

New York State Nondiscrimination Plan

*For the Nondiscrimination and Equal Opportunity Provisions of the
Workforce Innovation and Opportunities Act
Title I Financially Assisted Programs*

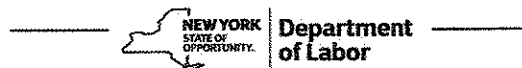
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LIST OF ACRONYMS

Acronym	Definition
AAA	Affirmative Action Administrator
ACCESS-VR	Adult Career and Continuing Education Services - Vocational Rehabilitation
ADA	Americans with Disabilities Act of 1990
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADR	Alternative Dispute Resolution
AS&T	Administrative Staff & Technical
BOCES	Board of Cooperative Educational Services
CFR	Code of Federal Regulations
CRA	Civil Rights Act of 1964
CRC	U.S. Department of Labor Civil Rights Center
DEI	Disability Employment Initiative
DEOD	New York State Department of Labor Division of Equal Opportunity Development
DEWS	NYS DOL Division of Employment and Workforce Solutions
DHR	New York State Division of Human Rights
DIPA	NYS DOL Division of Immigrant Policies and Affairs
DRC	Disability Resource Coordinator
EEO	Equal Employment Opportunity
EEOC	U.S. Department of Labor Equal Employment Opportunity Commission
EO	Equal Opportunity
EOS	Equal Opportunity Specialist
ETA	U.S. Department of Labor Employment and Training Administration
GOER	New York State Governor's Office of Employee Relations
JAWS	Job Access with Speech
LEP	Limited English Proficiency
LWDA	Local Workforce Development Area
LWDA EO Officer	Local Workforce Development Area Equal Opportunity Officer
LWDB	Local Workforce Development Board
MOA	Methods of Administration
MOU	Memorandum of Understanding
MSFW	Migrant Seasonal Farm Worker
NDP	Nondiscrimination Plan
NYS DOL	New York State Department of Labor
OGS	New York State Office of General Services
OSOS	One Stop Operating System
OTDA	New York State Office of Temporary and Disability Assistance
RFP	Request for Proposals
SBS	New York City Small Business Services
SLMS	Statewide Learning Management System
SSI/SSDI	Supplemental Support Income/Social Security Disability Insurance
State WIOA EO Officer	New York State Workforce Innovation and Opportunity Act Equal Opportunity Officer (i.e., Director DEOD)
SWA	State Workforce Agency
TA	Technical Advisory
TCC	New York State Department of Labor Unemployment Insurance Telephone Claims Center
TDD/TTY	Telecommunication Device for the Deaf/Teletype
Title I	Workforce Innovation and Opportunity Act Title I
Title VI	Title VI of the Civil Rights Act of 1964
UI	Unemployment Insurance
USDOL	United States Department of Labor
WIA	Workforce Investment Act of 1998
WIIN	Work Incentive Information Network
WIOA	Workforce Innovation and Opportunity Act of 2014
WorkSource1	New York City Small Business Services' Case Management System

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Element 1. Designation of Statewide Equal Opportunity (EO) Officers
(29 CFR §§ 38.28-38.33)

State Level EO Officer

The Governor appoints the Chief Risk Officer and Special Counsel (CRO) of the New York State Department of Labor's (NYSDOL or Department) as the State-Level Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity (EO) Officer to coordinate compliance with the equal opportunity and nondiscrimination requirements in the WIOA. The CRO is a full-time employee that oversees NYSDOL's Division of Equal Opportunity Development (DEOD) which is the office devoted to equal opportunity matters. The CRO reports directly to the Governor and is supervised by the NYSDOL Executive Deputy Commissioner on organizational matters, and the Commissioner (the Governor's Designee) and Executive Deputy Commissioner on EO matters. The State Level EO Officer directs the statewide development, implementation, evaluation and monitoring of equal employment opportunity and affirmative action plans and programs for all Department of Labor operating units, training programs, state contractors, and recipients of WIOA, Title I funding. NYSDOL provides the Local Workforce Development Area (LWDA) EO Officer opportunities for training to maintain competency in equal opportunity/nondiscrimination matters.

State Level EO Officer's contact information is as follows:

New York State Department of Labor
Division of Equal Opportunity Development
State Campus Building #12, Room 576
Albany, NY 12240
Phone: (518) 457-1984
Fax: (518) 485-2575
(TDD) 1-800-662-1220, (Voice) 1-800-421-1220
Email: DEOD@labor.ny.gov

Duties of the State Level EO Officer

The WIOA EO Officer's duties¹ include, but are not limited to:

- Serving as NYSDOL's liaison with the United States Department of Labor, (USDOL) Civil Rights Center (CRC);
- Monitoring and investigating the NYSDOL WIOA grant recipients', State Level WIOA funding grantees and subrecipients' (including those in NYS Career Centers, Unemployment Insurance Call Centers, Partner agencies and affiliate sites) activities to make sure that NYSDOL and its subrecipients meet their obligations under WIOA Title I, 29 CFR Part 38 and any federal, state or local guidance;
- Reviewing NYSDOL's and WIOA grant recipients' written policies to ensure compliance with anti-discrimination laws;

Developing and publishing NYSDOL's procedures for review and administration of the discrimination complaint process, ensuring compliance, and ensuring public accessibility



- to the complaint process;
- Serving as the Americans with Disabilities Act (ADA) Backup Coordinator / Designee for Reasonable Accommodations (DRA) for the NYSDOL;
 - Undergoing training at NYSDOL's expense to maintain competency of the State Level EO Officer and staff as required by the Director of the CRC;
 - Overseeing the development and implementation of NYSDOL's Non-Discrimination Plan (NDP);
 - Conducting outreach and education about equal opportunity and nondiscrimination requirements and discrimination complaint filing procedures;
 - Communicating applicable policies and procedures to staff statewide and providing training as required under the applicable statutes in person, via webinar or by other methods.

The identity of the State Level EO Officer is communicated to applicants, participants, employers, the public and employees by providing contact information, together with other information on EO rights, through the following means:

- Posting the notice "Equal Opportunity is the Law" prominently, in NYS Career Centers and Department of Labor Offices throughout the State. The notice gives the contact information for the State Level EO Officer and LWDA EO Officer, including the organization name, address, e-mail address, telephone, fax, and TDD/TTY numbers. The notice is also posted in English and other languages² spoken by significant portions of the population of the area in which the notice is posted.
- Providing a written copy, the "Equal Opportunity is the Law" notice in their *Unemployment Insurance— A Claimant Handbook*.³ to individuals who have filed claims for Unemployment Insurance benefits.
- Providing a copy of the notice "Equal Opportunity is the Law" to each individual registering for employment services in the Career Centers.
- Publishing contact information for the State Level EO Officer in NYSDOL's General Administration Manual (available on NYSDOL's intranet website).
- Posting EO procedures and policies on the NYSDOL's intranet website.
- Providing the "Equal Opportunity is the Law" notice to potential participants during the orientation and application process for employment and reemployment services.
- Maintaining NYSDOL's Internet website to contain equal opportunity and non-discrimination information, identify the name of the State Level EO Officer, and offer technical assistance, policy issuances, links to relevant Internet sites, EO statutes and regulations, and a copy of the State's NDP.

Staff and Resources of the State Level EO Officer

DEOD maintains full-time staff at the Albany office. Office staff operate as an extension of the State Level EO Officer to ensure compliance with the EO Laws and regulations. They answer EO/ADA questions, provide technical assistance, investigate complaints of discrimination, assess requests for reasonable accommodations, and conduct on-site visits at the Career Centers and other service providers to ensure that WIOA Title I financially assisted programs and activities operate in a non-discriminatory manner. Using the monitoring tools and processes described in detail under Element 7 of this NDP, DEOD staff members work with recipients to identify problem areas and to develop a plan for corrective action when deficiencies occur. Follow-up visits may be scheduled to ensure that the appropriate actions



are fulfilled.

