

**Workforce Development System  
Technical Advisory # 22-01  
January 10, 2022**

**To:** Workforce Development Community

**SUBJECT:** Implementation of Workforce Innovation & Opportunity Act (WIOA) Equal Opportunity (EO) and Nondiscrimination Policy and Complaint Processing Procedures

**PURPOSE**

Advise the New York State (NYS) workforce development system of the current WIOA EO and Nondiscrimination Policy and Complaint Processing Procedures established by the New York State Department of Labor (NYSDOL).

**POLICY**

The NYS workforce development system must adopt EO and nondiscrimination policy and complaint processing procedures and responsibilities in accordance with WIOA [Section 188](#).

Each Local Workforce Development Area (LWDA) must designate a local EO Officer to handle EO and discrimination complaints.

Participant notification of EO and nondiscrimination rights must be data entered in the One-Stop Operating System (OSOS).

**ACTION**

**A. EO and Nondiscrimination Responsibilities**

All NYS workforce development system staff must be apprised of and follow the WIOA EO and nondiscrimination policy and complaint processing procedures outlined in **Attachment A: Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity (EO) and Nondiscrimination Policy and Complaint Processing Procedures**.

**B. LWDA EO Officer**

Each Local Workforce Development Board (LWDB) must designate a LWDA EO Officer by completing and submitting **Attachment B: Local Workforce Development Area (LWDA) Designated Equal Opportunity (EO) Officer Information Form** to NYSDOL's Division of Equal Opportunity Development (DEOD) at [DEOD@labor.ny.gov](mailto:DEOD@labor.ny.gov) no later than April 4, 2022.

Per WIOA regulations at 29 CFR Part 38, "a senior level employee" should be appointed as the LWDA EO Officer, and they "must not have other responsibilities or activities that create a conflict, or the appearance of a conflict with the responsibilities of an EO Officer." The LWDA EO Officer should be able to adequately accomplish all of their responsibilities under the EO and nondiscrimination provisions of WIOA, including, but not limited to:

- Handling discrimination complaints at the lowest level per the complaint and mediation procedures detailed in **Attachment A**;
- Serving as a WIOA Title I recipient's liaison to NYSDOL;
- Monitoring and investigating the recipient's activities and those of the entities that receive Title I funds from the recipient;
- Reviewing the recipient's written EO and nondiscrimination policies;
- Developing and publishing the recipient's procedures for processing discrimination complaints;
- Reporting directly to the appropriate official;
- Undergoing training to maintain competency; and
- Training recipient staff in EO and nondiscrimination policies.

DEOD will maintain a list of each LWDA EO Officer in the State and submit the list to the United States Department of Labor (USDOL) upon request. LWDBs must continue to submit updated information to DEOD, via **Attachment B**, when LWDA EO Officer changes are made.

**Note:** The LWDA EO Officer's name, position/title, address, and telephone number (including Telecommunications Device for the Deaf (TDD) and Teletype) must be made public and posted in the local Career Center(s).

### **C. EO and Nondiscrimination Data Entry**

All participants receiving an initial assessment and/or an orientation to workforce development system services must be apprised of their rights under the EO and nondiscrimination provisions of WIOA. When this occurs, documentation must be entered in OSOS. Information on data entering this information in OSOS can be found in the Equal Opportunity OSOS Guide available on the NYSDOL [website](#).

### **BACKGROUND**

WIOA Section 188 prohibits discrimination because of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency (LEP) individuals), age, disability, political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity.

WIOA Section 188 updates Workforce Investment Act (WIA) Section 188 by including the following provisions:

- **LEP:** Discrimination based upon LEP may be unlawful discrimination based on national origin. WIOA recipients must take reasonable steps to provide meaningful access to programs and activities for LEP individuals by providing written translation or oral interpretation when appropriate;
- **Individuals with Disabilities:** In accordance with the Americans with Disabilities Act Amendments of 2008, the definition of “disability” is to be interpreted broadly. This enables more individuals with disabilities to be effectively served within the workforce development system;
- **Transgender Status, Gender Identity, and Sex-Stereotyping:** Discrimination on the basis of transgender status, gender identity, or sex-stereotyping are forms of prohibited sex discrimination, in accordance with similar civil rights laws. Sex discrimination includes discrimination based on pregnancy, childbirth, and related medical conditions, in accordance with the Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972; and
- **Modernization:** WIOA recipients must also utilize electronic and information technology which incorporates accessibility features for individuals with disabilities.

