

§ 34.46

(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.

(iv) The Director may disapprove any written assurance or Conciliation

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Agreement submitted for approval pursuant to paragraph (a)(2)(iii) of this section that fails to satisfy each of the applicable requirements provided in paragraph (d) of this section.

(b) *National programs.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part has occurred in a National Program, he or she shall notify the National Program recipient by issuing 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 Agreement pursuant to paragraph (d) of this section, as applicable.

(c) *Written assurance; conciliation agreement—(1) Written assurance.* A written assurance developed pursuant to this section must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

(2) *Conciliation agreement.* A Conciliation Agreement developed pursuant to this section must:

(i) Be in writing;

(ii) Address each cited violation;

(iii) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;

(iv) Provide for periodic reporting, as determined by the Director, on the status of the corrective and remedial action;

(v) Provide that the violation(s) will not recur; and

(vi) Provide for enforcement for a breach of the agreement.

§ 34.46 Final Determination.

(a) The Director shall conclude that compliance cannot be secured through informal means when:

(1) The grant applicant or recipient fails or refuses to correct the violation(s) within the applicable time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or

(2) The Director has not approved an extension of time in which to secure voluntary compliance, pursuant to § 34.45(a)(2)(i)(B), and:

(i) Has not received notification pursuant to § 34.45(a)(2)(iii) that voluntary compliance has been achieved; or

(ii) Has disapproved a written assurance or Conciliation Agreement, pursuant to § 34.45(a)(2)(iv); or

(iii) Has received notice from the Governor, pursuant to § 34.44(a)(2)(ii), that voluntary compliance cannot be achieved.

(b) Upon so concluding, the Director may:

(1) Issue a Final Determination which shall:

(i) Specify the efforts made to achieve voluntary compliance and indicate that those efforts have been unsuccessful;

(ii) Identify those matters upon which the Directorate and the grant applicant or recipient continue to disagree;

(iii) List any modifications to the findings of fact or conclusions set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;

(iv) Determine the liability of the grant applicant or recipient, as applicable, and establish the extent of the liability, as appropriate;

(v) Describe the corrective or remedial action that must be taken for the grant applicant or recipient to come into compliance;

(vi) Indicate that the failure of the grant applicant or recipient to come into compliance within 10 days of the receipt of the Final Determination may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request to file suit;

(vii) Advise the grant applicant or recipient of the right to request a hearing, and reference the applicable procedures at § 34.51; and

(viii) Determine the Governor's liability, if any, in accordance with the provisions of § 34.32; or

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(3) Take such other action as may be provided by law.

§ 34.47 Notice of finding of noncompliance.

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director shall so notify: (a) the Departmental granting agency; and (b) the Assistant Attorney General.

§ 34.48 Notification of Breach of Conciliation Agreement.

(a) Where a Governor is a party to a Conciliation Agreement, the Governor shall immediately notify the Director of a recipient's breach of any such Conciliation Agreement.

(b) When it becomes known to the Director, through the Governor or by other means, that a Conciliation Agreement has been breached, the Director may issue a Notification of Breach of Conciliation Agreement.

(c) A Notification of Breach of Conciliation Agreement issued pursuant to this section shall be directed, as applicable, to the Governor and/or other party(ies) to the Conciliation Agreement.

(d) A Notification of Breach of Conciliation Agreement issued pursuant to paragraph (a) of this section shall:

(1) Specify the efforts made to achieve voluntary compliance and indicate that those efforts have been unsuccessful;

(2) Identify the specific provisions of the Conciliation Agreement violated;

(3) Determine liability for the violation and the extent of the liability, as appropriate;

(4) Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department