LWDA EO Officers

There are 34 LWDA EO Officers across the State who are senior-level employees of the local WIOA Title I Recipient. The State Level EO Officer and DEOD staff review the credentials of the LWDA EO Officer designees to ensure they meet the eligibility requirements specified under 29 CFR § 38.30, including the requirement that they do not have other duties or responsibilities that could create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.⁴

Duties of LWDA EO Officers

A single, standardized position description⁵ has been adopted by all LWDA EO Officers. The majority of LWDA EO Officers have other duties and responsibilities in addition to their EO responsibilities. These duties involve the provision or coordination of services to job seekers and employer customers.

LWDA EO Officers' duties include:

- Serving as the WIOA grant recipient's liaison with the State Level EO Officer and the USDOL Civil Rights Center (CRC);
- Monitoring and investigating the WIOA grant recipients' and its subrecipients' activities to make sure that the WIOA grant recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under applicable federal law;
- Reviewing the WIOA grant recipients' and its subrecipients' written policies for compliance with antidiscrimination laws;
- Tracking, investigating, resolving complaints, ensuring complaint procedures are followed, and making the procedures for filing a complaint available to the public in appropriate languages and formats;
- Reporting to the WIOA grant recipient about equal opportunity matters; and
- Undergoing training at the WIOA grant recipient's expense to maintain competency.

Making the Identity of LWDA EO Officers Known

LWDAs make the name of their LWDA EO Officers known to applicants, participants, employers, the public and employees by the following methods:

- Posting the "Equal Opportunity is The Law" notice in local Career Centers and affiliate center offices. The notice gives the contact information for the WIOA EO Officer and LWDA EO Officer, including the organization name, address, e-mail address, telephone, fax, and TDD/TTY numbers.
- Advising LWDAs to communicate the name of the LWDA EO Officer:
 - in internal documents and memoranda and other written or electronic communications;⁶
 - in employer handbooks and manuals;
 - by ensuring the above referenced Notice is made available to each participant; and
 - by reviewing the content of the above referenced Notice with potential participants and



- participants during orientation and application processes.
- Listing LWDA EO Officer names on the NYSDOL Internet website.

Federal regulations require the State Level EO Officer and LWDA EO Officers and their staffs to be sufficiently funded, administratively supported, and trained to maintain competency commensurate with the level of assignment, knowledge, skills, and abilities necessary to carry out their responsibilities. DEOD has instituted best practices that ensure all EO staff receives adequate training, as detailed below.

Training of EO Officers and their Staff

The State Level EO Officer provides training that includes:

- Sharing information, best practices and resources;
- Communicating collaborative efforts and partnerships that promote Statewide EO accountability, ADA accessibility, and LWDA monitoring activities; and
- Providing on-site, virtual, telephonic, or regional technical assistance.

DEOD meets in person and communicates via email/telephone with LWDA EO Officers to provide updates and technical assistance, new policies and procedures, recent regulation changes, training, and to discuss other pertinent information to ensure the LWDA EO Officers maintain competency in EO matters. The State Level EO Officer and assigned staff members respond to telephone or e-mail requests for information as quickly as possible and arrange site visits as needed. Training is conducted on a continuous basis to ensure that LWDA EO Officers are provided the information necessary to carry out their EO responsibilities. State Level EO Officer and DEOD conduct training or obtain trainers or contractors to provide training to the LWDA EO Officers on Equal Opportunity is the Law, Americans with Disabilities Act, NDP, Sexual Harassment Prevention, and Limited English Proficiency.

For Fiscal Year 2017, the DEOD allocation has been established at ten positions.

In addition, the State Level EO Officer and DEOD receives support from other divisions and offices in NYSDOL (Forms, Human Resources, Office of Communications, Workforce Development and Training, etc.). State Level EO Officer and DEOD staff members provide training to the LWDA EO Officers on EO matters and inform them of training opportunities such as an overview of DEOD and its role in ensuring equal opportunity in NYSDOL Agencies and complaint investigation training to newly designated EO Officers.

¹ / DEOD Duties Description

² “Equal Opportunity is the Law” Poster in All Languages



- 3 Unemployment Insurance– A Claimant Handbook
- 4 Guidance Document – Local Workforce Development Area’ Designated Equal Opportunity (EO) Officers
- 5 Local Workforce Development Area Profile
- 6 Example of LWDA Document showing contact info for LWDA EO Officer



Element 2. Notice and Communication (29 CFR §§ 38.34-38.40)

Notification: Initial & Ongoing

In New York State, recipients disseminate the required notices under 29 CFR §§38.34 and 38.35 to applicants, registrants, eligible applicants/registrants, participants, employees, unions or professional organizations that hold collective bargaining or professional agreements with recipients, subrecipients that receive WIOA Title I financial assistance from the State, and to members of the public, including those with impaired vision or hearing, and Limited English Proficiency (LEP).

- The *Equal Opportunity is the Law* Poster is prominently posted in all New York State Career Centers, NYSDOL Employment Services Offices, and other offices that receive Title I-federal funds. The Poster contains information required by 29 CFR § 38.35 and is provided in languages other than English.
- The equal opportunity and nondiscrimination policy³ is disseminated in internal memoranda and other written or electronic communications such as the *NYSDOL General Administration (GA) Manual*^{4 5 6}, the NYSDOL Intranet website, the NYSDOL Internet website, and the *NYSDOL Employee Handbook*.
- The equal opportunity is the law statement is contained in New York's *Unemployment Insurance– A Claimant Handbook*.
- Readers and other assistive devices for the visually impaired that allow for magnification and audible translations of the Poster are available at NYSDOL and LWDA sites.⁷
- Sign language interpreters⁸ are available to persons with hearing impairments should they have questions about the notice or the filing process for complaints of discrimination, upon request. The *Unemployment Insurance– A Claimant Handbook*, also contains the Notice provisions and is provided to all applicants and claimants either in hard copy, electronically, audio or Braille.

State Level EO Officer and DEOD staff members monitor LWDA's and Career Centers for compliance as outlined under Element 7 of this document. In addition to verifying that the poster is appropriately displayed in Career Center locations, State Level EO Officer and DEOD staff members verify that LWDA's have instituted a process to confirm that their subrecipients and service providers are posting the notice appropriately. LWDA's monitor subrecipients in accordance with their duties outlined under Element 1 of this document, and upon request, will submit results of the monitoring reviews to State Level EO Officer and DEOD staff members, including documentation to support that the notice was posted.

State Career Center participants are issued a copy of the notice, or an alternative version⁹ in the appropriate language at the time of application for registration. LWDA's maintain the Customer Registration Form (ES 100)¹⁰ to document that notice has been provided, or they maintain a signed hardcopy of the notice in the participant's file, whereby the participant acknowledges that the participant has received and read the notice.

All Unemployment Insurance claimants filing for benefits through the Tel-Service System of the Telephone Claims Centers (TCCs) are automatically mailed a copy of the notice. Claimants



who file a claim for Unemployment Insurance benefits electronically on the Unemployment Insurance website can select to “opt out” of receiving a mailed notice. However, they are advised that they are responsible for reading and following up on all information provided in the online Handbook which includes a digital copy of the Notice. They are also advised that if they later decide they want a mailed copy, they can request one from the TCC. The TCC will create a note in the system that the handbook was requested and mailed.

Notification to Individuals with Disabilities

The statements, “equal opportunity employer/program” and “auxiliary aids and services are available upon request to individuals with disabilities” are included on all NYSDOL marketing materials^{11 12} and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large.

DEOD staff review local recruitment and marketing materials¹³ to verify that a TDD/TTY number is indicated or that an equally effective means of communication with individuals with hearing impairments is provided. UI customers who use TDD/TTY equipment, call a relay operator at 1-800-662-1220 and ask the operator to call the Telephone Claims Center at 1-888-783-1370 (this number is only for TDD equipment).

