommodations” to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless the recipient can show that the requested accommodation would impose an undue hardship. In meeting this obligation, MWAs must adopt and publish written procedures describing the process participants, employees, applicants for employment, and the general public is to use to request accommodations in accessing agency programs and services. Local procedures must reference the provision of the full range of accommodation measures listed in federal regulations. Such measures include:

- Restructuring job or training programs;
- Developing modified work or training schedules;
- Altering assessment/testing techniques which prevent the fair evaluation of skills;
- Providing auxiliary aids and services;
- Acquiring or modifying equipment or devices; and
- Making necessary alterations to the work or training site to ensure that facilities are accessible to individuals with disabilities.

Local procedures must additionally reference the recipient’s willingness to make reasonable modifications to agency policies, practices, and procedures when requested, unless the recipient can demonstrate that such modifications would result in a fundamental alteration in the nature of their program activity or service. MWAs and their recipients are also required to disseminate both public and internal agency notice of the local accommodations process and must maintain, as readily available materials, any forms or instructions that are to be used to initiate an accommodations request.

5.5 Standards for Determinations of Undue Hardship/Fundamental Alteration

All determinations as to whether a requested accommodation would result in undue hardship or in fundamental alteration in the nature of a program, activity, or service must be made by the MWA's highest level official or his/her designee.

Factors that must be considered in making such determinations include:

- The type of accommodation requested;
- The net cost of the accommodation;
- The overall size of the agency;
- The overall financial resources the agency has available and the individual facility or facilities that would be involved in the accommodation; and
- The effect that providing the accommodation would have on the agency's or facility's ability to serve other customers and the agency's or facility's ability to carry out its mission.

If undue hardship is determined, the MWA must prepare a written statement of the reasons for reaching that conclusion. A copy of the written determination must be provided to the individual requesting the accommodation. MWAs are advised that the determination that a requested accommodation would result in an undue hardship does not relieve the MWA from the duty to furnish an alternative accommodation or service, if available, that would not result in an undue hardship.

5.6 Communications Access/Provision of Auxiliary Aids and Services

MWAs, their Service Centers, and provider agencies must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others. In meeting this obligation, recipients are required to make auxiliary aids and services available, where necessary, to assist individuals with visual, hearing, or speech impairments in accessing all phases of program delivery. When an auxiliary aid or service is required, the recipient must give the person with the disability the opportunity to request the auxiliary aids or services of his/her choice and must give that choice primary consideration in processing the request.

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5.7 Qualified Interpreter Services

MWAs and their recipients are required to establish specific arrangements to ensure that an accommodations request for qualified interpreter services can be made in a timely fashion. Appropriate arrangements include contractual or letter agreements, memoranda of understanding, resource listing, or other means that guarantee service provision within a reasonable standard of promptness.

Written agreements must specifically address the terms and conditions under which the interpreter is available. Resource listing, if utilized, must specify the order in which interpreters are to be called and must reference the understanding the recipient has with each listed provider regarding the terms of their service provision.

5.8 Telecommunication Devices

MWAs and their recipients must have access to a TTY, or another equally effective telecommunications device, to facilitate communications between their agencies and individuals with hearing or speech impairments. Use of the Michigan Relay Service toll-free 1-800-659-3777 or 711-access number represents a functionally equivalent means of communications and would satisfy this requirement.

5.9 Assistive Devices

Service Centers and other providers are encouraged to equip their facilities with assistive technology devices and other products to aid in enhancing access to program resources and services by customers with disabilities. State standards requiring acquisition of a specific set of technology devices have not yet been adopted; however, Service Centers and other providers are encouraged to rely on recommendations generated by the Institute for Community Inclusion (Reference: <http://www.communityinclusion.org/>) in determining the types of assistive devices that can be acquired to facilitate effective communications and maintain a universally accessible and welcoming service environment.

5.10 Technology Accessibility

The obligation to provide effective communications also extends to information technology/computer related applications. Recipients must ensure that agency web pages, software, Internet sites, and other technology information systems are accessible. MWAs and their recipients, as part of the self-evaluation of program accessibility, must conduct a review of their technology applications/network services and take action as appropriate to ensure that such systems are accessible to users with disabilities.

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EMPLOYMENT AND TRAINING DISABILITY-RELATED PRACTICES

5.11 Maintenance of Non-discriminatory Employment Practices

As employers, MWAs and their recipients are prohibited from discriminating in their employment practices or in the terms, conditions, and privileges of employment. MWA/provider personnel and labor relations policies and procedures must reflect adoption of employment practices consistent with the ADA and the nondiscrimination provisions of applicable state and federal laws.

5.12 Review of Job Qualifications

MWAs and their recipients must periodically review the appropriateness of all job qualifications. The review is to ensure that job qualifications are related to job performance and are consistent with business necessity and safe performance. The recipient has the burden to demonstrate that it has complied with this requirement.

5.13 Disability Inquiries in the Provision of Workforce Services

Within the context of providing services, MWAs and their recipients may make limited inquiries as to whether or not an individual has a disability. Such inquiries generally are to be made (in writing) for data collection purposes and may be directly solicited to determine eligibility for special programs/funding or to ensure that accommodations necessary to access program services are provided. MWAs and their recipients are to follow guidelines issued by federal agencies in complying with this requirement and must develop internal protocols and instructions for use by staff that routinely interact with or interview applicants seeking services.

5.14 Disability Inquiries During the Pre-Employment Selection/Hiring Process

It is illegal for MWAs and their recipients to ask whether a job applicant has a disability or make inquiries that might elicit a disclosure about a disability during agency employment selection processes or when performing pre-employment screening and related job interview functions on behalf of local employers. In cases where disability-related information is voluntarily provided, recipients are prohibited from disclosing it (or other medical information) to potential employers, unless the job applicant has made an independent decision to disclose their disability status and has specifically requested recipient staff to make the disclosure on his or her behalf.

5.15 Pre-Employment Medical Examinations

Recipients may not require pre-employment medical examinations, but they may condition a job offer on the results of a medical examination conducted prior to an individual's entrance on duty if:

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- All entering employees/trainees in the same job category, regardless of disability status, are required to take the same medical examination; and
- The results of the medical examination are treated as confidential information and are not used to discriminate on the basis of the disability.

5.16 Confidentiality of Medical Disclosures/Records

Disability disclosures and all information concerning the medical condition or history of applicants, participants, and employees, including information voluntarily disclosed, must be treated as confidential medical information. Recipients must take steps to safeguard the security of medical records and to ensure that such information is not included in an employee's personnel or a participant's program file. In limited circumstances, as specified in the regulations, medical information may be shared with management and other officials. Local procedures adopted by MWAs and their recipients must specify the manner in which medical documents will be maintained and the personnel who will be afforded access to such records.