## REFERENCES

WIOA [Section 188](#)

WIOA EO Regulations at [29 CFR Part 38](#)

United States Department of Labor (USDOL) [website](#)

USDOL [Civil Rights Center](#)

[NYS Nondiscrimination Plan](#)

Equal Opportunity [OSOS Guide](#)

## INQUIRIES

Questions regarding implementation of the EO and Nondiscrimination Policy and Complaint Processing Procedures may be directed to:

Director  
New York State Department of Labor  
Division of Equal Opportunity Development  
W. Averell Harriman State Office Campus  
Building 12, Room 540  
Albany, NY 12240

Email inquiries may be sent to: [DEOD@labor.ny.gov](mailto:DEOD@labor.ny.gov).

#### **ATTACHMENTS**

- A. Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity (EO) and Nondiscrimination Policy and Complaint Processing Procedures
- B. Local Workforce Development Area (LWDA) Designated Equal Opportunity (EO) Officer Information Form

# WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA) EQUAL OPPORTUNITY (EO) AND NONDISCRIMINATION POLICY AND COMPLAINT PROCESSING PROCEDURES

The New York State Department of Labor (NYSDOL), as designated by the Governor as the administrator of WIOA Title I funds, does hereby adopt and publish the complaint processing procedures for filing a discrimination complaint under [Section 188](#) of WIOA applicable to all recipients as defined in [29 CFR Part 38](#) and below.

## I. BACKGROUND

[Section 188](#) of WIOA provides that no individual will be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such WIOA Title I-financially assisted program or activity because of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency (LEP) individuals), age, disability, or political affiliation or belief, or for any beneficiary, because of the beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States. The WIOA regulations at [29 CFR Part 38](#) clarify the nondiscrimination and EO provisions. Examples of discriminatory acts specifically prohibited, other than those based on a disability, are set forth in 29 CFR Section 38.6. The regulatory requirements associated with employment practices and communication with individuals with disabilities are set forth in 29 CFR Section 38.12.

## II. POLICY

It is the policy of NYSDOL to ensure EO and nondiscrimination in the operation and administration of all programs, services, and activities funded in whole or in part with WIOA funds. Any individual covered by WIOA who believes he or she, or a specific class of individuals, has been discriminated against has the right to file a formal complaint in accordance with the procedures set forth herein. Recipients of Title I WIOA funds must take appropriate steps to ensure they are providing universal access to their programs and activities. Efforts recommended to ensure this type of access are set forth in 29 CFR Section 38.40. If an issue arises that relates to a language barrier, 29 CFR Section 38.9 should be followed.

## III. DEFINITIONS

29 CFR Section 38.4 contains the definitions of the terms used in the implementation of the EO and nondiscrimination requirements of WIOA. For convenience, some of the definitions found in that section are listed below. If a conflict exists between a term, as it is defined in this policy and 29 CFR Section 38.4, the definition in 29 CFR Part 38.4 is controlling.

- A. **Applicant** is an individual who is interested in being considered for WIOA Title I-financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by a recipient.