Brochures, and other marketing materials for NYSDOL include the TDD/TTY (1-800-662-1220) and Voice – Relay Operator (1-800-421-1220) numbers to provide access to NYSDOL services and programs for individuals with hearing impairments. Where no number is provided, brochures direct inquiries to the NYSDOL internet website page, www.labor.ny.gov, which provides the TDD/TTY number on the home screen.

NYSDOL includes the phrases “equal opportunity employer/program” and “auxiliary aids and services are available upon request to individuals with disabilities” whenever it publishes or broadcasts WIOA Title I financially assisted program-related information. See Elements 4 and 5 for a full description of how the State provides access to individuals with disabilities.

Notifications to Persons with LEP

Information in languages other than English is provided based on an assessment of the demographics of a specific area or population being served. NYSDOL has contracted for translation and interpretation services^{14 15} for all its programs. LWDAs are provided access to these interpretive services free of charge. See Element 4 for a full description of how the State provides language access services for persons with limited English-speaking ability.

Individuals with LEP can also access programs and activities through the NYSDOL's Contact Center which handles all incoming calls, emails, and the Language Access Hotline for all Divisions within the Department except the Unemployment Insurance Division. The Department's Contact Center can be accessed toll-free by calling 1-800-HIRE-992. The Contact Centers employ Spanish-speaking staff to assist callers, and staff also has access to telephonic interpretive services on behalf of customers to enable dialogue in a broad array of languages. NYSDOL has a Language Bank whereby employees with foreign language skills volunteer to serve as interpreters for persons with LEP. The interpretation in most cases takes place over the telephone, however, travel may be authorized when necessary.



Career Centers provide handouts explaining customers' EO rights, and some conduct formal orientations which include a discussion of these rights. NYSDOL includes a discussion of EO and non-discrimination rights in its new employee orientations and ensures that information is communicated in appropriate languages and in formats accessible for individuals with disabilities.

As part of its monitoring function, State Level EO Officer and DEOD staff members conduct on-site reviews of Career Centers to verify that Career Center staff are familiar with communication procedures to assist blind and visually impaired individuals such as:

- verbalizing directions;
- initiating introductions to customers who are visually impaired;
- verbally communicating important information that is not readily apparent to a person who is visually impaired;
- being aware of alternatives available in the Career Center such as alternatives to handing out materials in normal size print; and
- understanding how to use a signature guide.

Career Centers are physically and programmatically accessible to individuals with disabilities, and provide auxiliary aids and services such as:

- Qualified interpreters;
- assistive listening headsets;
- closed and open captioning on videos;
- telecommunication devices for hearing impaired individuals;
- computers that allow voice input and output;
- readers;
- taped texts;
- brailled materials;
- videotext displays; and
- transcription services.

LWDAs include a TDD/TTY number or an equally effective means of communication with individuals with hearing impairments on its local recruitment and marketing materials whenever a phone number is included. The LWDAs also include text indicating "auxiliary aids and services are available upon request to individuals with disabilities," on their local recruitment and marketing materials. The LWDAs takes appropriate steps to ensure they are providing equal access to WIOA financially assisted programs and activities to various groups including, but not limited to, persons of different sexes, various racial and ethnic/national origin groups, various religions, LEP individuals, individuals with disabilities and individuals in different age groups through affirmative outreach.

DEOD

Under the direction of the State Level EO Officer, DEOD:



- Disseminates nondiscrimination and equal opportunity policies to the Workforce Development System through Technical Advisory Bulletins;
- Assures publication of equal opportunity procedures and policies applicable to employees in the Department's General Administration Manual (available on the Intranet), as well as in Unemployment Insurance and Employment Service directives;¹⁶
- Disseminates New York State's NDP to LWDA's;
- Reviews the LWDA's written equal opportunity and non-discrimination policies;
- Provides technical assistance and guidance to LWDA's on EO or non-discrimination matters; and
- Ensures that the training plan described in Element 1 for LWDA EO Officers is executed. In most instances, training will be conducted by State Level EO Officer and DEOD staff members, however, when necessary, State Level EO Officer and DEOD staff members will secure certified training instructors or consultants, including those provided by the USDOL, to provide training to LWDA EO Officers and their staff. Training may also be provided via the NYSDOL Statewide Learning Management System and webinars.

In addition:

- LWDA's also ensure that nondiscrimination and equal opportunity training is provided. LWDA EO Officers and staff are encouraged to pursue training opportunities as they become available, including those from sources outside of the NYSDOL, such as those developed by the State, and webinars presented by the USDOL, Employment and Training Administration (ETA).

¹ Equal Opportunity is the Law Poster in English and Spanish – LWDA Version

² Guidance Document - Implementation of the Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures of the Workforce Innovation and Opportunity Act (WIOA)

³ NYSDOL Affirmative Action Policy –GA 813

⁴ Guidance Document – Discrimination Against People with Disabilities

⁵ Guidance Document – Sexual Harassment

⁶ Guidance Document – Workplace Harassment Policy

⁷ Notice Under the Americans with Disabilities Act

⁸ Guidance Document – Language Interpretation Services Available at Career Centers

⁹ Example of an Alternative Notice of Rights Under WIOA

¹⁰ NYSDOL Customer Registration Form – ES100

¹¹ Factsheet – Hudson Valley New York State Career Centers, showing taglines



- ¹² The Prime Objective – A Job Seeking Guide for Ex-Offenders Booklet showing taglines
- ¹³ Hempstead Works Veterans Services Handout, showing TTY number
- ¹⁴ Poster - If You Need An Interpreter
- ¹⁵ NYSDOL Language Access Plan for LEP Individuals
- ¹⁶ Guidance Document – Universal Accessibility of the Workforce Development System to Individuals with Disabilities, including those who are Blind or Visually Impaired



Element 3. Assurances (29 CFR §§ 38.25-38.27)

Assurances

The required EO assurance is included in both the State and LWDA's Strategic Plan¹ and the State's *Workforce Innovation and Opportunity Act Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures*² requires local recipients to place the assurance in every grant, cooperative agreement or contract³ for financial assistance under Title 1 of WIOA (See Element 8). Each training provider seeking eligibility must include the required EO assurance in its application.

Each grant applicant and training provider seeking eligibility assures that they are able to provide programmatic and architectural accessibility for individuals with disabilities. The State reserves the right to cancel any award or to remove any training provider from the Statewide list that does not provide programmatic and architectural accessibility as assured, as well as the right to conduct pre-award, on-site inspections of grant applicants to determine their accessibility to individuals with disabilities. LWDA's also conduct on-site inspections of their providers and contractors⁴ and may implement corrective actions or cancel contracts should problems be identified and not addressed accordingly.

NYSDOL includes the equal opportunity and nondiscrimination assurance statement set forth in 29 CFR § 38.25(a)(1) in all grants, cooperative agreements, contracts and requests for proposals (RFPs) via a standardized form that contains federal and State certifications⁵ including the required EO assurance language.

NYSDOL policies, contracts, and other necessary materials or agreements are carefully reviewed by trained staff to ensure they are not discriminatory either in intent or effect. If the WIOA EO Officer discovers any problematic language or policy, it is amended to meet compliance.

The State Level EO Officer takes a leadership role in ensuring policies on WIOA Title I non-discrimination and EO issues⁶ are developed and implemented in a timely manner. In doing so, the State Level EO Officer works in conjunction with other divisions and offices within NYSDOL to ensure the policies are carefully crafted and properly reviewed by individuals and staff responsible for implementing the policy. Policies affecting WIOA Title I recipients are broadcast on the NYSDOL homepage.