ARCHITECTURAL ACCESSIBILITY STANDARDS

5.17 Obligation to Provide Architectural Accessibility

MWAs and their service providers must ensure that all aspects of their programs and activities are architecturally accessible to individuals with disabilities. In complying with this standard, MWAs must assure that all sites designated as a One-Stop Service Center meet federal architectural accessibility guidelines. Within the local service network, MWAs are not required to make each facility or every part of an existing facility accessible. MWAs will have achieved accessibility as long as their programs, when viewed in their entirety, are accessible.

5.18 Modification to Facilities/Transition Plan

Program and training facilities need only be modified where alternative, nonstructural methods fail to offer the same or comparable benefits and opportunities to individuals with disabilities on an equitable basis. In cases where structural changes to facilities are required, recipients must develop a transition plan with the assistance of interested persons, including qualified individuals with disabilities. The plan, and the developmental process related to the plan, must meet requirements specified in the regulations. All new construction or plans for facility renovation must adhere to standards for architectural accessibility, as delineated by the General Services Administration in the Architectural Barriers Act of 1968. Reference: <http://www.gsa.gov/portal/category/100000>

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5.19 Information and Signage

Recipients must ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. All agencies must take action to comply with guidelines for building signage and other postings which provide directions to, or information about, functional spaces and accessible facilities and programs within buildings. Specifically recipients must:

- Install the international symbol of accessibility at each primary entrance of an accessible facility;
- Post other appropriate signs and notices at its administrative office(s), training, and/or service site(s), directing individuals with disabilities to designated parking and to accessible secondary facilities (such as rest rooms, lunchrooms, drinking fountains, telephones/TTYs, etc.); and
- Provide signage at a primary entrance of its inaccessible facilities, directing users to locations where information about accessible services and facilities can be obtained.

5.20 Facility Evacuation Plans

As part of a local facility management program, MWAs and their recipients are required to develop and post in conspicuous places, evacuation plans which describe the procedures that will be activated in response to emergency situations (i.e., fire, tornado, bomb threat, and other public safety issues) that could involve participants, staff, and visitors to Service Centers, provider agencies, and training facilities. Such procedures must address plans for the emergency evacuation of individuals with disabilities who may need mobility or other assistance. MWAs and their recipients must also inform individuals with disabilities of the plans for their personal evacuation.

ADMINISTRATIVE OBLIGATIONS

5.21 Self-Evaluation

Recipients of federal financial assistance are required to conduct a self-evaluation to determine the extent to which current facilities, programs, communication systems (including internet/computer-related applications), and agency employment practices are in compliance with federal accessibility standards. Where warranted, recipients are required to modify and/or correct those policies and practices that are inconsistent with regulatory standards or that adversely affect the full participation of individuals with disabilities. The self-evaluation must cover all facets of the recipient's programs and must be retained on file as evidence of the recipient's good faith efforts to comply with the Act and for WDA compliance purposes.

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5.22 Policy Development

MWAs are required to describe and document internal systems and practices for ensuring the accessibility of individuals with disabilities through their local service network. Policy communications issued by the MWA must advise Service Centers, provider agencies, and other recipients of their obligation to comply with disability-related service requirements and must require the adoption and/or maintenance of service protocols/written procedures that outline the specific mechanisms that are to be followed in responding to the needs of customers with disabilities.

5.23 Disability Service-Related Training

Consistent with the requirements outlined in policy standard 2.13, staff at all levels, are to be provided access to training on federal disability (Section 504/ADA) requirements. MWAs further have an obligation to ensure that their administrative staff, personnel of Service Centers, and provider agencies, whose positions bring them in contact with individuals with disabilities, have received thorough training on the MWA's and/or the provider's disability service strategy. Training content must include, as appropriate, procedures for responding to special needs, accessing alternative telecommunications systems, processing requests for reasonable accommodations/auxiliary aids and services, and general disability sensitivity awareness. Evidence that such training has been provided must be retained on file for review during the compliance review process.

PART VI **EQUAL OPPORTUNITY DATA COLLECTION AND RECORD
RETENTION REQUIREMENTS**

PURPOSE: To transmit recipient obligations to collect EO data in accordance with federal requirements and to highlight the reporting, recordkeeping, and confidentiality standards applicable to EO data.

6.0 POLICY: MWAs and their recipients must collect EO program and employment-related data, maintain records documenting EO management activities, and be able to provide statistical data and reports, as necessary, to determine compliance with the nondiscrimination and EO requirements of workforce programs administered by their agencies.

6.1 General EO Demographic Data Collection and Reporting Requirement

Demographic information must be collected, maintained, and entered on the applicable Management Information System (OSMIS) by MWAs and/or their recipients for all individuals accessing training and/or workforce services. The data to be captured must include race/ethnicity, sex, age, and disability status, where known. For reporting purposes, race/ethnicity is to be recorded utilizing the definitions of ethnic identification issued by the Department of Technology, Management and Budget (DTMB)

6.2 Point of Demographic Data Collection

EO data for PATH and the Food Assistance Employment & Training Program is to be entered on the OSMIS at the point the customer is enrolled in program services. EO data collection for employment services provided under the Wagner-Peyser program is to be entered on the Mediated Services Reporting System, at the point of registration for staff- assisted services. For programs funded under WIA, EO data is to be collected and entered on the OSMIS for every individual who:

- Is interested in being considered for a WIA Title I financially assisted aid, benefit, service, or training; and
- Has signified that interest by submitting personal information in response to a request by the MWA or its agents.

The OSMIS pre-registration screen is designed to capture the information required to meet WIA EO reporting requirements.

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6.3 Employment-Related Data Collection and Document Maintenance Requirements

MWAs and their recipients must collect and be prepared to provide the WDA and other state/federal agencies with data and records to assess whether agency employment practices provide both job applicants and agency employees with equal employment opportunity. As part of document maintenance requirements, recipients must maintain written human resource/personnel policies and procedures as detailed in policy standard 2.3 of this guide.

6.4 Records of Recipient Agency Hiring Practices

Recipient agencies must maintain a complete file that provides sufficient information to enable reconstruction of the process used in filling each employment vacancy with the agency. At a minimum the following information must be retained:

- Copy of the vacancy announcement and/or job posting and the methods by which the vacancy was advertised;
- The position description or other material developed in identifying the essential functions of the position;
- The name, contact information, work history, resume, educational background, and the date of application for each person that applied for the position;
- A demographic profile of the applicant pool that includes each job applicant's race/ethnicity, sex, age, and disability status, if known;
- A description of the objective/subjective criteria used in the selection process (such as the selection criteria, any test instruments used/scores achieved, the interview questionnaire, and/or the selection rating procedures);
- Copies of any correspondence written to, or received from, members of the applicant pool; and
- A copy of the written hiring recommendation for the selected candidate and for applicants not selected the reason for non-selection, and the names of members of the interview/selections committee.

Recipients must also be able to document the manner in which the notice required by policy standard 3.2 was disseminated to applicants for employment.