- B. Applicant for employment** is a person who applies for employment with a recipient of Federal financial assistance under WIOA Title I.
- C. Beneficiary** is the person or persons intended by Congress to receive benefits or services from a recipient.
- D. Complainant** is the individual or entity who files a complaint of discrimination. See Part V.B. (1) of this Policy regarding who may file a complaint.
- E. CRC** is the Civil Rights Center of the United States Department of Labor (USDOL), 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210.
- F. Department** means USDOL, including its Agencies and Organizational Units.
- G. Disability and Qualified Individual with a Disability.** See 29 CFR Section 38.4.
- H. Eligible applicant/registrant** is an applicant who has been determined eligible to participate in one or more WIOA Title I-financially assisted programs or activities.
- I. Entity** is any person, corporation, partnership, joint venture, unincorporated association, or State or local government, and any agency, instrumentality or subdivision of such a government (29 CFR Section 38.4 contains a partial list of entities that are considered recipients).
- J. Employment Services (ES) Complaint Specialist** is an employee of NYSDOL in the Career Center system designated to handle certain initial complaints for matters related directly to NYSDOL programs.
- K. Equal Opportunity Officer (EO Officer)** is the individual responsible for coordinating a recipient's obligations under [29 CFR Part 38](#). In New York State, this includes the person designated by the Governor as the State WIOA EO Officer and the person designated by the Local Workforce Development Board of each Local Workforce Development Area (LWDA EO Officer).
- L. LWDA Grant Recipient** means the entity that receives WIOA Title I financial assistance for a LWDA directly from the Governor and disburses those funds for workforce development activities.
- M. Participant** is an individual who has been determined to be eligible to participate in and who is receiving aid, benefits, services or training under a program authorized by Title I of WIOA. Examples of who qualifies as a participant are listed in 29 CFR 38.4. Participation will be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized aid, benefits, services, or training provided under Title I of WIOA.
- N. Recipient** is an entity to which financial assistance under WIOA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I-funded program or activity. Recipients are listed in 29 CFR 38.4.
- O. Respondent** is the individual or entity against whom an EO or discrimination complaint is filed.
- P. Service Provider.** See 29 CFR Section 38.4. (Telecommunications Device for the Deaf (TDD) 1-800-662-1220; VOICE 1-800-421-1220).

- Q. Small recipient** is a recipient who serves a total of fewer than 15 beneficiaries during the entire grant year and employs fewer than 15 employees on any given day during the entire grant year.
- R. State WIOA EO Officer** is the Director of NYSDOL's Division of Equal Opportunity Development (DEOD).
- S. WIOA Title I-funded program or activity.** See 29 CFR Section 38.4.

#### **IV. DISSEMINATION OF AND NOTICE OF NONDISCRIMINATION**

A recipient of WIOA grant funds will provide initial and continuing notice that it does not discriminate on any prohibited ground, to subrecipients that receive WIOA Title I funds from the recipient, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with recipient. The notice will contain the language prescribed in 29 CFR Section 38.35.

##### **A. POSTING OF NOTICE**

The notice of [Equal Opportunity is the Law](#) must be posted prominently, in reasonable numbers and places; disseminated in internal memoranda and other written or electronic communications; included in handbooks or manuals; and made available to each participant and documented in the participant's electronic or paper case record (e.g., the One-Stop Operating System (OSOS)). The notice must be provided in appropriate formats to individuals with visual impairments and a record that such notice has been given must be made a part of the participant's record.

##### **B. NOTICE IN BROCHURES AND OTHER MATERIALS**

The notice contained in recruitment brochures and other materials, which are ordinarily distributed to the public in written and/or oral form, electronically and/or on paper to describe programs funded by Title I of WIOA or the requirements for participation by recipients and participants, must contain the language prescribed in 29 CFR Section 38.38(a). If these materials indicate that the recipient can be reached by telephone, the materials must state the telephone number of the TDD/Teletype or relay service used by the recipient.

##### **C. NOTICE IN NEWS MEDIA**

Any information published or broadcast in the news media must contain the language prescribed in 29 CFR Section 38.38(b).

##### **D. NOTICE IN ORIENTATION PRESENTATIONS**

During orientation presentations and/or during initial assessments for new participants, new employees, and/or the general public regarding the recipient's Title I WIOA-financially assisted programs or activities, the recipient will include a discussion of an individual's rights under the nondiscrimination and EO provisions of WIOA and [29 CFR Part 38](#). They will also be informed of their right to file a complaint of discrimination with the LWDA EO Officer or the Director of the CRC.