¹ New York State Workforce Innovation and Opportunity Act Four Year Combined State Plan – Program Years 2016 through 2019



- ² Guidance Document – Implementation of the Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures of the Workforce Innovation and Opportunity Act (WIOA)
- ³ Sample Contract showing Assurance Language – Genesee-Livingston-Orleans-Wyoming (GLOW) Workforce Investment Area On-The-Job Training Contract
- ⁴ Guidance Document – Technical Assistance and Clarifying Guidance regarding Oversight and Monitoring Responsibilities for Chief Local Elected Officials and Local Workforce Investment Boards
- ⁵ Appendix D – Federal and State Certifications
- ⁶ Discrimination Against People with Disabilities – GA 252



Element 4. Universal Access (29 CFR §§ 38.40, 38.41(b)(1)(2))

Communication of Efforts to LWDAs, Career Centers and Service Providers

NYS DOL has communicated the obligation of recipients to make efforts to broaden the composition of their customer pool, and to provide universal access, through guidance, training, and the provision of ongoing feedback as to the makeup of their service pools:

- LWDAs are required to outline outreach strategies for special needs populations such as persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with LEP, individuals with disabilities, and individuals in different age groups in their WIOA Strategic Plans¹;
- As part of recertification, LWDAs are required to describe in local Memoranda of Understanding,^{2,3} and in various other documents, how services to different groups will be delivered;
- Career Centers ensure outreach and provision of services to special populations by partnering and leveraging resources across a range of state and federally-funded programs (e.g., Job Corps, Apprenticeship Programs, BOCES, Adult Career and Continuing Education Services – Vocational Rehabilitation (ACCES-VR), Job Fairs, etc);
- All LWDAs have access to the State’s LWDA Management Reports System via the One Stop Operating System (OSOS), which enables them to view customer demographics for three different customer pools: active participants, new registrants, and exiters (those exited from the system due to obtaining employment or some other outcome). These LWDA-specific reports⁴ provide multiple tables including those by gender, age group, disability status and ethnicity/race. Local Workforce Development Board (LWDB) Directors and Career Center Directors use this information to track their EEO compliance. The LWDA Management Reports System can be queried to create reports for one Career Center, or all Centers within a LWDA;
- To identify the language assistance needs for individuals with LEP, a “Primary Language” tab is included in the OSOS Customer module. LWDAs are able to select from 21 languages or “Other Not Listed” where the language specified by the customer is not available. Where “Other Not Listed” is selected, the LWDAs are able to type the specified language in a free form text entry box. The Primary Language tab also includes a “Language Assistance Needed” drop-down menu which allows the LWDA to indicate that no assistance is needed, or where necessary, that the assistance provided is in the form of “oral interpretation”, “sign language,” or “written translation.”



Outreach Efforts

The services provided by NYSDOL and partner entities are fully accessible on the NYSDOL and partner agency websites. Language access is also included to inform individuals that assistance is available to people with disabilities and those who have LEP.

Through their comprehensive plans, LWDAs provide for service delivery to targeted populations including dislocated workers, displaced homemakers, low-income individuals, migrant and seasonal farm workers, women, minorities, individuals training for non-traditional employment, veterans, public assistance recipients and individuals with multiple barriers to employment, including older workers, individuals with Limited English Proficiency and persons with disabilities. Efforts are continually made to broaden the composition of those considered for participation or employment in LWDA programs.

NYSDOL and LWDAs accommodate individuals' religious practices or beliefs⁵. Some of the strategies used include:

- Planning flexible or alternative work schedules.
- Changing or modifying job assignments.
- Asking workers to volunteer coverage of an assignment.
- Accommodating dietary requirements.
- Permitting an alteration to dress codes and grooming habits (such as allowing beards or head coverings).
- Allowing observation of mourning periods and other religious practices.
- Accommodating the observance of religious holidays and/or Sabbath observances.

On September 26, 2013, the NYSDOL received a grant to operate the Disability Employment Initiative⁶ (DEI). The purpose of the DEI is to improve employment opportunities for people with disabilities by improving coordination and collaboration among employment, training, and asset development programs implemented at the state and local levels. Twenty-four (24) Disability Resource Coordinators (DRCs) are stationed at Career Centers located within 13 LWDA. An additional benefit of the DEI is the emphasis placed on operating as an Employment Network by serving customers of the Career Centers who identify as receiving Social Security benefits (Supplemental Support Income and/or Social Security Disability Insurance) through the U.S. Social Security Administration's Ticket-to-Work program. This federal program has the potential of generating unrestricted income for LWDA who successfully place qualified candidates into employment for an extended period of time. Performance outcomes, including the success or failure of the DEI populations, are evaluated and measured through the submission of quarterly reports by the LWDA, and audits done by an evaluation team (subcontracted by USDOL).



NYSDOL also issued several RFPs to increase services to special populations including: the *New York State Department of Labor Dislocated Worker Training National Emergency Grant*, and the *Job Driven National Emergency Grant* to solicit projects to provide occupational training to dislocated workers, with emphasis on long-term unemployed, unemployment beneficiaries likely to exhaust benefits, and foreign-trained immigrant worker populations to enable them to obtain employment.

NYSDOL, through its Division of Immigrant Policies and Affairs (DIPA), works with both advocacy groups and the public to address the needs of immigrant workers and to broaden the pool of applicants to workforce development programs by adopting programs that include:

- Establishing “Access Points” to Career Centers in local community and advocacy organizations to allow immigrant workers to gain better access to the Centers;
- Establishing a Translation Interface⁷ on the NYSDOL Internet site which allows for an electronic translation of the site in 52 languages;
- Hiring bilingual employees to work with individuals seeking the services offered by the NYSDOL;
- Making community outreach presentations about the Department for governmental and nongovernmental groups and agencies that deal directly with immigrant workers throughout the State;⁸
- Assuring that the State Monitor Advocate is familiar with all of the Career Centers in the State and provides continued monitoring of the Career Centers in order to guarantee that agricultural and non-agricultural workers are offered equitable DOL services;
- Examining the demographics of the immigrant groups accessing the programs of the NYSDOL and the language services currently available, and then making whatever adjustments necessary to better serve the immigrant community.
- Disseminating “Help for Farm Workers” laminated cards that detail services provided by the Division to advocacy groups or other agencies that request information about DIPA.
- Visiting areas where large groups of immigrants live or work. Because many immigrant workers are hesitant to visit the NYSDOL offices due to cultural and language barriers, DIPA brings information on the services offered by the NYSDOL to workers in their own neighborhoods. Bilingual representatives of the NYSDOL distribute translated materials as appropriate.
- Individuals with LEP can fully access the programs offered by NYSDOL and ensure that all state agencies comply with Governor Cuomo’s Executive Order 26,^{9 10} Statewide Language Access Policy.

Monitoring

The Career Center certification process requires Local Workforce Development Board’s (LWDB) to establish written agreements with each Career Center operator within their local area. These agreements clarify roles and responsibilities, promote inclusion of partners and integration of services. Site visits by the LWDB are an integral part of the certification reviews and address many universal access issues. An online guide¹¹ was developed for use by both Workforce Development Boards and Career Center Operators as they prepare for re-certification and is available on the NYSDOL website.



The DEI grant requires the NYSDOL to complete a narrative report that is compiled and submitted by the DEI State lead to the USDOL ETA on a quarterly basis. This narrative is comprised of activities documented in monthly reports by Disability Resource Coordinators (DRC) in each pilot site under the project. This narrative report offers USDOL ETA the opportunity to learn more about the project and the activities of its DRCs. The information gleaned is used for training and technical assistance.

The EO compliance and monitoring reviews, and statistical assessment outlined in Element 7 of this NDP is designed to ensure that all participants are provided with equitable services.

Annual reports are generated by NYSDOL's Division of Research and Statistics and provided to the State Level EO Officer for monitoring and compliance. These reports provide EO characteristics of Employment Services participants by race, gender, age, disability, veteran's status, and migrant seasonal farm worker (MSFW) status. Based on the information gathered for review it can be determined if there are disparities in services toward any particular class and those disparities can be corrected.