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6.5 Data and Record Maintenance Requirements for Employees

MWAs and their recipients must ensure that, at a minimum, the following is collected and maintained for each agency employee:

- The date of hire and position occupied;
- The employees' race/ethnicity, sex, age, and disability status, if known;
- Initial rate of pay, as well as the date and amount of any subsequent pay increases;
- Promotions received; the position, date, and amount of salary increase associated with the promotion;
- Training received;
- Performance evaluations; and
- Any records of adverse employment actions, such as disciplinary action, reassignment, demotion, layoff, or termination.

MWAs and their service providers must also maintain on file a document and/or other EO plans that highlight data on staff utilization:

6.6 Record Maintenance for the Provision of Employment-Related Services

MWAs and/or their recipients that perform employment pre-screening or hiring functions as an employer service must ensure that the records and information identified in policy standard 6.4 is maintained on file to document the integrity of the pre-screening/hiring service provided.

6.7 Clarification Regarding Voluntary Disclosure of EO Demographic Information

In implementing systems practices to collect the demographic information required by this policy, recipients are reminded that disclosure of such information is voluntary. Recipients have the obligation to provide notice of the voluntary nature of such disclosures on program forms, employment applications, and other documents that seek to collect demographic information. Such documents must include a brief explanation of the reason why EO information is being requested and provide assurance that failure to disclose demographic data will not subject individuals to any adverse treatment in seeking to access services or employment opportunities.

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6.8 Confidentiality

Recipients are required to implement systems and practices to safeguard the confidentiality of EO data and to prevent the improper use of such information. EO data collected and maintained by local agencies is to be used only for the purposes of:

- Recordkeeping, reporting, and determining, as applicable, program eligibility;
- Determining the extent to which recipients are operating programs and activities in a nondiscriminatory manner; and
- Other uses authorized by federal grant agencies and/or the EO regulations.

The confidentiality requirements for general EO program data do not necessitate that separate or locked filing systems be maintained. MWAs and their recipients will have met this requirement as long as reasonable measures have been taken to ensure that data and other EO records are stored in secure locations and are not available to individuals who are not authorized to have access.

6.9 Other Data Records and Federal Reporting Requirements

Recipients must comply with all other record or special EO data requests that may be required by federal civil rights enforcement agencies. Practices must also be in place to ensure compliance with the notification of administrative enforcement/lawsuits provisions required by policy standard 2.15 and to maintain, if applicable, the discrimination complaint log required by policy standard 7.21.

6.10 Record Retention

All applicant, eligible applicant, participant, terminée, applicant for employment, employee records (including records related to the provision of reasonable accommodations), and other EO management/program-related documents and reports, must be maintained for a period of not less than three years from the close of the applicable program year. Records regarding complaints alleging violations of the nondiscrimination and EO provisions of WIA and other grant programs, as outlined in policy standard 7.22, must be maintained for a period of three years from the date of resolution of the complaint.

PART VII

DISCRIMINATION COMPLAINT PROCEDURES

PURPOSE: To outline discrimination complaint processing requirements and to disseminate the uniform complaint procedures adopted by WDA for the state's workforce investment and One-Stop delivery system.

7.0 POLICY: MWAs must implement internal mechanisms to ensure compliance with all notification, complaint handling, and file documentation requirements established by the state and must follow the state's uniform procedures in the event a complaint of discrimination, seeking review and resolution under these procedures, is filed with their agency. MWAs that fail to follow these procedural mechanisms may be subject to sanction in accordance with procedures outlined in Part IX of this guide.

STATE ADMINISTRATIVE MANAGEMENT PROVISIONS

7.1 State Approach to Discrimination Complaint Processing

To ensure the prompt and equitable resolution of complaints at the lowest administrative and service delivery level possible, WDA has adopted a decentralized complaint processing structure. MWAs are allocated half of the state's 90-day processing period, or **45 calendar days**, to resolve complaints in accordance with the state's uniform complaint procedures.

In administering this process, MWAs must assign primary responsibility for discrimination complaint review, investigation, and resolution to the agency's designated EO Officer. WDA will provide the local Officer consultation, compliance assistance, and intervention services, as may be necessary and will grant reasonable extensions of the processing period in the event the MWA is unable to resolve complaint issues within the 45 calendar day processing period.

7.2 Standards for Complaint Referral to MWAs for Resolution

WDA will generally refer to the MWA all complaints initially filed with the Agency that fall within the LWIA's service delivery network. WDA may make exceptions to this policy and retain jurisdiction for direct processing of a complaint at the state level in cases where:

- Allegations are filed against the Workforce Development Board, MWA officials or agency staff and the complainant (or their representative) raise issues regarding potential conflict of interest in the review and investigation of their charges;
- Allegations represent unusually serious or egregious charges warranting state-level review and examination;

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- Allegations raise issues that might impact WDA EO policy/practices; or
- WDA has reason to believe that the MWA lacks the capacity to conduct a thorough review of the charges in accordance with regulatory requirements and the state's uniform discrimination complaint procedures.

In cases where jurisdiction is retained by the state, the MWA will be provided notice of this determination and will be informed and/or consulted regarding the state's plan in seeking review and resolution of the charges.

7.3 Limitations on MWA Complaint Processing Authority

These procedures do not grant and MWAs are prohibited from accepting or processing any allegations of discrimination filed against a WDA or other state employee stationed at Service Centers or other local facilities. When allegations are made against a State of Michigan employee, the MWA **must immediately suspend** any discussion of alleged charges, notify the State EO Officer of the potential allegations and provide the complainant with contact information to refer the matter to the designated State EO Officer.

7.4 Incorporation of Alternative Dispute Resolution Processes

MWA internal mechanisms for complaint processing must include provisions for alternative dispute resolution (ADR) or mediation as an option for complaint resolution. In adopting policy incorporating this provision, MWAs may specify the types of complaints for which mediation may not be appropriate or offered as a means of resolving complaint issues. Such criteria must be pre-determined and reflected in agency internal procedures.

All ADR sessions must be conducted by an impartial mediator who is trained in mediation techniques and the principles of nondiscrimination and EO. MWAs are required to procure mediation services from qualified providers, unless the MWA can demonstrate that the agency has the capacity to administer the ADR component through existing agency resources. Documentation of such capacity, including a written description outlining the MWA's approach, must be submitted to WDA for review and approval.

All arrangements for mediation services must be pre-established and MWAs must retain written protocols which demonstrate its ability to activate ADR mechanisms within a reasonable standard of promptness. Internal procedures to manage the logistical aspects of the ADR process and record maintenance procedures (such as retention of a signed Resolution Designation Form, Agreement to Mediate, etc.) must also be developed and fully documented. MWAs, their Service Centers, and other providers must further publicize the availability of ADR services by making the Mediation Brochure,

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published by the state, readily available within the service network.

