



# MOA Element 9

## **CORRECTIVE ACTIONS AND SANCTIONS**

## AGENDA

- **Presentation:** Review of Learning Objectives
- **Presentation:** Key Requirements for Corrective Actions and Sanctions
- **Activity:** Identifying the Appropriate Corrective Action
- **Presentation:** Corrective Actions and Sanctions Supporting Documentation
- **Presentation:** State's Implementation of Requirements for Corrective Actions and Sanctions

## LEARNING OBJECTIVES

- The participant will be able to explain the requirements for Corrective Actions and Sanctions.
- The participant will be able to determine the appropriate corrective actions and sanctions when a violation has occurred.
- The participant will be able to identify documentation that indicates whether or not proper Corrective Actions and Sanctions procedures have been followed.
- The participant will be able to describe how the state guarantees that Corrective Actions and Sanctions requirements will be met.

## **KEY REQUIREMENTS FOR CORRECTIVE ACTIONS AND SANCTIONS**

The key requirements for Corrective Actions and Sanctions include the following:

- Establishing procedures for effecting corrective actions and applying sanctions, if needed, to ensure that resolution of any non-compliance can be enforced (29 CFR 38.54 [C] [VII])
- Documenting that corrective actions and prospective relief plans are being implemented and maintained (29 CFR 38.95 – 38.98)
- Imposing sanctions for violations that are not voluntarily corrected (29 CFR 38.110)

## KEY REQUIREMENT #1: EFFECT CORRECTIVE ACTIONS

### When to take Corrective Action

Corrective action is required from a recipient when there is probable cause to believe a violation of the nondiscrimination and equal opportunity requirements of WIOA has occurred.

The violation may be identified as a result of:

- A monitoring review
- A discrimination complaint
- Both a monitoring review and a discrimination complaint

### What is a Violation?



#### Term to Know - Violation

A violation is a failure to comply with WIOA regulations. A violation may range in seriousness from an infraction, or a technical violation, to a more significant discrimination violation.

Taking corrective action requires identifying the violation(s) that must be corrected:

- **Technical violations.** For example, a failure to include the required language in an assurance or failure to include the tag lines in a communication.
- **Discrimination violations.** Include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.

## Appropriate Corrective Action

The action taken to correct a violation should be appropriate and reasonable given the violation that has occurred. If the technical violation involved failing to include tag lines in a communication, the appropriate corrective action would be to re-issue the communication with the tag lines included.

To correct a discrimination violation, the appropriate corrective action may be to provide make-whole relief.



### Term to Know - Make-Whole Relief

Make-whole relief is “making the person whole” or bringing the person to the condition they would be in if the discrimination had not occurred. Such relief might involve back pay, front pay, retroactive benefits, training, or any service discriminatorily denied.

For example:

- Make-whole relief for back pay: the victim(s) is entitled to be made-whole for any loss of earnings suffered because of a discriminatory practice. The amount of money received should be equal to what they would have earned (plus compound interest) had the discrimination not occurred.
- Make-whole relief for discrimination involving a failure to place an individual in a training program: the victim is entitled to an immediate and unconditional offer of placement into the training program that he or she would have been placed in had it not been for the discrimination.

#### **NOTE:**

Monetary relief, such as back pay, may not be paid from federal funds.

## **KEY REQUIREMENT #2: DOCUMENT THAT CORRECTIVE ACTIONS AND PROSPECTIVE RELIEF PLANS ARE BEING MAINTAINED**

Where a technical violation has been (or can be) corrected immediately, a written agreement or assurance should be provided to document the corrective action taken and the prospective relief that is planned.

- Corrective actions must be designed to completely correct each violation.
- For each corrective action, a timeframe should be established that sets the minimum time necessary to completely correct the violation.
- It is also required that the state and the EO officer institute follow-up monitoring procedures to ensure that commitments to take corrective and remedial action are being fulfilled.



### **Term to Know - Prospective Relief**

Curative and preventive steps *voluntarily* taken to ensure that a violation does not re-occur in the future.