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- ¹ Example Strategic Plan – Tompkins County Local Plan – July 1, 2014 – June 30, 2015
 - ² Guidance Document – Memorandums of Understanding and Other Related Agreements
 - ³ Guidance Document Attachment A – One Stop System Memorandum of Understanding
 - ⁴ OSOS Management Report Screen Shot
 - ⁵ NYSDOL Policy Statement on Reasonable Accommodation for Religious Observance and Practices
 - ⁶ Disability Employment Initiative (DEI) Factsheet
 - ⁷ NYSDOL Translation Interface Screen Shot
 - ⁸ DIPA Handout – Labor Information for Agricultural Workers Booklet
 - ⁹ Executive Order 26, 9 NYCRR § 8.26 – Statewide Language Access Policy
 - ¹⁰ NYSDOL Language Access Plan for LEP Individuals
 - ¹¹ Guide to Certifying One-Stop Operators Screen Shot



Element 5. Compliance with § 504 of the Rehabilitation Act of 1973, as amended and 29 CFR Part 38 (29 CFR §§ 38.25(a)(i)(c), 38.41(b)(3)(i)(A)(B)(C)(ii))

Non-Discrimination

State law ensures that individuals with disabilities are afforded an equal opportunity to receive program benefits and services and that they are not discriminated against in the process.

- The State Level EO Officer and DEOD staff members provide training and education for local area DRCs to assist the Career Centers in building systems that enable the career Centers to meet the needs of all individuals with disabilities.
- NYSDOL's Internet website contains technical assistance and training for both State and local staff.^{1, 2}
- Monitoring activities conducted by State Level EO Officer and DEOD staff members assure that barriers preventing access to programs and services for those who are disabled are removed.
- Providing Unemployment Insurance handouts that contain EO information.
- NYSDOL and Career Center websites provide information regarding the EO rights of individuals with disabilities.³
- The assurance language is incorporated into all grants, cooperative agreements, contracts and RFPs, and assures that recipients of federal financial assistance will comply with Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities.

DRC

As stated in Element 4, the NYSDOL has received a grant under the DEI initiative. DEI projects support extensive partnerships, collaboration and service coordination across multiple workforce, and disability systems such as: vocational rehabilitation agencies, mental health and developmental disability agencies, Medicaid infrastructure grant- supported activities, independent living centers, business leadership networks, and other community-based and nonprofit organizations. The State will foster and expand these collaborations through its training and technical assistance activities. Responsibilities of DRCs include:

- Expanding the workforce development system to serve as Employment Networks under the U.S. Social Security Administration's Ticket to Work program;
- Servicing ticket holders;
- Maintaining and ensuring the accessibility of the Career Center System;
- Helping job seekers make the connection to programs and agencies that will provide direct services and support;
- Maintain credentials for the Work Incentive Information Network (WIIN) benefits



advisors. The WIIN credentialed training is a way to structure benefits and work incentives planning with assistance services available in the State for people with disabilities.

LWDAs who participate in the DEI are responsible for:

- Creating Integrated Resource Teams to enhance the delivery of services to individuals with disabilities and;
- Collecting data including how many ticket holders are served under the Ticket to Work program, and the number of Integrated Resource Teams that were created. This data will be used to refine the services provided to disabled individuals both locally, and nationally.

The State-Level EO Officer and DEOD staff members conducts training of LWDA EO Officers, and Career Center management where applicable, on an ongoing basis. Training focuses on compliance with the WIOA, and the State's NDP, including compliance with Section 504 of the Rehabilitation Act of 1973, as amended. Additionally, LWDA EO Officers are given hands-on instruction for processing complaints of discrimination. The State Level EO Officer and DEOD staff members maintain open communications with LWDA EO Officers and Career Center management to offer technical assistance when needed.

Monitoring

In compliance with the provisions of WIOA, and Section 504 of the Rehabilitation Act of 1973, as amended, the State Level EO Officer and DEOD staff members conduct compliance reviews of the Career Centers to ensure programmatic and architectural accessibility, that services are provided in the most integrated setting possible, that medical information is kept confidential, that the Career Center advises participants of their rights to file a discrimination complaint, and that the Career Center has a process in place for handling requests for reasonable accommodations.

Reasonable Accommodations

NYS DOL assists LWDAs in establishing policies to make Career Center programs and services accessible for individuals with disabilities. There are assistive technology workstations in at least one full-service Career Center located in each of the LWDAs across the State. The workstations contain hardware and software⁴ to ensure computer access for customers with disabilities, including: Dell computer systems, JAWS, Zoom Text, Open Book, Smart View CCTV with cameras, Tash mini keyboards and track ball mice.

The State Level EO Officer and DEOD staff members monitor LWDAs to determine whether they provide reasonable accommodation and reasonable modification in accordance with federal regulations.

NYS DOL ensures that individuals with disabilities can file Unemployment Insurance claims by providing accommodations and modifications to policies, practices, and procedures. For example, when an individual files a claim for Unemployment Insurance benefits they are asked to select a personal identification number (PIN) to be used each time they wish to access Unemployment Insurance services by telephone. Although claimants are advised not to give



out this number, individuals with disabilities may allow another person to assist provided the helper is present each time services are accessed, including during the entry of the PIN.⁵ In addition, both the NYDOL's Internet website and Unemployment Insurance program brochures available in the Career Center offices,⁶ advise hearing impaired individuals with TTY/TDD equipment that they can file a claim by calling a toll-free number established for that purpose. Reasonable accommodations must be made for the known physical or mental limitations of otherwise qualified employees, applicants for employment, registrants, and participants, unless providing the accommodation would cause undue hardship to a recipient. The NYSDOL and LWDA's engage in an interactive process with the individual requesting the accommodation. Where a reasonable accommodation is denied on the basis of hardship, the NYSDOL and LWDA, where applicable, provides the individual who requests the accommodation with an explanatory written statement justifying the conclusion.

NYSDOL has issued a policy statement on Discrimination Against People With Disabilities and a Request for Reasonable Accommodation Procedure⁷ for all its employees and customers. LWDA's also establish their own reasonable accommodation policies.⁸

Architectural and Programmatic Accessibility

A thorough architectural accessibility review is conducted by the State's Office of General Services (OGS) prior to approval of a NYSDOL lease or renewal lease. For its compliance review, OGS uses the American's with Disabilities Act Accessibility Guidelines, the State's building code, and the New York City Building Code for reviews conducted in New York City. NYSDOL cannot enter into or renew a lease without OGS clearance. If deficiencies are found, then the NYSDOL's Property Unit must work with the landlord to get the deficiencies corrected. The Career Center recertification process addresses physical and programmatic accessibility matters, as do the State guidelines for WIOA Local Plan submissions.

The State Level EO Officer and DEOD staff members conduct on-site monitoring of LWDA Career Centers using its "ADA Premise Review" form.⁹ NYSDOL provides the following resources on its website to communicate directives that assure programmatic and architectural accessibility:

- Workforce Development System Technical Advisory 16-4, *Universal Accessibility of the Workforce Development System to Individuals with Disabilities, including those who are Blind or Visually Impaired*;
- *An Orientation & Mobility Primer: A Self-Evaluation for Workforce Development One-Stop Providers Serving Customers who are Blind or Visually Impaired* prepared by the New York State Office of Children and Family Services, and Commission for the Blind and Visually Handicapped;
- *Access for All: A Resource Manual for Meeting the Needs of One-Stop Customers with Disabilities* developed by the Institute for Community Inclusion;
- The USDOL Civil Rights Center, *Promising Practices in Achieving Universal Access and Equal Opportunity – A Section 188 Disability Reference Guide*;
- *A Primer for People with Disabilities*; and
- *Disability Etiquette – Tips on Interaction with People with Disabilities*



When conducting a Compliance review for a LWDA or NYSDOL owned/ leased facility, the State Level EO Officer and DEOD staff members interviews staff to determine if they are aware of and are providing programmatic accessibility for persons with disabilities, including that:

- Reasonable accommodations/modifications are provided to individuals with disabilities based upon the specific limitations of their ability to access programs and services;
- The program or activity, in its entirety, is readily accessible to qualified individuals with disabilities;
- Programs and activities ensure the most integrated setting possible for individuals with disabilities;
- The recipient has developed a transition plan (as specified in 29 CFR § 32.27) to make its site/program more accessible, and if so, whether or not the recipient is adhering to its plan;
- The recipient has implemented procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by individuals with disabilities;
- Software used in the program is accessible to individuals with disabilities;
- Web pages are accessible to individuals with disabilities; and where appropriate; and
- Information Transaction Machines (e.g. computer kiosks) are accessible to and usable by individuals with disabilities as required by law.