7.5 Prohibition Against Retaliation

Intimidation and retaliation against any individual for having filed a discrimination complaint, opposed a discriminatory practice, furnished information, assisted or participated in any manner in a discrimination complaint investigation, hearing or other activity to secure rights protected by the nondiscrimination and EO provisions of federal programs is **strictly prohibited**. The sanctions and penalties outlined in policy standard 9.2 may be imposed against the MWA and/or any recipient that either engages in retaliation or intimidation, or fails to take appropriate steps to prevent it from occurring.

PROCESSING PREREQUISITES

7.6 Who May File

Complaints may be filed by any person who believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; genetic information and for WIA only on the basis of a beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States or on his or her participation in a WIA Title I financially assisted program or activity.

Complaints may be filed by the affected individual, or by their authorized representative. Individuals wishing to file discrimination charges against a program or activity that receives federal financial assistance from WDA must be given the option to file under the state's uniform procedures or directly with the federal agency with civil rights enforcement authority.

7.7 Standards for Receipt of Complaints in Languages Other than English

Complaints of discrimination filed by LEP customers, unless filed by the complainant's authorized representative as established in policy standard 7.9, are to be submitted by the complainant in writing in his/her primary language. All subsequent interaction and communications with the complainant must be conducted in accordance with protocols established in the MWA's language assistance plan and in a manner which ensures that the complainant can understand and effectively participate in all phases of the discrimination complaint process.

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7.8 Documenting Complaint Receipt

All complaints of discrimination must be logged and assigned a complaint number using a locally designed complaint numbering system. MWAs must also notify the WDA's EO Officer upon complaint receipt to activate complaint tracking mechanisms at the state level. The notice must specify the workforce program, the nature of the complaint, and be e-mailed to WDA's EO Officer.

7.9 Complaint Content

To be processed, a complaint must be submitted in writing and include:

- The complainant's name and address or other means of contact;
- The identity of the individual or entity that the complainant alleges is responsible for the discrimination;
- A description of the complainant's allegations, in enough detail to determine whether the MWA has jurisdiction and if the complaint has apparent merit;
- The date(s) the alleged discrimination occurred; and
- The complainant's signature or the signature of the complainant's authorized representative.

If the complaint does not contain all required elements, the MWA must seek to obtain missing/clarifying information from the complainant. Requests for clarification must be forwarded, in writing, to the complainant, providing ten days for receipt of the information. If missing information is not received within the ten-day standard, the MWA may close the complaint file and forward the complainant notice of such action.

7.10 Jurisdiction

If a written discrimination complaint contains all required content elements, the MWA's EO Officer must review the complaint and make a determination as to whether the MWA has jurisdiction. In cases where jurisdiction is established, the MWA must proceed with the review and processing of the complaint in accordance with the procedures outlined in this section and **is prohibited** from referring the allegations to other civil rights enforcement agencies.

If the MWA lacks jurisdiction, the agency must immediately notify the complainant, in writing, of that determination. The notification must include a statement regarding the reasons for reaching the determination and, where possible, include referral to an appropriate state or federal agency with complaint processing authority. Where an appropriate referral source is unknown, the notice must specifically state that the

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complainant has 30 days from the date the “Notice of Lack of Jurisdiction” was received to file with the USDOL’s Civil Rights Center.

7.11 Timelines for Filing

Complaints must be filed within 180 calendar days of the alleged discrimination, unless the federal agency with civil rights oversight authority extends the filing deadline for good cause shown. If the 180-day standard is not met, the MWA must notify the complainant, in writing, that the complaint cannot be processed by the MWA and must advise the complainant of the process for filing a request for extension with the appropriate federal agency.

PROCESSING REQUIREMENTS/RESOLUTION APPROACHES AND CORRECTIVE ACTION

7.12 Notification of Complaint Receipt

If all pre-processing elements are met, the MWA’s EO officer must analyze issues detailed in the complaint and provide the complaining party with a written notification. The notice must:

- Acknowledge complaint receipt and notify the complainant of their right to be represented in the complaint process;
- Include a listing of the issues raised in the complaint;
- Specify, for each issue raised, whether the MWA will accept or reject the issue for investigation;
- Outline, for each issue rejected, a discussion/explanation of the reasons for the rejection; and
- Provide, if issues have been accepted for review, information regarding complaint resolution options and the availability of ADR. The mediation brochure published by the state is to be used for this purpose.

In cases where none of the issues raised in the complaint will be accepted for investigation, the notice required by this section must advise the complainant of their right to request a state level review of the local determination, as provided in policy standard 7.17 of these procedures.

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7.13 Timeline for the Issuance of the Notice of Complaint Receipt

The MWA is expected to complete the review of complaint issues within ten days of receipt of the complaint. If the issues raised will require more than ten days to analyze and determine the MWA's response, the complainant must, at a minimum, be forwarded an acknowledgement of complaint receipt, within the ten day standard. The letter must indicate that the MWA is in the process of reviewing issues raised in the complaint and must specify a date by which the complainant will be notified of the MWA's determination.

7.14 Selection of Resolution Approach

The choice as to whether the MWA uses its ADR or fact-finding procedures in processing a complaint of discrimination is a matter of **complainant choice**. The complainant is to be given ten days to notify the MWA's local EO Officer of the manner in which they elect to resolve the dispute. If notice is not received within this period, the complainant forfeits the opportunity for mediation and the MWA must proceed with a fact-finding investigation.

7.15 Obligation to Notify Respondent Party

After the resolution approach has been selected, the MWA's EO Officer must notify the respondent(s) and/or other entities/parties involved of the nature of the alleged act(s)/incident(s) of discrimination that have been accepted for investigation and the approach the MWA will use to review and resolve the complaint. The notification must specifically reference that any form of retaliation or intimidation because a complaint of discrimination has been filed is prohibited.

7.16 Resolution through Mediation

If the complainant elects ADR, the MWA's local EO Officer must schedule/refer the complainant and respondent to mediation in accordance with local procedures. Where the mediation is successful and results in the negotiation of a written settlement agreement, signed by the mediator and all parties involved, the MWA must issue the "Notice of Final Action." The notice must include:

- A description of the way the parties resolved the issue; and
- A statement reminding the parties of options available in the event there is a breach of the negotiated agreement.

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For mediation sessions conducted for USDOL programs, the notice must specifically reference that the non-breaching party may file a complaint with the CRC Director within 30 days of the date the party learns of the alleged breach.

In cases where ADR was attempted, but unsuccessful, the MWA's EO Officer must immediately notify the WDA and forward the original signed complaint to the state's EO Officer for review and possible investigation by the WDA during the time remaining in state's 90- day processing period. The MWA's EO Officer must notify the complainant, in writing of this action.

7.17 Resolution through Fact-Finding

If the complainant elects to have their allegations investigated and resolved through a fact-finding process, MWA's EO Officer must conduct the investigation in accordance with local procedures that must include provisions for varying investigative approaches and techniques based on the nature and complexity of the allegations. MWAs are not required, but may at their option, incorporate local hearing processes into local resolution procedures. If hearings are provided, the MWA must maintain internal procedures governing the hearing process.