An example of a corrective action plan for failing to include tag lines in a communication would be documentation that included:

- An explanation that the communication was reissued with the tag lines added
- The timeframe for reissuing the communication if it has not yet been reissued

- Prospective relief planned to ensure that all future notices will also include the required language by:
  - Changing the policy, practice, or procedure that allowed for the violation
  - Developing a new policy
  - Communicating the change in policy
  - Educating those responsible for implementing the revised procedures

### **Conciliation Agreements**

In the case of a more serious violation, or of a deficiency that cannot be corrected immediately, a detailed written assurance, or Conciliation Agreement, should be negotiated. The agreement must:

- Be in writing
- Describe each violation
- Specify the corrective or remedial action needed to come into compliance
- State the time period in which the corrective or remedial action must be completed
- Be sufficient in scope to ensure that the violation(s) will not recur
- Institute periodic reporting by the recipient on the status of the corrective and remedial action
- Institute enforcement procedures to be applied if the agreement is breached

## KEY REQUIREMENT #3: IMPOSE SANCTIONS

When all attempts to provide assistance to effect voluntary correction of a violation have failed, or it is apparent that the recipient fails or refuses to correct the violation within the timeframe established, the state must have procedures in place to impose sanctions.



### Term to Know – Sanction

Sanctions are the judicial enforcement actions taken, including suspending, terminating, or denying funding, when appropriate corrective actions are not taken to comply with WIOA regulations.

Sanction procedures should:

- List the measures taken to achieve voluntary compliance up through the point when sanctions are imposed
- Explain that the severity of the noncompliance will determine the sanctions imposed
- Provide a table or listing of the potential sanctions that may be imposed
- Detail the notification process including rights of the respondent, time frames involved and provisions for a hearing
- Identify the individuals who have responsibility for carrying out the various steps in the sanctions process and the role of the state EO Officer and sub-state EO Officer in this process

The following corrective action/sanction process, used by CRC, may serve as a model for the state's procedures:

## NON-COMPLIANCE, CORRECTIVE ACTION, AND SANCTION GUIDELINES

<b>AREA OF NON-COMPLIANCE</b>	<b>CORRECTIVE ACTION</b>	<b>PRE-SANCTION AND SANCTION</b>
<p>I. Practices and policies</p> <p>A. Policies or procedures which discriminate, or have the effect of excluding identifiable groups of individuals or denying the administration of benefits, participation in, employment, or other activities in connection with WIOA.</p>	<p>1. Technical Assistance.</p> <p>2. Elimination or modification of policies, practices and procedures which have been found to be discriminatory within a time period specific by the state's procedures</p>	<p>1. Warning of non-compliance.</p> <p>2. Recommendation of reduction of funding.</p> <p>3. Reduction of funding</p>
<p>B. Programs, activities, or services that are inaccessible to disabled or limited English-speaking individuals.</p>	<p>1. Technical Assistance</p> <p>2. Identification of inaccessible features, and modification of inaccessible features, within time frame specified by the state's procedures</p>	<p>1. Warning of non-compliance.</p> <p>2. Reduction of funding.</p> <p>3. Disallowance of costs in inaccessible programs, activities, or services.</p> <p>4. Elimination of funding.</p>

<b>AREA OF NON-COMPLIANCE</b>	<b>CORRECTIVE ACTION</b>	<b>PRE-SANCTION AND SANCTION</b>
<b>AREA OF NON-COMPLIANCE</b>	<b>CORRECTIVE ACTION</b>	<b>PRE-SANCTION AND SANCTION</b>
C.) Non-existent, incomplete, or inadequate accessibility assessment tool on file as required by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990	<ol style="list-style-type: none"> <li>1. Acquisition of technical assistance materials.</li> <li>2. Production of such a document within a time period specified by the state's procedures.</li> </ol>	<ol style="list-style-type: none"> <li>1. Warning of non-compliance.</li> <li>2. Reduction of funding.</li> </ol>
D.) Policies, practices, or procedures which are not in compliance with Section 188, 29 CFR 38, or other civil rights legislation.	<ol style="list-style-type: none"> <li>1. Acquisition of technical assistance materials.</li> <li>2. Prompt modification or elimination of non-complaint policies, practices, and procedures within a time specified by the state's procedures.</li> </ol>	<ol style="list-style-type: none"> <li>3. Warning of non-compliance</li> <li>4. Reduction of funding.</li> <li>5. Elimination of funding</li> </ol>
E.) Non-existence of a staff analysis by race, sex, and age.	<ol style="list-style-type: none"> <li>1. Completion of staff analysis within 1 month of receipt of non-compliance.</li> </ol>	<ol style="list-style-type: none"> <li>1. Warning of non-compliance</li> <li>2. Recommendation of reduction of funding.</li> <li>3. Reduction of funding</li> </ol>