## V. PROCEDURES FOR COMPLAINTS AND INVESTIGATIONS

### A. LWDA EO Officer

1. All local areas will designate an LWDA EO Officer to coordinate its responsibilities under this Act in accordance with 29 C.F.R Section 38.28. Recipients must comply with the procedures for processing complaints and investigations set forth herein and cooperate with the LWDA EO Officer.
2. Service providers will follow the procedures set forth in this policy when a complaint of discrimination is received.
3. A LWDA EO Officer must not have other responsibilities or activities that create a conflict of interest, or the appearance of a conflict, with the responsibilities of a LWDA EO Officer.

### B. Complaints

1. **Who may file.** Any person who believes they or any specific class of individuals has been or is being subject to discrimination prohibited by the EO and nondiscrimination provisions of WIOA or the regulations may personally file a written complaint or file a written complaint through a representative.
2. **Where to file.** The complaint may be filed either with the LWDA EO Officer or directly to the Director of the CRC at U.S. Department of Labor, 200 Constitution Avenue, Room N-4123, Washington, DC 20210.

Complaints made involving NYSDOL programs should be filed directly with the State WIOA EO Officer at New York State Department of Labor, Division of Equal Opportunity Development, State Office Campus, Building 12, Room 540, Albany, NY 12240; or through the designated ES Complaint Specialist in the Career Center.

3. **Time for filing.** A complaint filed pursuant to this part must be filed within one-hundred eighty (180) days of the alleged discrimination. The Director of the CRC may extend the filing time if the EO Officer does not include in its Notice of Final Action the required notice about the complainant's right to file with the Director or for good cause shown.
4. **Contents of complaints.** Each complaint must be filed in writing in a form prescribed by the State WIOA EO Officer or Director (complaints filed with the CRC) and must:
  - a. Contain the complainant's name and address (or specify another means of contacting them);
  - b. Identify the respondent's name and address (the individual or entity that the complainant alleges is responsible for the discrimination);
  - c. Date of occurrence;
  - d. Describe the complainant's allegations in sufficient detail to allow the Director of the CRC or LWDA EO Officer to determine whether:
    - i. The CRC, the State WIOA EO Officer, or the LWDA EO Officer, as applicable, has jurisdiction over the complaint; and
    - ii. The complaint was timely filed; and

- iii. The complaint has apparent merit (whether the complainant's allegations, if true, would violate any of the EO and nondiscrimination provisions of WIOA).
  - e. Be signed by the complainant or their authorized representative.
- 5. **Complaint Forms.** The State WIOA EO Officer shall provide a [Complaint Information Form](#) to each LWDA EO Officer and recipient to be maintained and used in filing a complaint hereunder.
- 6. **Right to Representation.** Each complainant and respondent has the right to be represented by an attorney or other individual of their own choice.
- 7. **Complaint processing.** Upon receipt of a written complaint, the LWDA EO Officer must provide a written acknowledgement within five (5) days of receipt of the complaint with notice that the complainant has the right to be represented in the complaint process. The LWDA EO Officer will have ninety (90) days from the date of receipt of a written complaint to process the complaint. All complaints must be date stamped upon receipt and forwarded to the appropriate LWDA EO Officer for processing. The State WIOA EO Officer will monitor the processing of all complaints, including the established time limits for processing a complaint.
  - a. If the complaint is filed with the LWDA EO Officer, the LWDA EO Officer will assign a case number, log the complaint, and commence the complaint process.

If a complaint filed with the LWDA EO Officer involves a program administered by NYSDOL, the LWDA EO Officer will log the complaint and forward it to the State WIOA EO Officer for processing.
  - b. If the complaint is filed with the State WIOA EO Officer or ES Complaint Specialist, and involves a program or activity administered by the recipient or a partner in the Career Center system, the State WIOA EO Officer will immediately notify the LWDA EO Officer and forward the complaint for processing. If a complaint is related to programs administered by NYSDOL, the State WIOA EO Officer shall retain the complaint for processing.
- 8. **Confidentiality of complaint.** The respondent, individual or entity against whom the complaint is filed, will receive a letter within fifteen (15) days of receipt of the complaint indicating that a complaint has been filed against them and on what basis, and will be notified that they have the right to representation. The respondent will be allowed the opportunity to respond to the allegation(s) during the investigation. The name of the complainant will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint.
- 9. **Confidentiality of witnesses.** The identity of any individual who furnishes information relating to, or assisting in, an investigation of a complaint or a compliance review will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint or as otherwise required by law.
- 10. **Prohibition against intimidation or retaliation.** See Part VI of this Policy.
- 11. **Computation of time.** In computing any time period as prescribed by these rules, the first day shall be excluded and the last day included to complete the period. In addition, the time periods are counted in calendar days, not business days.