At the conclusion of the investigative process, the MWA's EO Officer must issue the "Notice of Final Action-Local Recipient Level" to distinguish the local (initial) determination from any subsequent notice that may be issued by the WDA in the event of a state-level review. The notice must contain:

- The MWA's decision on each issue accepted for investigation;
- An explanation of the reasons underlying each decision;
- Notice of the complainant's right to request a state-level review of the local determination; and
- Reference to successive steps that may be available after State of Michigan remedies have been exhausted, by filing with the federal agency with civil rights enforcement authority.

In addition to the "Notice of Final Action-Local Recipient Level," MWA EO Officers are required to prepare a written "Report of Findings" to document the local investigative process.

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7.18 Opportunity for State Review of the Local Determination

Individuals whose complaints are investigated through fact-finding, who disagree or are dissatisfied with the MWA's resolution, may request a state-level review of the local determination. All such requests must:

- Be filed with WDA within ten days of receipt of the MWA's written determination, and
- Include a brief signed statement of the issues which remain in dispute or a discussion of why the complainant is dissatisfied with the MWA's resolution.

Requests for state level review are to be submitted to WDA's EO Officer.

7.19 Standards for Corrective Action

Where allegations of discrimination are substantiated through the investigative process, MWAs must initiate actions to (i) completely remedy any adverse action experienced by the complainant (retrospective or "make whole" remedies) **and** (ii) correct any technical violations or EO management deficiencies to ensure that discrimination or EO violations do not reoccur (prospective remedies). Such remedies may include, but are not limited to:

- Restoration of workforce services discriminatorily denied;
- Hire, reinstatement, retrospective seniority, promotion, or payment of wages and benefits (i.e. back pay with interest, front pay, or other monetary relief) for which the complainant may be entitled (**monetary relief cannot be paid with federal funds**);
- Repeal or modification of policies/procedures shown to be discriminatory;
- Adoption of new EO policies, service protocols, and other curative and preventive measures, as may be warranted, to ensure that cited violations do not re-occur; and
- Provision of EO diversity or other compliance-specific training, as appropriate for staff, Service Centers, service providers and other partner agencies.

In cases where the MWA is unable to secure voluntary compliance to correct findings of discrimination, the MWA must initiate sanction proceedings against the recipient agency

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in accordance with local procedures developed in compliance with requirements established in policy standard 2.14 of this guide.

REPORTING/RECORD MAINTENANCE AND OTHER COMPLAINT RELATED OBLIGATIONS

7.20 Complaint File

MWAs must maintain on file a detailed factual chronology of all contacts and discussions held in response to discrimination complaints received by the agency. Actions taken with respect to the logistical aspects of the ADR process and each interview, meeting, and official action taken during a fact-finding investigation must be documented. All correspondence required in carrying out complaint-related functions are to be forwarded to the complainant (and other involved parties, as appropriate) by certified mail.

7.21 Complaint Log

MWAs must maintain a discrimination complaint log that documents the receipt and disposition of complaints filed with their agency. The log must include, at a minimum:

- Name, address, or place to contact the complainant;
- The date of receipt of the signed complaint;
- An identification of the program or funding source under which workforce services were provided;
- The grounds or basis for the complaint; and
- A brief description of the complaint: the nature of the resolution and the date of the resolution.

The log must be maintained as a confidential document and must be filed with WDA upon request.

7.22 Record Retention

All records regarding discrimination complaints and actions taken must be retained for a period of three years from the date of the resolution of the complaint. After expiration of the retention period, it is recommended that the files, which may contain confidential or other sensitive information, be destroyed.

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7.23 Publication Requirements

MWAs must provide both public and internal notice of discrimination complaint procedures and the availability of ADR services. The public notice must reference:

- Who may file;
- Where to file, including notification of the right to file directly with the responsible federal agency;
- When to file;
- Content elements to be included in a complaint; and
- The right to representation during the complaint process

Provisions regarding the prohibition against retaliation, contact information for the local EO Officer, and an invitation to informally resolve the complaint prior to official filing must also be included in the notice. The WDA's EO Officer can provide consultation and assistance to the MWAs in the development of their procedures, overview and related forms/materials to meet this requirement. MWAs that release information regarding the agency's discrimination complaint, programmatic grievance, or Employment Service complaint process in a single publication must ensure that processing time lines and other variances between the three processes are clearly delineated.

7.24 Complaint Filing Forms and Related Materials

MWAs are also responsible for ensuring that discrimination complaint forms, Privacy Act Consent forms, and other documents used in conjunction with filing a discrimination complaint with the state and/or the civil rights offices of USDOL, Health and Human Services (HHS) and the US Department of Agriculture (USDA) are readily available at all local Service Centers and provider agencies. All documents outlining MWA discrimination complaint procedures are to be made available to individuals seeking such information **immediately upon request**. Recipient agencies must further assure that such documents are available in alternative formats, accessible to individuals with disabilities and to persons who speak languages other than English.

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7.25 Confidentiality

All complaints of discrimination must be handled as confidentially as possible to protect the rights of all parties involved. In processing complaints, EO Officers must keep the following information confidential:

- The fact that a complaint has been filed;
- The identity of the complainant;
- The identify of individual respondent(s) to the allegations; and
- The identity of any person(s) that furnished information relative to, or assisted in a discrimination complaint investigation.

In cases where it is necessary to disclose the identity of a complainant, the MWA must implement measures to protect the complainant from retaliation.

7.26 Other Complaint Related Obligations

MWAs must adopt internal systems and practices to ensure compliance with these requirements. As with all EO procedures, MWAs must ensure that the EO Officer responsible for managing the discrimination complaint process and any staff, who may assist the EO Officer with the investigative process, has received appropriate (i.e., discrimination complaint/investigative techniques/theories of discrimination) training.

MWAs must also ensure that EO Liaisons and/or Complaint Coordinators at Service Centers and other recipient agencies are aware of their role in assisting complainants in understanding their options for discrimination complaint resolution and of their duty to direct complainants to staff responsible for managing the discrimination complaint process. Failure to comply with these processing guidelines may subject the MWA to sanctions, should WDA determine that the MWA knowingly circumvented the state's uniform discrimination complaint procedures.

**PART VIII PROCEDURES FOR MONITORING EQUAL OPPORTUNITY
COMPLIANCE AND IMPLEMENTING CORRECTIVE ACTION**

PURPOSE: To notify MWAs of the monitoring and oversight functions WDA will utilize to assess recipient compliance with the nondiscrimination and EO provisions of workforce programs and to describe the process by which corrective action for EO noncompliance will be secured.

