

(b) The recipient's Equal Opportunity Officer, or in the case of a small recipient, the person designated pursuant to §34.22(c), shall be responsible for the adoption and publication of procedures pursuant to paragraph (a) of this section, and for ensuring that such procedures are followed.

(c) A recipient who processes a complaint alleging a violation of the non-discrimination and equal opportunity provisions of JTPA or this part shall provide the complainant with written notification of the resolution within 60 days of the filing of the complaint. Such notification shall include a statement of complainant's right to file a complaint with the Director.

§ 34.43 Complaints and investigations.

(a) *Who may file.* Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of JTPA or this part may file a written complaint by him or herself or by a representative.

(b) *Where to file.* The complaint may be filed either with the recipient or with the Director.

(c) *Time for filing.* A complaint filed pursuant to this part must be filed within 180 days of the alleged discrimination. The Director, for good cause shown, may extend the filing time. This time period for filing is for the administrative convenience of the Directorate and does not create a defense for the respondent.

(d) *Contents of complaints.* Each complaint shall be filed in writing and shall:

(1) Be signed by the complainant or his or her authorized representative;

(2) Contain the complainant's name and address (or specify another means of contacting him or her);

(3) Identify the respondent; and

(4) Describe the complainant's allegations in sufficient detail to allow the Director or the recipient, as applicable, to determine whether:

(i) The Directorate or the recipient, as applicable, has jurisdiction over the complaint;

(ii) The complaint was timely filed; and

(iii) The complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the non-discrimination and equal opportunity provisions of JTPA or this part. The information required by this paragraph may be provided by completing and submitting the Directorate's Complaint Information and Privacy Act Consent Forms.

(e) *Right to Representation.* Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.

(f) *Election of recipient-level complaint processing.* Any person who elects to file his or her complaint with the recipient shall allow the recipient 60 days to process the complaint.

(1) If, during the 60-day period, the recipient offers the complainant a resolution of the complaint but the resolution offered is not satisfactory to the complainant, the complainant or his or her representative may file a complaint with the Director within 30 days after the recipient notifies the complainant of its proposed resolution.

(2) Within 60 days, the recipient shall offer a resolution of the complaint to the complainant, and shall notify the complainant of his or her right to file a complaint with the Director, and inform the complainant that this right must be exercised within 30 days.

(3) If, by the end of 60 days, the recipient has not completed its processing of the complaint or has failed to notify the complainant of the resolution, the complainant or his or her representative may, within 30 days of the expiration of the 60-day period, file a complaint with the Director.

(4) The Director may extend the 30-day time limit if the complainant is not notified as provided in paragraph (f)(2) of this section, or for other good cause shown.

(5) Notification of no jurisdiction. The recipient shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part. The notification shall also include the basis for such determination, as well as a statement of

the complainant's right to file a written complaint with the Director within 30 days of receipt of the notification.

(g) *Complaints filed with the Director.*

(1) Notification of acceptance of complaint. The Director shall determine whether the Directorate will accept a complaint filed pursuant to this section. Where the Directorate accepts a complaint for investigation, he or she shall:

(i) Acknowledge acceptance of the complaint for investigation to the complainant and the respondent, and

(ii) Advise the complainant and respondent of the issues over which the Directorate has accepted jurisdiction.

(2) Any complainant, respondent, or the authorized representative of any complainant or respondent, may contact the Directorate for information regarding the complaint filed pursuant to this section.

(3) Where a complaint contains insufficient information, the Director shall seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been used to locate him or her, or the information is not furnished within 15 days of the receipt of such request, the complaint file may be closed without prejudice upon notice sent to the complainant's last known address.

(4) The Director may issue a subpoena, as authorized by Section 163(c) of JTPA, directing the person named therein to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated time and place.

(5) Where the Directorate lacks jurisdiction over a complaint, he or she shall:

(i) So advise the complainant, indicating why the complaint falls outside the coverage of the nondiscrimination and equal opportunity provisions of JTPA or this part; and

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

(6) Where a complaint lacks apparent merit or has not been timely filed, it

need not be investigated. Where a complaint will not be investigated, the Director shall so inform the complainant and indicate the basis for that determination.

(7) Where a complaint alleging discrimination based on age falls within the jurisdiction of the Age Discrimination Act of 1975, as amended, the Director shall refer the complaint in accordance with the provisions of 45 CFR 90.43(c)(3), and shall so advise the complainant and the respondent.

(8) Where a complaint solely alleges a charge of individual employment discrimination covered by the non-discrimination and equal opportunity provisions of JTPA or this part and by title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e-17), the Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)), or the Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, et seq.), the Director shall refer such "joint complaint" to the Equal Employment Opportunity Commission for investigation and conciliation under procedures for handling joint complaints at 29 CFR part 1691, and shall advise the complainant and the respondent of the referral.

(9) Determinations. The Director shall determine at the conclusion of the investigation of a complaint whether there is reasonable cause to believe that a violation of the non-discrimination and equal opportunity provisions of JTPA or this part has occurred.

(i) Upon making such a cause finding, the Director shall issue an Initial Determination. The Initial Determination shall notify the complainant and the respondent, in writing, of:

(A) The specific findings of the investigation;

(B) The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed, as provided in § 34.44;

(C) Whether it will be necessary for the respondent to enter into a written agreement, as provided in § 34.45; and

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

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(ii) Where a no cause determination is made, the complainant and the respondent shall be so notified in writing. Such determination represents final agency action of the Department.

§ 34.44 Corrective and remedial action.

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued pursuant to §§ 34.40, 34.41 or 34.43 respectively, shall include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.

(b) Such steps shall include, but are not limited to:

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

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

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

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

§ 34.45 Notice of violation; written assurances; Conciliation Agreements.

(a) *State Programs.* (1) Violations at State-office level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part has occurred at the State-office level, he or she shall notify the Governor through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, pursuant to §§ 34.40, 34.41 or 34.43 respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part through, among other means, the execution of a written assurance and/or Conciliation Agree-

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ment, pursuant to paragraph (d) of this section.

(2) Violations below State-office level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part has occurred below the State-office level, the Director shall so notify the Governor and the violating recipient(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, pursuant to §§ 34.40, 34.41 or 34.43 respectively.

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

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

(C) Include a determination as to whether compliance should be achieved by: Immediate correction of the violation(s) and written assurance that such violations have been corrected, pursuant to paragraph (d)(1) of this section; entering into a written Conciliation Agreement pursuant to paragraph (d)(2) of this section; or both.

(ii) If the Governor determines, at any time during the period described in paragraph (a)(2)(i)(B), that a recipient's compliance cannot be achieved by voluntary means, the Governor shall so notify the Director.

(iii) If the Governor is able to secure voluntary compliance pursuant to paragraph (a)(2)(i) of this section, he or she shall submit to the Director for approval, as applicable: written assurance that the required action has been taken, as described in paragraph (d)(1) of this section; and/or a copy of the Conciliation Agreement, as described in paragraph (d)(2) of this section.