<b>AREA OF NON-COMPLIANCE</b>	<b>CORRECTIVE ACTION</b>	<b>PRE-SANCTION AND SANCTION</b>
<p>II. ADMINISTRATIVE DUTIES</p> <p>A. Lack of implementation of procedure for resolving complaints alleging a violation of the WIOA, or relating to terms and conditions of employment.</p>	<p>Obtain technical assistance, and take necessary steps to achieve compliance.</p>	<ol style="list-style-type: none"> <li>1. Warning of non-compliance.</li> <li>2. Terminate federal financial assistance</li> </ol>
<p>B. Service provider complaint procedures which are not in compliance with 29 CFR 38</p>	<p>Obtain technical assistance and take necessary steps to achieve compliance.</p>	<ol style="list-style-type: none"> <li>1. Warning of non-compliance.</li> <li>2. Suspension of federal financial assistance.</li> <li>3. Discontinue federal financial assistance.</li> </ol>
<p>D. Failure to comply with equal opportunity directives issued by Governor’s liaison or the state EO officer, as his designee, and with applicable laws and regulation.</p>	<p>Take prompt action to comply within a time frame specified in the state’s procedures.</p>	<ol style="list-style-type: none"> <li>1. Warning of non-compliance.</li> <li>2. Discontinue federal assistance</li> </ol>

<b>AREA OF NON-COMPLIANCE</b>	<b>CORRECTIVE ACTION</b>	<b>PRE-SANCTION AND SANCTION</b>
<p>E. Failure to carryout oversight responsibilities by monitoring equitable service performance of its subcontractors.</p>	<p>Require immediate implementation of oversight and written report of the results to the state EO office within 3 months of the receipt of report of noncompliance.</p>	
<p>F. Failure to collect and maintain records as required in 29 CFR 38.</p>	<p>Take prompt action to comply within a time frame specified by the state’s procedures.</p>	<ol style="list-style-type: none"> <li>1. Warning of non-compliance.</li> <li>2. Suspension of federal financial assistance.</li> <li>3. Termination of federal financial assistance.</li> </ol>

## **ACTIVITY: IDENTIFYING THE APPROPRIATE CORRECTIVE ACTION**

### **Purpose:**

-  To determine which corrective action is appropriate to rectify a discriminatory practice

### **Task:**

- ✓ Read each scenario.
- ✓ Decide what, if any, corrective actions are necessary for each case.
- ✓ Determine if a written assurance or a conciliation agreement would be more appropriate.
- ✓ Come to a group consensus for each case.
- ✓ Appoint a spokesperson to report on your group's findings.

### **Time:**

-  15 minutes

## **IDENTIFYING THE APPROPRIATE CORRECTIVE ACTION**

1. The state EO officer does an on-site investigation to determine the cause of statistically significant disparities between the proportion of women in the program participant pool and the proportions of women in the construction and automotive repair OJTs (On the Job Training).

After interviewing case managers and female participants, reviewing all OJT participant records, talking to the contract job coordinator, and listening to orientation sessions on OJT placement procedures and nontraditional employment for women, the EO Officer determines that the primary reason for the disparities is that women expressed a strong preference for office work.

2. An assessment instrument is determined to have a disparate impact on Hispanics.
3. Though there is an accessible entrance and parking for individuals with disabilities at the rear of the One-Stop center, there are no signs to that effect at the front of the building.
4. A desk review of the ABE (Adult Basic Education) program shows a disparity between the very large proportion of men enrolled in Title IIA (adult programs and services) and the very small proportion in ABE. The disparity is a statistically significant -7.5 standard deviations.

The EO Officer reviews assessment files, and learns that all males that needed ABE were placed in ABE. The One-Stop Center Director suggests that the overwhelming presence of women in the ABE program may result from state law, which requires all WtW (Welfare-to-Work) recipients to go through ABE.

## **SUPPORTING DOCUMENTATION: CORRECTIVE ACTIONS AND SANCTIONS**

Supporting documentation, which indicates the state's compliance with the requirements for Corrective Actions and Sanctions should include, but need not be limited to:

- Copies of any policy memorandum or directives explaining corrective actions and sanctions
- Copies of each instrument (e.g., directives, memoranda) used to inform recipients of the state's procedures regarding corrective actions and sanctions

## **STATE'S IMPLEMENTATION OF CORRECTIVE ACTIONS AND SANCTIONS**

This part of the training has been reserved to discuss the state's approach to implementing the MOA's Corrective Actions and Sanctions. The state specialist will address the following:

- Policy communications and directives to LWWSA's that instruct recipients on how to comply with the 29 CFR 38.54 (C) (VII); Corrective Actions and Sanctions
- State's procedures for penalizing or censuring a non-complying recipient and a table of sanctions that may be applied
- Additional MOA requirements imposed by the state to implement Corrective Actions and Sanctions