8.0 POLICY: WDA will conduct periodic compliance, performance, and specialized reviews to assure the maintenance and effectiveness of required EO systems and practices and will issue written notice of EO compliance findings and recommendations for the implementation of voluntary and/or required corrective action measures.

8.1 Compliance Reviews

MWA administrative offices, selected Service Centers, and provider agencies will be monitored, on a routine basis, by the state EO Officer and/or other designated WDA staff. The reviews, which will include both desk and on-site assessment techniques, will incorporate document/file reviews, facility assessments, and a series of interviews with the local EO Officer, key management staff, and individuals enrolled in agency programs and activities. The review will cover all facets of the EO management system and will specifically focus on:

- Compliance with administrative obligations and general EO responsibilities;
- EO Officer functions;
- EO policy/procedure development and training;
- Universal access and local strategies for ensuring meaningful access for persons with limited English proficiency;
- Compliance with Section 504 programmatic and architectural accessibility requirements;
- Local EO compliance review and statistical analysis processes, and
- EEO compliance and staff utilization assessment.

Service strategies, implementation methods, and outcomes achieved in promoting inclusion/diversity practices, nontraditional training, and equal employment opportunities will also be reviewed.

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8.2 Finding Notification for the Compliance Review Process

Findings identified through the on-site compliance review process will be transmitted to the MWA/grant recipient via a monitoring report. Such reports will contain:

- A review of findings noted for the MWA administrative office and for each Service Center or provider agency where compliance assessment was conducted;
- A description of any violation(s) and reference to the pertinent EO regulation(s) or state policy standard(s) that have been violated;
- An identification of any administrative recommendations proposed by the state that the MWA should consider implementing to enhance their EO management program; and
- A request for a written response to the compliance findings.

MWAs will be given 30 days to respond to the findings and submit a description of the locally designed corrective action measures implemented to remedy each identified violation. Follow-up, if required, will be conducted within 60 days of corrective action implementation.

8.3 EO Performance Reviews

On a periodic basis, the WDA will conduct a statistical review of EO performance data for WIA Title I and Employment Service programs funded under the Wagner-Peyser Act. Such reviews will survey both statewide and MWA-specific outcomes as they relate to core indicators of EO performance.

Where the EO statistical review pinpoints performance deficiencies registering a value of two or more standard deviations, WDA will notify the MWA to initiate corrective action. Where statistical data continue to show disproportionate or adverse findings, WDA may initiate more stringent data analysis or conduct a specialized review, as appropriate.

8.4 Specialized Reviews or Investigations

As required, EO management staff will conduct in-depth specialized reviews or special investigations to assess the efficiency and/or propriety of local practices. The decision to conduct a specialized review may be prompted by indicators of both exemplary and/or adverse program performance.

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Special investigations, if conducted, will be initiated in response to concerns or potentially serious infractions that are brought to the WDA's attention by means other than a written complaint. Depending on the nature/severity of the charges, the WDA may elect to use an investigative team to review reported concerns/allegations. Such team(s) may be comprised solely of the WDA's EO management staff or consist of an interagency team of personnel from various organizational units within WDA, technical consultants, and/or personnel from other state agencies involved in the administration of the workforce initiative under which discriminatory actions are alleged.

8.5 Finding Notification for Performance/Specialized Review and Special Investigations

Results of findings identified through the quarterly performance or specialized review process will be transmitted to the MWA/grant recipient via a "Letter of Findings." The notice will:

- Advise the recipient of the preliminary findings of the review;
- Request clarification and/or where appropriate, describe the specific corrective or remedial action to be taken; and if appropriate;
- Identify of any administrative recommendations proposed by the state that the MWA should consider implementing to enhance service mechanisms or compliance practices for the EO management area under review.

Recipients will be given 30 days to respond to requests for clarification and/or to implement, prescribed corrective action measures. The timeframe for follow-up, if warranted, will be negotiated upon acceptance of the corrective action response.

Results of findings identified through a special investigation will be transmitted to the MWA/grant recipient via the process outlined in 10.2 of this guide. The timeframe and procedures outlined in that part and in policy standard 10.3 will be provided to allow MWAs to respond to identified findings and to facilitate voluntary compliance.

8.6 Conciliation Agreements

In cases where EO corrective actions required by the state to address deficiencies identified through the compliance, performance or special review processes will take longer than 30 days to implement, the MWA will be advised of the need to develop a written conciliation agreement. If an agreement is warranted, the MWA will be provided the opportunity to engage in voluntary compliance negotiations with WDA to mutually establish the specific measures that must be taken to move into compliance. The conciliation agreement will contain time frames and checkpoints for each negotiated compliance activity.

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8.7 Other EO Performance Activities, Site Reviews, and Assessments

On an as needed basis, WDA may conduct EO performance reviews for other state/federal workforce initiatives (i.e., PATH, the Food Assistance Employment & Training Program, etc.) to make comparative analysis of target and/or protected group program outcome statistics. WDA may also rely on other available programs (such as the former Mystery Shopper/Mystery Stopper program) to test compliance with selected EO/disability and program-related accessibility standards at Service Center locations.

On a periodic basis, other WDA administrative units or state administrative offices may conduct EO related assessment activities at MWA and/or Service Center facilities. Such reviews typically will be related to the biennial Service Center certification process or may be conducted by Michigan Rehabilitation Services and/or other disability advocate agencies, to assess recipient compliance with technical specifications and architectural requirements detailed in the ADA Accessibility Guidelines (ADAAG) or the Architectural Barriers Act Accessibility Standard (ABAAS).

Findings identified by other WDA or state administrative units during the course of EO related compliance activities will be transmitted in accordance with procedures adopted by those units. Where WDA EO management staff is advised of compliance concerns, follow-up to ensure that identified issues have been adequately addressed may be conducted.

PART IX PROCEDURES FOR APPLYING SANCTIONS FOR EQUAL OPPORTUNITY NONCOMPLIANCE

PURPOSE: To describe the manner in which sanction proceedings will be conducted in the event EO violations cannot be resolved through conciliatory efforts.

9.0 **POLICY:** It is WDA policy to be fully supportive of the statewide workforce system and to seek resolution of all findings of EO noncompliance through conciliation and the provision of appropriate compliance assistance. In cases where compliance cannot be secured through voluntary means, WDA will initiate sanction proceedings as required by federal regulations.

9.1 Violations for Which Sanctions May be Imposed

WDA may initiate sanction proceedings for infractions that include, but are not limited to:

- Failure or refusal to comply with federal EO regulatory requirements, state policy directives, or responsibilities assigned to the LWIA and its recipients in the state’s MOA;
- Failure or refusal to implement required corrective action or to abide by the terms of a conciliation agreement negotiated with the state; and
- Failure or refusal to comply with a requirement imposed by the state where failure to comply results in the WDA’s inability to carry out state oversight responsibilities or to comply with an information/data request made by a federal civil rights enforcement agency.