Job Qualifications

As part of its EO compliance review, the State Level EO Officer and DEOD staff members reviews job orders to evaluate all essential functions and skill requirements to ensure they are related to the job and consistent with business necessity, and to ensure that language contained in the job order does not discriminate against individuals with disabilities.

For NYSDOL employees, NYSDOL and NYS Department of Civil Service representatives routinely convene a Scope Conference to discuss and recommend valid considerations to be incorporated into civil service examinations for job titles in NYSDOL. The Scope Conference includes subject matter to be tested, minimum qualifications, recruitment, and equal opportunity and affirmative action considerations, including the removal of any artificial qualifications or barriers that may have disparate impact on protected class individuals.

Pre-Employment Inquiries

The State Level-EO Officer and DEOD staff members provides technical assistance to LWDA EO Officers and Career Center management in the review of preemployment applications distributed at the career center. As part of that assistance, the State Level EO Officer and DEOD staff members advises about refraining from making inappropriate medical or disability inquiries prohibited by law.

NYSDOL offers human resources consultation services to businesses to help maintain



compliance with EO and labor laws. These services include reviewing employment applications for discriminatory content and offering guidance to employers on avoiding illegal questions during interviews.

Confidentiality of Medical Information

The State Level EO Officer and DEOD staff members monitors LWDA's to ensure recipients maintain the confidentiality of medical information provided by applicants and participants. Compliance is required of all LWDA and NYSDOL staff.

See Element 6 for a discussion of the safeguards that are in place to ensure the confidentiality of data, including medical information, and Element 7 for additional information on monitoring reviews.

Administration of WIOA Funds and Integration

Recipients have been advised of their need to serve individuals with disabilities in the most integrated setting appropriate to that individual through training, the issuance of technical advisories and through the provision of resources.

NYSDOL ensures that appropriate steps are taken so that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees and members of the public who are individuals with disabilities are as effective as communications with others.

LWDA Career Centers partner with programs and agencies who provide services specific to the needs of disabled individuals such as ACCES-VR.

Communication with Individuals with Disabilities

Recipients have been advised of their requirement to communicate with persons with disabilities as effectively as with others through training and the issuance of technical advisories.

Each LWDA develops its own strategies to fulfill the requirement to communicate with persons with disabilities based upon the unique mix of resources available. Through self-assessment, and guidance from the DRCs, LWDA's throughout New York State offer a solid platform of services including, but not limited to: assistive technology (computer workstations, Interpretive Communications Devices, TTY/TDD lines), copies of key documents in Braille and large print, and access to sign language interpreters.

¹ Training Guide - Disability Etiquette – Tips on Interacting with People with Disabilities
Training Guide

² Guidance Document – Mitigating Discriminatory Content in Job Orders on the New York Job
Bank



- ³ Niagara County Worksource One Webpage Screen Shot regarding Disability Resource Coordination
- ⁴ Hempstead Works Veterans Services Handout showing Assistive Technology
- ⁵ Factsheet – Do You Help Others Apply or File for Unemployment Insurance?
- ⁶ Factsheet – Applying for Unemployment Insurance(UI) Benefits
- ⁷ Procedures for Implementing Reasonable Accommodation in Programs and Services for Individuals with Disabilities
- ⁸ Workforce 1 Career Center Reasonable Accommodation Policy
- ⁹ ADA Review Form



Element 6. Data and Information Collection and Maintenance **(29 CFR §§ 38.41-38.45)**

Collecting Demographic Data

Data collection and record maintenance requirements are communicated to recipients in our Guidance Document, *Implementation of the Equal Opportunity and Non-Discrimination Policy and Complaint Processing Procedures*.

New York State uses America's One-Stop Operating System (OSOS) for its Labor Exchange and WIOA programs. OSOS was designed to comply with federal data collection and reporting requirements, including the reporting of EO information.¹ All Employment Service and all WIOA Title I-B programs use the OSOS, with the exception of one LWDA, New York City's Adult and Dislocated Worker programs under the NYC Small Business Services (SBS). They use WorkSource1, a case management system that interchanges data with OSOS through an automated computer interface.

Career Centers gather demographic information at the intake stage. Individuals are asked to complete a registration form that asks applicants to voluntarily provide their sex, age, race/ethnicity, and disability status. Updates to the OSOS included an option for applicants to forego disclosing their race/ethnicity, disability status, or gender by selecting, "Not Disclosed". The baseline, or "customer core" data collected is also the data collected by LWDA recipients in conformance with federal data collection requirements.

NYSDOL maintains a central database for the Unemployment Insurance program. A claimant's sex, birth date, race/ethnicity and disability status, if known, is collected via telephone or online and processed at NYSDOL's Unemployment Insurance Telephone Claims Center.

Data collected for federal reports (including EO data) are maintained by NYSDOL's Research and Statistics Division. Research and Statistics produces a series of reports for the State Level EO Officer, arraying participant EO characteristics for Employment Service, Unemployment Insurance and WIOA programs. These reports are used by the State Level EO Officer and DEOD staff members to monitor recipient EO performance.

Confidentiality of Demographic Data

NYSDOL and LWDA's enter into confidentiality agreements to protect the information available in OSOS. Individual users must certify that they will share the information contained in OSOS only with authorized persons or organizations and only for the purpose of providing and coordinating service to the customer. These required confidentiality agreements are transmitted to LWDA's and NYSDOL staff via guidance documents.

There are five levels of security clearance permissions for users. The permissions for case



management functions are only granted to staff directly involved in providing or overseeing that function. If abuses are detected by the local Information Security Officers, access is immediately revoked.

For Unemployment Insurance applicants, §537 of the New York State Labor Law, prescribes the parameters for the disclosure information acquired from applicants, employees or employers.³ Special confidentiality rules that apply to Unemployment Insurance and employment service data, are discussed with all employees when they are hired, followed by annual confidentiality training and updates.

All NYSDOL employees are assigned an access code to allow the employee to update or view applicable data. Employees also assign a password to be used in conjunction with their access code, limiting access to NYSDOL employees. Employees access to computer programs is determined based upon their job requirements to limit access to confidential information. The State Level EO Officer and DEOD staff members monitors local areas to ensure recipients maintain the confidentiality of medical information provided by applicants. The State Level EO Officer and DEOD staff members ensure the recipient has been trained/apprised of the NYSDOL confidentiality policy and that medical information is kept confidential and maintained separately from application materials.

Complaint Logs

Each LWDA EO Officer is required to maintain a log of complaints alleging discrimination using the prescribed complaint form⁴ and submit them to the State Level EO Officer on a quarterly basis.⁵ Logs include the name and address of the complainant; the basis of the complaint; a description of the complaint; the date the complaint was filed; the disposition; and date of disposition of the complaint.

Record Retention

LWDA EO Officers are obligated to retain data and complaint logs for three years.⁶ Data entered into the OSOS is maintained in the OSOS production database and available on-line for a minimum of one year. Once data is no longer needed in the production database, it is transferred to a separate data warehouse where a history of all data and changes to existing data is maintained. Data in the data warehouse is not purged.

All electronic data collected by Unemployment Insurance and Initial Claims processed over the telephone system are stored and maintained in a confidential manner for four years.

Monitoring and Compliance

LWDA EO Officers are obligated to notify the Director of the CRC of administrative enforcement actions and lawsuits brought against their LWDAs that allege discrimination.

Each grant applicant and recipient promptly notifies the State Level EO Officer, and Director of the CRC of any administrative enforcement actions or lawsuits filed against it that allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political



affiliation or belief, and, for beneficiaries only, citizenship or participation in WIOA Title I-financially assisted program or activity.

