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STATE INSTRUCTION NUMBER 16-17, Change 2

To: Local Workforce Area Signatory Officials
Local Workforce Development Board Chairs
Local Workforce Area Administrators

Subject: Sanctions for Violations of Nondiscrimination and Equal Opportunity Provisions of WIOA

Issuance Date: May 13, 2025

Effective Date: Immediately

Purpose: To establish procedures for remedying noncompliance with the nondiscrimination and equal opportunity (EO) provisions of the Workforce Innovation and Opportunity Act (WIOA).

Change 2 Revision: This state instruction has been reviewed for currency and revised for clarity. No significant changes were otherwise made to this policy.

References:

- Workforce Opportunity and Innovation Act, Public Law 113-128, § 188
- 2 CFR § 200.339 and 29 CFR § 38

Background: States must establish procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance with the nondiscrimination and EO provisions of WIOA is found (29 CFR 38.54(c)(2)(vii)).

Policy: When the SC Department of Employment and Workforce (DEW), as the state administrative agency for WIOA, finds that a violation has occurred, corrective action is achieved using the following procedure:

1. *Initial Determination* (29 CFR § 38.87): The State EO Officer issues an Initial Determination containing the following:
 - a) Specific findings underlying the determination of noncompliance
 - b) The proposed corrective or remedial action

- c) The time by which the respondent must complete the corrective or remedial action
 - d) A statement offering the opportunity to engage in voluntary compliance negotiations
- 2. *Written Assurance (29 CFR §§ 38.92)*: If the respondent takes all corrective actions to remedy the noncompliance within 30 calendar days after receipt of the Initial Determination, the State EO Officer may issue a written assurance indicating resolution of the finding.
- 3. *Conciliation Agreement (29 CFR § 38.93)*:
 - a) If the respondent disagrees with the findings or proposed corrective or remedial action in the Initial Determination, the respondent must respond to the Initial Determination in writing **within 30 calendar days** explaining in detail its disagreement and/or the items over which it desires to negotiate.
 - b) The State EO Officer contacts the respondent to begin negotiation regarding a Conciliation Agreement (29 CFR § 38.93) that resolves the matter on mutually agreeable terms.
 - c) The total time allotted to secure voluntary compliance must not exceed 60 days.
- 4. *Final Determination (29 CFR § 38.96)*: If voluntary compliance is not achieved through steps 2 or 3 above, or if the respondent breaches the agreed-upon Conciliation Agreement, the State EO Officer will issue a Final Determination containing the following:
 - a) A statement of the efforts made to achieve voluntary compliance and a statement that those efforts have been unsuccessful
 - b) A statement of those matters upon which the respondent and DEW continue to disagree
 - c) A list of any modifications to the Initial Determination
 - d) A description of the corrective or remedial actions that the respondent must take to come into compliance
 - e) Notice that DEW may administer sanctions as listed in step 5 below if the respondent fails to come into compliance within 10 calendar days of receipt of the Final Determination
- 5. *Sanctions*: DEW considers sanctions only if the respondent has failed to come into compliance within 10 calendar days of the date on which it received a Final Determination. If sanctions are necessary, the precise nature of the sanction will be

determined by the egregiousness and pervasiveness of the violation(s). Sanctions that may be imposed include, but are not limited to (29 CFR § 200.339):

- a) Disallowance of selected costs
- b) Temporary withholding of cash payments pending correction of the deficiency
- c) Termination of future funding
- d) Other remedies allowed by law

The South Carolina State Nondiscrimination Plan details the obligations of the State Office of Equal Opportunity (OEO), in compliance with Federal guidance. The current State Nondiscrimination Plan is available online: <https://scworks.org/about-us/legal>, and is updated by June 1st of each odd year.

Action: Please ensure that all staff receive and understand this guidance.

Inquiries: Questions may be directed to WorkforcePolicy@dew.sc.gov.

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