In cases where sanctions are imposed under the preceding infraction, WDA may waive the Show Cause procedures established in policy standard 9.4 and proceed directly to the process referenced in policy standard 9.5 to seek resolution of compliance issues.

9.2 Other Sanctionable Offenses

Sanctions may also be initiated in situations where the WDA has reasonable cause to believe that an MWA/grant recipient, or other entity within the state’s recipient network, has engaged in actions or behaviors that are strictly prohibited by state policy. Actions eligible for sanction under this provision include, but are not limited to:

- Failure to take immediate action to prevent discriminatory or sexual harassment against an individual or groups of individuals after being notified that prohibited or inappropriate behaviors has been or is taking place; and

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- Engaging in retaliatory action and/or failure to take appropriate measures to prevent retaliation or intimidation against an individual who has filed a complaint of discrimination; opposed a practice prohibited by EO provisions or otherwise participated in actions to secure protected rights.

The determination that such violations have occurred typically will be made during the course of a discrimination complaint or special investigation. The decision to impose sanctions under this provision will be made as part of the resolution process described in Part X of this guide.

9.3 Nature and Scope of EO Sanctions

The nature and scope of sanctions to be imposed for EO noncompliance will be determined on a case-by-case basis, taking into consideration the circumstances and seriousness of the violation(s). Sanctions may include, but are not limited to:

- Mandated staff and/or recipient/service provider training and technical assistance to address EO compliance deficiencies;
- Mandatory revision to the MWA's EO management system such as changes to monitoring procedures, outreach/recruitment mechanisms, the EO management plan, and/or Service Center/provider agency/vendor selection processes;
- Reduction or temporary withholding of financial assistance, in whole or in part, to the MWA/grant recipient or to another entity under contract with the LWIA;
- Deferment of an incentive award to the MWA/grant recipient until EO violations are corrected or identified management weaknesses are improved;
- Forfeiture of the MWA/grant recipient's eligibility to receive an incentive award, discretionary and/or de-obligated funds which may become available by formula or request; or
- Termination of federal funding to the MWA/grant recipient or to another entity under contract with the LWIA.

9.4 Notice to Show Cause

Prior to the initiation of sanctions, WDA will transmit a "Notice to Show Cause" to the MWA/grant recipient and other local officials providing notification of the violation. The notice will include:

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- A description of the violation and a citation of the pertinent nondiscrimination regulatory provisions or state policy that has been violated;
- A summary of actions taken to date by the WDA to secure compliance;
- An identification of the possible sanction(s) to be imposed in response to the referenced violations;
- A review of corrective action necessary to achieve compliance; and
- A request for a written response to the notice.

The MWA/grant recipient will have 30 days to respond to the notice and show cause why enforcement proceeding under the nondiscrimination and EO provisions should not be initiated. If the MWA/grant recipient's response to the Show Cause Notice satisfactorily addresses compliance issues, or successfully challenges the state's authority/findings, the case file will be closed, with no further action required.

9.5 Notice of Pending Sanctions

Where the recipient fails to show cause, or in cases where the state waives the show cause provision, WDA will issue the MWA/grant recipient, the Workforce Development Board Chair (WDB) and the Chief Elected Official (CEO) a "Notice of Pending Sanctions." The notice will:

- Include a description of the violation(s) and provide a specific reference to the nondiscrimination and EO provision(s) that have been violated;
- Specify the corrective or remedial actions necessary to achieve compliance and describe the results that are anticipated;
- Provide written notice announcing the nature, extent, and duration of proposed sanctions; and
- Require that a written response be submitted to the WDA within ten days of receipt of the "Notice of Pending Sanctions" that expresses the MWA/grant recipient's intent in response to the state's pending action.

In cases where the MWA/grant recipient's response to the "Notice of Pending Sanctions" results in correction of the violation within the ten-day period or a written commitment to complete action(s) related to the violation by a date documented in a conciliation agreement, sanctions proceedings will be avoided. When all agreed upon actions are implemented, the case file will be closed, with no further action required.

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9.6 Opportunity for Mediation/Hearing

Where the MWA/grant recipient does not indicate intent to move into voluntary compliance in response to the “Notice of Pending Sanctions,” or disagrees with WDA’s proposed sanction(s), the MWA/grant recipient may request a mediation hearing prior to the expiration of the ten-day period established in the “Notice of Pending Sanctions.” The request for the mediation hearing must include:

- Any admission or denial of each finding of noncompliance identified by WDA; and/or
- An explanation why specific sanction(s) proposed by the state should not be imposed.

The request for mediation hearing must be submitted to the attention of the Director, WDA. Upon receipt of the request, WDA will schedule a mediation hearing, to be conducted by an impartial third-party facilitator, within reasonable notice to all parties involved.

If the MWA/grant recipient fails to request a mediation hearing by the stated deadline, the agency automatically waives the right to a mediation hearing and the findings cited by the state will be considered admitted. WDA will immediately initiate actions to impose the sanctions proposed in the “Notice of Pending Sanctions.”

9.7 Resolution through Mediation/Hearing or State Agency Determination

In cases where a mediation hearing resolves outstanding compliance issues, a written settlement and/or conciliation agreement will be negotiated. The state may or may not impose sanctions as part of this process.

If a mediation hearing is held, but does not result in an agreement for voluntary compliance and/or the negotiation of alternative sanctions, the hearing facilitator and the WDA will make independent recommendations to the Michigan Strategic Fund (MSF) executive office as to the course of action that should be taken and/or the sanctions that should be imposed in resolving the dispute. The MSF Executive Office, on behalf of the Governor, will make the final determination in resolution of the matter and will determine the nature and extent of any sanctions to be imposed. The decision of the MSF Executive Office will represent the final state action in response to the matter and the case file will be closed upon the MWA/grant recipient’s satisfactory completion of remedial measures imposed in the state’s final directive.

PART X

**PROCEDURES FOR ADDRESSING ADVERSE FINDINGS
RESULTING FROM A CHARGE OF DISCRIMINATION**

PURPOSE: To describe the process that will be used to resolve adverse findings resulting from allegations of discrimination investigated by WDA.

10.0 POLICY: WDA is committed to ensuring that the Agency carries out its obligations for the resolution of findings identified through the investigation of allegations of discrimination in a fair and impartial manner. When an adverse determination is made, the MWA/grant recipient will be invited to engage in conciliation and will be provided an opportunity for hearing to contest any disputed findings.

10.1 Protocol For the Resolution of Claims of Discrimination

As established in the MOA and policy standard 2.17, the state will direct all actions related to findings of discrimination and other adverse EO determinations to the MWA/grant recipient for resolution. Where such findings occur below the LWIA/administrative agency level, the MWA must provide the affected recipient with an opportunity to respond to the findings through local level procedures, developed in compliance with state policy.