## 12. Notification to the Complainant

- a. **Notification of no jurisdiction.** The LWDA EO Officer will notify the complainant within fifteen (15) days of receipt of the complaint in writing if it determines that it does not have jurisdiction over a complaint that alleges a violation of the EO and nondiscrimination provisions of WIOA. The notification will also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the Director of the CRC within thirty (30) days of the receipt of the notification. This notice will be sent to the complainant and respondent by certified mail and a copy of the notice will be sent to the State WIOA EO Officer.
- b. **Statement of issues.** If the LWDA EO Officer that receives the complaint has jurisdiction, they will notify the complainant within fifteen (15) days of the date of receipt of the complaint in writing. The letter will advise the complainant of the list of issues raised in the complaint and of their right to be represented in the complaint process. In addition, the complainant will be advised of which issues will be accepted for investigation and the reason for each issue not accepted. The complainant will be notified that they have the option of resolving the complaint through a fact-finding/investigation process or alternative dispute resolution (ADR).

If the complaint is filed with the LWDA EO Officer, the statement of issues will be sent to the complainant by certified mail and a copy of the notice will be sent to the State WIOA EO Officer. The respondent will receive a letter (certified mail) notifying them that a complaint has been filed against them, on what basis (race, gender etc.), and will be notified that they have the right to be represented during the investigation. The LWDA EO Officer that receives the complaint will also notify the complainant and respondent of the prohibition against retaliation and intimidation set forth in Part VI of this Policy.

- c. **Informal meeting/Resolution.** The LWDA EO Officer may meet with the complainant or their representative, within fifteen (15) days from the date of receipt of the written complaint, to informally discuss and clarify the issues. During this process, the LWDA EO Officer may, in appropriate cases, offer a resolution of the matter, provided the LWDA EO Officer files a Notice of Final Action in accordance with section V(C)(4) herein. If the complainant is not satisfied with the informal resolution, the complainant may proceed with a full investigation or request ADR.

## C. Resolution of Complaints

1. **Options.** The complainant has the option of resolving their complaint through a full fact-finding/investigation process or ADR. If the complainant chooses the ADR option, they must notify the LWDA EO Officer within ten (10) days of receipt of the Statement of Issues. If no response is received, the LWDA EO Officer will continue to investigate the complaint.
2. **Fact-Finding/Investigation Process.** If the complainant chooses the full fact-finding/investigation process, the entity that receives the complaint will conduct a full review of the matter, including giving the complainant and the respondent the opportunity to respond to all the evidence presented. A complaint investigation or fact-finding includes the following elements:

- a. Interview the complainant to gather facts;
- b. Ask the complainant for the names, addresses, and phone numbers of people who are knowledgeable about the situation. The LWDA EO Officer should contact the potential witnesses to request interviews;
- c. Collect any evidence the complainant has to support their allegation(s);
- d. State the resolution sought by the complainant;
- e. Assure the complainant that only those who have a “need to know” will be told anything. Who must be told is decided on a case-by-case basis and generally includes managers, supervisors, and witnesses, to the extent necessary to obtain information;
- f. The investigator should make certain strategic decisions as to which witnesses to interview for which purpose:
  - i. First, individuals should be interviewed who have firsthand knowledge;
  - ii. Second, individuals should be interviewed who were directly involved in the situation that the complainant has alleged occurred; and
  - iii. Third, individuals who have second-hand knowledge should be interviewed later if deemed necessary by the investigator.