NYS DOL also requires grant applicants, training providers seeking eligibility, and LWDA's, as part of a compliance review, to provide the following information to the State Level EO Officer and CRC:

- The name of any other federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
- Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include the:
 - names of the parties;
 - forum in which each case was filed; and
 - relevant case numbers.
- Any additional information that the Director of CRC determines to be relevant to investigate complaints or conduct compliance reviews on grounds prohibited under the non-discrimination and EO provisions of WIOA reviews; and
- Any particularized information and/or to submit periodic reports that are necessary to determine compliance with the non-discrimination and EO provisions of WIOA; and
- Any particularized information necessary to determine whether or not the grant applicant, if financially assisted, would be able to comply; and
- Where the designation of individuals by race or ethnicity is required, that the guidelines of the Office of Management and Budget were used.

The State-level EO Officer conducts monitoring reviews of each LWDA using the *Guide to Conducting Equal Opportunity Monitoring and Compliance Reviews – LWDA*. These reviews encompass the nine (9) elements of the NDP.

¹ Additional Guidance on the Collection of EEO Data

² Guidance Document – One Stop Operating System (OSOS) Confidentiality Agreements

³ Unemployment Insurance Division Procedure – Disclosure of Information – Breach of Security

⁴ NYS WIOA Title I Discrimination Complaint Log

⁵ Guidance Document – Submission of Discrimination Complaint Logs to New York State Workforce Investment Act Equal Opportunity Officer

⁶ Guidance Document – Retention of Records by Local Workforce Development Boards



Element 7. Monitor Recipients for Compliance **(29 CFR §§ 38.51, 38.53, 38.54, 38.60-38.68)**

Assurances

The Assurances section of the State's Strategic Plan, includes the assurance that the State will comply with the nondiscrimination provisions of Section 188 of WIOA. The State's compliance is documented in the NDP, as well as through subsequent Technical Advisories. The State Plan also has an assurance that the State will collect and maintain data necessary to show compliance with the nondiscrimination provisions of WIOA Section 188.

The LWDAs' Strategic Plans incorporate the assurance stipulated under 29 CFR § 38.25. The assurance is incorporated into every grant, cooperative agreement, contract or other agreement, including those for grant applicants and training providers seeking eligibility (See Element 3).

The State Level EO Officer and DEOD staff members monitors LWDAs and requests samples of job training plans, contracts and other agreements and will review them to see that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.

Equal Opportunity Officers

LWDAs are required to designate an LWDA EO Officer who is a senior-level employee of the recipient, with no responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an LWDA EO Officer. The State Level EO Officer and DEOD staff members conducts compliance reviews to ensure adherence to the regulations. When necessary, monitoring reviews are conducted to assess small recipients to determine their compliance through the designation of an individual who will be responsible for developing and publishing complaint procedures and processing complaints.

Notice and Communication

The State Level EO Officer and DEOD staff members will monitor LWDAs to determine that their equal opportunity policy is disseminated in accordance with 29 CFR §§ 38.29 through 38.36. (See Element 2).

Data and Information Collection and Maintenance

The State Level EO Officer and DEOD staff members and LWDA EO Officers are responsible for conducting EO Compliance Reviews of LWDA systems for the collection and maintenance of data and other information. (See Element 6).

Universal Access / Affirmative Outreach

The LWDAs are monitored to determine if they have taken appropriate steps to ensure that they are providing universal access to their WIOA Title I-financially assisted programs and activities. (See Element 4).



Complaint Processing Procedures

The State has developed a uniform complaint processing procedure that is used by the State and LWDA's (See Element 8).

Compliance Reviews

The State evaluates the extent to which recipients ensure that their programs and activities are operating in a nondiscriminatory manner through:

- Desk Audits;
- Observation of Program Activities;
- Interviewing;
- Review of Significant Differences;
- Review of Recipient Services;
- Review of Recipient Employment Practices;
- Review of Documentation;
- Record Analysis;
- Off-site Analysis; and
- Corrective Action and Sanctions.

The State Level EO Officer and DEOD staff members will conduct compliance reviews of stand-alone NYSDOL Offices, and Careers Centers (including entities that administer WIOA funds) on an annual basis using *Guide to Conducting Equal Opportunity Monitoring and Compliance Reviews – LWDA*. The reviewer will notify the appropriate parties of the on-site review approximately 30 days before the scheduled visit.

Additionally, LWDA's provide oversight and compliance monitoring for programs operating under their jurisdiction. They conduct monitoring/compliance reviews of 25% of their subrecipients on an annual basis.

OGS conducts facility accessibility reviews for all new buildings where the NYSDOL is the lease holder (via agreements executed by OGS), to determine compliance with the ADA and the ADAAG. Subsequent premise reviews are conducted by the State Level EO Officer and DEOD staff members to monitor ADA compliance of all sites including those where leases are not held by the NYSDOL.

The State Level EO Officer and DEOD staff members ask about the LWDA EO Officer regarding the recipient's non-discrimination policies and will review samples of policy documents and procedures. Should any questionable policy or procedures be identified, the State Level EO Officer and DEOD member staff will work with the LWDA EO Officer to ensure action is taken to correct the policy or procedure.

Within NYSDOL, the State Level EO Officer and DEOD staff members review NYSDOL's policies



and procedures that may have discriminatory ramifications. In accordance with the NYSDOL's Affirmative Action Policy, any discriminatory language or procedures will be changed should violations be discovered. NYSDOL's Counsel's Office is consulted, as necessary to ensure that alternative language or procedural changes are satisfactory.

Ensuring Policy Development, Communication, and Training are Carried Out

As indicated in Elements 1 and 2, NYSDOL communicates its non-discrimination policies and procedures to employees through the GA Manual, L-Memorandums (Intranet notifications to all NYSDOL Department employees) and program procedure manuals. Policy guidance to LWDA's is communicated through Workforce Development System Technical Advisories, direct mailings from the State Level EO Officer and also via the NYSDOL Intranet website (for NYSDOL employees) and the NYSDOL Internet website (for LWDA's and the public). The State Level EO Officer and DEOD staff members conduct on-site compliance reviews that include physical reviews of non-discrimination policies, procedures and communications.

Data Analysis

The State Level EO Officer or DEOD staff member conduct a desk audit of the program using OSOS Management Reports¹, Census data, and data prepared by the NYSDOL's Division of Research and Statistics that provide EO characteristics of employment services participants by race, gender, age, disability, veteran's status, and MSF worker status. This data is used to analyze the under or over-representation of particular classes. Significant variances may represent problem areas on which to focus the onsite review. The desk audit will assess and draw comparisons, where appropriate, for:

- Applicants;
- Eligible applicants;
- Employees and applicants for employment;
- For terminations; and
- For those entering employment, wage rate and length of employment.

The State Level EO Officer and DEOD staff members review the data to see if there has been any adverse impact on any group, that is, if there is a "disparity" between the way a group was represented in the delivery of services or participation in a program. Two mathematical methods used to analyze the data are: (1) the 80% Rule and (2) tests of statistical significance (standard deviation). Under the 80% Rule, a selection rate for any racial, ethnic or sex group that is less than four-fifths (or 80%) of the rate of the group with the highest rate, will generally be regarded as evidence of adverse impact. Under standard deviation, a case of adverse impact discrimination could be established if a statistically significant disparity of sufficient size (two or more standard deviations from the norm) existed between protected classes versus non-protected classes.

If any significant differences are discovered during the desk review, the State Level EO Officer and DEOD staff members uses the onsite review for further evaluation. At the onsite review, the State Level EO Officer and DEOD staff members will become more familiar with the recruitment,



eligibility, assessment, placement, referral and other decision processes by conducting interviews with a number of people, including:

- Recipient program staff who may give insight into areas of potential discrimination. Additionally, program staff will be interviewed to assess their knowledge of EO policy and procedures, level of training and communication of notice.
- Program beneficiaries who may be asked to describe their experiences in the program, including how they were recruited and selected, as a way of assessing the equity of services and activities. Additionally, the State Level EO Officer and DEOD staff members can determine the level of policy and notice dissemination by asking program beneficiaries of their awareness of EO policy and of the WIOA procedures for filing complaints.