10.2 Notification of Investigative Findings

In cases where the WDA conducts a discrimination complaint or special investigation and finds reasonable cause to believe allegations of discrimination, the state will issue a written “Notice of Final Action or Letter of Findings” that will:

- Summarize each issue or area of concern that was examined as part of the investigation;
- Provide an explanation of the reasons underlying the reasonable cause determination;
- Identify any EO policy/technical violations detected during the course of the investigation;
- Highlight the general scope of corrective and remedial action(s) proposed by the WDA to address the finding(s); and
- Provide the MWA/grant recipient with 30 days from receipt of the “Notice of Final Action or Letter of Findings” to notify WDA of the MWA/grant recipient’s initial response and/or intent to engage in voluntary compliance negotiations.

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In cases where the MWA/grant recipient declines the opportunity to participate in voluntary compliance negotiations or does not respond to the state's letter of notification, WDA will issue a "Notice of Opportunity for Hearing" and the proceedings detailed in policy standards 10.6 through 10.9 of this procedure will be initiated.

10.3 Period Established for Compliance Negotiations

After receipt of the MWA/grant recipient's initial response, WDA will, if required, establish a period for voluntary compliance negotiations. The voluntary compliance period will provide the MWA/grant recipient the opportunity to engage in dialogue with the state and respond to WDA's findings by providing supplemental or clarifying information that may result in modification (in whole, or in part) to the state's determination. The voluntary negotiation process will also be used to mutually:

- Establish the specific measures the MWA/grant recipient must take (or impose on a violating recipient) to end or redress the EO violation(s);
- Negotiate a time frame for the completion of required actions; and
- Determine whether it will be necessary to enter into a written conciliation agreement and/or if sanctions will be imposed.

The total time allotted to secure compliance through voluntary, conciliatory means will be limited to 60 calendar days from the date the MWA/grant recipient notifies the state of their intent to initiate compliance negotiations.

10.4 Resolution During Compliance Negotiations

If resolution of investigative findings is reached prior to, or during the period established for voluntary negotiations, WDA will document the agreement, in either a resolution letter or in a conciliation agreement. Where the resolution involves the provision of "make whole" remedies or monetary relief, WDA will act as the facilitator in negotiating an appropriate settlement between the complainant and the MWA/grant recipient. When all agreed upon actions are implemented, the case file will be closed in accordance with policy standard 10.11 of this guide.

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10.5 Failure to Resolve Through Voluntary Compliance Negotiations

In cases where WDA determines, after the conclusion of the 60-day period established for compliance negotiations, that compliance cannot be secured by voluntary means, the Agency will provide the MWA/grant recipient with written notice of that determination. The notice will contain:

- A statement of the specific efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- A listing of any modification to the findings of fact or conclusions that were outlined in the “Notice of Final Action or Letter of Findings”;
- A statement of those matters upon which the MWA/grant recipient and the department continue to disagree;
- A statement of the MWA/grant recipient’s liability, and if appropriate, the extent of that liability; and
- A description of the specific corrective or remedial actions the MWA/grant recipient must take to move into compliance.

The notice will also state that if the MWA/grant recipient fails to negotiate plans to move into compliance within ten calendar days of receipt of the notice, the WDA will issue a “Notice of Opportunity for Hearing.” Such notice will specifically state that the determination reached through the hearing process may result in the imposition of sanctions, or in the suspension, termination, or discontinuance of financial assistance, in whole or in part.

If circumstances warrant, WDA, in lieu of issuing a “Notice of Opportunity for Hearing,” may elect to refer contested issues to the appropriate federal civil rights agency for enforcement proceedings. The MWA/grant recipient will be notified in writing in the event of such referral.

10.6 Response to the Notice of Opportunity for Hearing

Where the “Notice of Opportunity for Hearing” has been issued, the MWA/grant recipient must file a formal written response within 15 calendar days of receipt of the notice. If the MWA/grant recipient elects a hearing, the request for hearing must be set forth in a separate paragraph of the response. The response must additionally:

- Specifically admit or deny each finding of fact or issue detailed in the initial (or as modified) “Notice of Final Action or Letter of Findings;” and

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- Separately state and identify matters alleged as affirmative defenses.

If the MWA/grant recipient fails or refuses to respond to the “Notice of Opportunity for Hearing”, all findings identified by WDA in the “Notice of Final Action or Letter of Findings” will be considered admitted and WDA will issue mandatory corrective action measures and will impose sanctions that may result in the suspension, termination, or discontinuance of financial assistance, in whole or in part.

10.7 Hearing Scheduling/Opportunity to Withdraw

In response to the request for a hearing, WDA will appoint an impartial Hearing Administrator and schedule a hearing date within reasonable notice to all parties involved. The MWA/grant recipient will be provided the opportunity to withdraw the request for hearing and initiate actions to move into compliance, prior to the date of the scheduled hearing. Any such request must be filed in writing and received by WDA by the deadline established for withdrawal in the hearing notice.

10.8 Hearing Provisions

The hearing process will be structured to allow all parties the opportunity to bring witnesses and/or documentary evidence; examine all evidence presented at hearing; and question any witnesses or parties to the hearing.

10.9 Issuance of the Final Determination

At the conclusion of the hearing proceedings, the Hearing Administrator will issue a recommended decision to Michigan Strategic Fund within 30 days. The Michigan Strategic Fund Executive Office, on behalf of the Governor; will render a final determination within 30 days of the Hearing Administrator’s recommendation. The final determination (if it supports the state’s pre-hearing findings) will identify the nature and scope of corrective action remedies and/or the sanctions that will be imposed against the MWA/grant recipient and/or the affected provider agency. In making the sanction determination, the range of penalties outlined in policy standard 9.3 may be imposed.

10.10 Waiver of the Imposition of Certain Sanctions

WDA may waive the imposition of certain sanctions, where discriminatory actions and other infractions occurred below the LWIA administrative level and the MWA/grant recipient is able to demonstrate that it has:

- Developed and issued EO procedures that clearly delineate EO obligations to its staff, Service Centers, provider/training agencies, or other entities under contract with the agency;

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- Provided EO training and compliance assistance to its staff, Service Centers, provider/training agencies, or other entities under contract with the agency;
- Acted with due diligence to monitor internal EO compliance and the compliance status of its staff, Service Centers, provider/training agencies, or other entities under contract with the agency; and
- Taken prompt and appropriate corrective action upon becoming aware of evidence of EO violations.

All wavier determinations are at the discretion of the WDA Director.

10.11 Case Closure

The case file relative to the investigation or compliance issue(s) that prompted sanction proceedings will remain open until the MWA/grant recipient satisfies the corrective action and/or sanction requirements imposed by the state. In all cases where sanctions are imposed, WDA will require the submittal of a written report and the State EO Officer will conduct a follow-up review to ensure that required actions and/or the terms of any imposed corrective actions/sanctions are implemented. Upon satisfactory completion, the case file will be closed, with no further action required. The MWA/grant recipient, WDB Chair and CEO will receive written notice of case closure.