Optional: Ask the witnesses to sign and date the notes of the interviews at the time of the interviews or, alternatively, prepare statements based on interview notes and ask the witnesses to sign and date the prepared statement.

- g. In the interview with the complainant, the Local EO Officer may wish to obtain a signed statement from the complainant that they received important documents that the recipient asserts they gave the complainant, such as disciplinary warnings, requests for documents, or notification of deadlines;

Optional: Ask the complainant to sign and date the notes of the interview at the time of the interview or, alternatively, prepare a statement based on interview notes and ask the complainant to sign and date the prepared statement.

- h. Interview the respondent to gather facts;

Ask the respondent for the names, addresses, and phone numbers of people who are knowledgeable about the situation. The Local EO Officer should contact the potential witnesses to request interviews.

Optional: Ask the respondent to sign and date the notes of the interview at the time of the interview or, alternatively, prepare a statement based on interview notes and ask the respondent to sign and date the prepared statement.

- i. Review documents, reports, correspondence, personnel records and policies/procedures related to activities which gave rise to the allegation of discrimination;

- j. If additional allegations are made during the investigation, or other pertinent information is discovered, inform the respondent and give them a chance to respond, following the format of the original investigation;
  - k. A witness will make statements based not upon what they know, but upon what they heard. Such hearsay information is not “evidence,” since its credibility depends upon another person or source. However, it may have relevance to the investigation. Therefore, hearsay evidence should not be eliminated, but should be used if appropriate to lead to sources that will allow the information to be used as evidence;
  - l. Prepare an investigatory report that includes statement of basis of complaint, specific allegations, respondent(s) response and witness statements, findings of fact, rationale and conclusion (probable cause or no probable cause that respondent may have discriminated) and appeal rights;
  - m. Any additional information essential to understanding of the specific matter of the case or environment in which it occurred;
  - n. The respondent’s position statement including their account of the facts and the respondent’s agreement or disagreement with each of the complainant allegations;
  - o. The respondent can produce documentation for review in their defense; and
  - p. Maintain a complaint file and complaint log with reference number.
- 3. Alternative Dispute Resolution (ADR) Process.** If the complainant chooses the ADR method, the LWDA EO Officer will refer the matter to an impartial mediator approved by the LWDA EO Officer. The complainant will be advised that mediation is voluntary. Both parties will be advised that they must participate in the mediation in good faith but will not be required to reach an agreement.
- a. Notice of Mediation Conference. Written confirmation of the mediation conference will be sent to each party within (ten) 10 days of the date of mediation. The notice will include the date, time, and location of the mediation conference and a statement of the issues to be mediated. If the complainant and respondent are represented, they are responsible for providing that person with notice of the mediation.
  - b. Confidentiality. Mediation sessions will be closed to any individual other than the parties and their representatives, except by consent of both the parties and the mediator. Communication and information disclosed during the mediation is privileged and confidential and shall not be disclosed to a third party, except for purpose of implementation or enforcement, or by written agreement of both parties. During the mediation process, notes may be taken. However, once the final settlement agreement has been reached or the parties are unable to reach an agreement, all notes must be turned over to the mediator for disposal.
  - c. Final Agreement. The mediator will provide a copy of the final agreement or notice of failure to reach an agreement to the complainant, respondent, and the LWDA EO Officer within (sixty) 60 days from the date of the complainant's election to participate in ADR.
  - d. Failure to Reach an Agreement. If the parties fail to reach an agreement, the LWDA EO Officer will submit a Notice of Final Action to the parties within five

(5) days of receipt of the notification from the mediator of the result of the mediation. The Notice of Final Action shall provide a copy of the agreement and indicate that the parties failed to reach an agreement on some or all of the issues, as applicable. The Notice shall also advise the complainant of his or her right to file a complaint with the Director of the CRC within thirty (30) days.