If the cause for the differences is not appropriately accounted for, technical assistance is offered and corrective measures are determined.

Written Reports

The State Level EO Officer and DEOD staff members will submit a copy of the written report to the State Level O Officer and other appropriate executives/managers/personnel, as needed, discussing in detail the areas of compliance and non compliance. NYSDOL's DEOD maintains an office in Albany, New York. Staff members for DEOD include professional and clerical staff. The State Level EO Officer and DEOD staff members routinely visit the Career Centers across the State to ensure that WIOA, Title I financially-assisted programs and activities operate in a non-discriminatory way. Using the monitoring tools and processes described in detail under Element 7 of this NDP, the State Level EO Officer and DEOD staff members work with recipients to identify problem areas and to develop a plan for corrective action where deficiencies are found.

Sanctions and Corrective Actions

See, Element 9 for procedures to prevent and/or redress violations of the non-discrimination and EO provisions of WIOA and the implementing regulations.

¹ Sample OSOS Management Report



Element 8. Complaint Processing Procedures (29 CFR §§ 38.70 - 38.89)

The State has developed and published a comprehensive Equal Opportunity and Non-Discrimination Complaint Processing Procedure (Procedures) that has been adopted and distributed to LWDA's by the State Level EO Officer workforce via a Guidance Document.

The NYSDOL ensures that recipients follow the procedures by requiring the Workforce Development Board Chair and chief elected officials to formally certify their adoption of the procedures and include the procedures in their local WIOA plans. Memoranda of Understanding with all Career Center partners require that such partners will abide by WIOA EO and non-discrimination requirements.

The procedures also provide for access to the complaint process for LEP individuals and individuals with disabilities who have the right to request and receive, at no cost, auxiliary aids and services, including language assistance/interpretation services. Additionally, the *EO is the Law* notice, which advises of the right to file a complaint, is translated into multiple languages, and posted at all Career Center service points.

Complaints

Individuals may file complaints with either the State Level EO Officer, the LWDA EO Officers, or with the Director of the USDOL CRC, (Director, CRC) within 180 days of the alleged violation. Complaints filed with the LWDA EO Officers involving programs administered by NYSDOL will be forwarded to the State Level EO Officer.

Investigations will typically be completed within 30 days of the receipt of the Complaint, and a Notice of Final Action will be issued within 90 days of the receipt of the complaint. At minimum, complaints should include:

- the complainant's name and address;
- 2) the identity of the individual or entity that the complainant alleges is responsible for the discrimination;
- 3) a description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint; and
- 4) the complainant's signature or the signature of the complainant's authorized representative.

Both the complainant and respondent are advised of their right to be represented by an attorney or other individual of their choice.

If the State Level EO Officer determines that they do not have jurisdiction over a complaint, written notification will be sent to the complainant including a statement of reasons for the determination and notice that the complainant has the right to file a complaint with the State



Division of Human Rights (DHR) within three hundred sixty-five (365) days of the alleged violation and/or the Equal Employment Opportunity Commission (EEOC) within three hundred (300) days of the alleged violation.

Formal Resolution

NYSDOL provides various forms of Alternative Dispute Resolution (ADR) to resolve discrimination complaints that allow the parties to avoid the traditional investigative or litigation process. The complainant may decide whether to use ADR or not. In mediation, a neutral third party trained in dispute resolution listens to both the complainant and respondent and then encourages them to reach a voluntary, negotiated settlement of the charges of discrimination. This process gives the parties a chance to discuss the issues raised in the complaint, resolve any misunderstandings, find areas of agreement and incorporate those areas of agreement into solutions. When mediation fails to result in an agreement or when the agreement is breached, the complainant will be advised of his/her right to file a complaint with CRC, DHR or EEOC; however, the State Level EO Officer will continue with the investigative process.

If the parties cannot amicably resolve the conflict through the ADR process, the State Level EO Officer will send a Notice of Final Action to the parties within 5 days of receipt of notification from the ADR Facilitator.

A written Notice of Final Action will be provided to the Complainant within 90 days of the date on which the complaint was filed, that contains the following information:

- For each issue raised in the complaint, a statement of either the recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue; and
- Notice that the Complainant has a right to file a complaint with the CRC, DHR or EEOC the appropriate time frames if they are dissatisfied with the outcome of the investigation.

If the Notice of Final Action is not received within 90 days of the receipt of the complaint, the complainant or their representative may file a complaint with the Director of CRC within 30 days of the expiration of the 90-day period.



Element 9. Corrective Action/Sanctions (29 CFR §§ 38.87 – 38.115)

Corrective Actions

NYSDOL has procedures to prevent and/or redress violations of the nondiscrimination and equal opportunity provisions of WIOA and the implementing regulations. If violations are found by the State Level EO Officer, corrective actions, which vary in relation to the severity of the violation, will be taken by the LWDA so that it complies with the law and regulations.

Technical violations may include failures to:

- Designate an EO Officer who is a senior-level employee, and whose EO responsibilities and activities are not in conflict with other duties;
- Include required language in assurances; or
- Display an *Equal Opportunity is the Law* notice.

Discrimination violations may include:

- Findings of disparate treatment, disparate impact; or
- Failure to provide reasonable accommodation.

Corrective actions for technical violations are tailored specifically to each finding and designed to correct the problem completely. In general, corrective actions for technical violations can be completed within 30 to 45 days of the recipient's written notification of the deficiency and, where appropriate, may require training for the staff responsible for its correction of the deficiency. The time frame to implement corrective actions shall not exceed 45 days.

Corrective actions for discrimination violations may include preventive and corrective actions and procedures designed to prevent a recurrence of the discrimination; directives to cease and desist; and make whole relief. Recipients must take steps to achieve compliance.

Such steps must include:

- Actions to end and/or redress the violation of the non-discrimination and EO provisions of WIOA;
- Make whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before 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 Such other remedial or affirmative relief as the NYSDOL deems necessary, including but not limited to outreach, recruitment and training designed to ensure EO.



Written Assurance and/or Conciliation Agreement

State Level EO Officer and DEOD staff members conduct follow-up reviews to ensure that the violations have been addressed. Where deficiencies continue to exist, time may be extended in which to secure voluntary compliance; immediate correction of the violation can be required including a written assurance that it has been completed; or the LWDA can enter into a written conciliation agreement that the violations will be corrected.

Upon a finding of noncompliance with a written assurance, the LWDA may be required by the State Level EO Officer to enter into a conciliation agreement. This agreement must be in writing, address the legal and contractual obligations of the recipient, address each cited violation, specify the corrective or remedial action to be taken within a stated period of time to come into compliance, provide for periodic reporting on the status of the corrective and remedial action, provide that the violation will not recur, and provide for enforcement for a breach of the agreement. The schedule for periodic reporting from the recipient on the status of any corrective or remedial action will be established by the State Level EO Officer. The State Level EO Officer will determine whether follow-up visits or some other additional monitoring is necessary based on the information/documentation provided in the reports.

Notification of Breach of Conciliation Agreement

When it becomes known to the State Level Officer that a conciliation agreement has been breached, a final determination, or a notification of breach of conciliation agreement will be issued to the recipient and any other parties to the agreement. Failure of the recipient to come into compliance within 10 days of the notice may result, after opportunity for a hearing, in sanctions as provided under the law.

Appeal of Final Determination

When a final determination or notification of breach of a conciliation agreement is issued, the recipient can request a hearing within 30 days of the date of receipt of the determination or notification.

Sanctions

If compliance has not been achieved after issuance of a final determination or notification of breach of conciliation agreement, and the violating party has waived their right to request a hearing, sanctions can be recommended. Sanctions may include suspension, termination, withholding, denial, or discontinuation of WIOA Title I financial assistance, in whole or part; a referral to the State Attorney General with a recommendation that an appropriate civil action be instituted; or other actions provided by law.