- e. Breach of Agreement. A party to any agreement reached under ADR may file a complaint with the Director of CRC in the event the agreement is breached.
- f. Non-Breaching Party Complaint. The non-breaching party may file a complaint with the Director of CRC within thirty (30) days from the date on which the non-breaching party learns of the breach.
- g. Evaluation of Complaint. The Director of CRC must evaluate the circumstances to determine whether the agreement has been breached. If it is determined that the agreement has been breached, the complainant may file a complaint with CRC based upon their original allegation(s) and the Director of CRC will waive the time deadline for filing the complaint.
- h. Mediation Files. The LWDA EO Officer is responsible for maintaining a record of the cases submitted for mediation and a copy of each mediation agreement.
- i. Alternative Fact-finding/Investigation Method. Local areas may elect to offer complainants the alternative of having the complaint heard on the record before an impartial administrative law judge within sixty (60) days of the complainants' election for a full fact-finding/investigation. This process is subject to the review and approval of the State WIOA EO Officer.

#### **4. Notice of Final Action**

- a. Upon completion of its investigation and review of the complaint, the LWDA EO Officer must file a Notice of Final Action within ninety (90) days of receipt of the complaint. The notice must address each issue raised in the complaint with an explanation of the reasons underlying the decision or provide a description of the way the parties resolved the issue. All Notices of Final Action must be reviewed by the State WIOA EO Officer to ensure a thorough investigation and decision is supported by the findings of fact.

The notice must also advise the complainant that they have the right to file a complaint with the Director of CRC within thirty (30) days from the date on which the notice is issued if the complainant is dissatisfied with the decision. The decision will be mailed to the complainant and respondent by certified mail.

- b. Within ninety (90) days, the LWDA EO Officer may, upon a preliminary investigation, offer a resolution of the complaint to the complainant. If the complainant accepts the resolution, the LWDA EO Officer must file a Notice of Final Action and notify the complainant of their right to file a complaint with the Director of the CRC and inform the complainant that their right must be exercised within thirty (30) days from the date on which the notice is issued if the complainant is dissatisfied with the decision. The decision will be mailed to the complainant and respondent by certified mail.

- c. If the complainant has not received a Notice of Final Action within ninety (90) days of filing the complaint, the complainant or their representative may, within thirty (30) days of the expiration of the 90-day period, file a complaint with the Director of the CRC provided, however, that the complaint must be filed with the Director of CRC within one-hundred twenty (120) days of the date on which the complaint was filed with LWDA EO Officer.

## VI. INTIMIDATION AND RETALIATION PROHIBITED

- A. A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any person because such person has filed a complaint alleging a violation of the EO and nondiscrimination provisions of WIOA; opposed a practice prohibited by the EO and nondiscrimination provisions of WIOA; furnished information to, assisted or participated in any manner in, an investigation, review, hearing or any other activity related to administration of, or exercise of authority under, or privilege secured by, the EO and nondiscrimination provisions of WIOA; or exercised authority under or privileges secured by the EO and nondiscrimination provisions of WIOA.
- B. The sanctions and penalties contained in [Section 188\(b\)](#) of WIOA may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

## VII. DATA AND INFORMATION COLLECTION

- A. Each recipient will collect such data and maintain such records, in accordance with procedures prescribed by the Director of the CRC, as the Director of the CRC finds necessary to determine whether the recipient has complied or is complying with the EO and nondiscrimination provisions of WIOA.
- B. Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment.
- C. Each recipient must record the race/ethnicity, sex, age, and where known, disability status of every applicant, registrant, eligible applicant/registrator, participant, terminee, applicant for employment and employee.
- D. Such information will be stored in such a manner that ensures confidentiality and must be used only for the purposes of record keeping and reporting; determining eligibility, where appropriate, for WIOA-financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

## VIII. NOTIFICATION OF COMPLAINTS/LAWSUITS

- A. Each grant applicant and recipient will promptly notify the State WIOA EO Officer and the Director of CRC of any administrative enforcement actions or lawsuits filed against it alleging 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. The requirements for the notice are set forth in 29 CFR Section 38.42.

- B. Each LWDA EO Officer will maintain a log of complaints filed with it that allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, or for any beneficiary, because of that beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States or for participation in WIOA Title I-financially assisted program or activity. The log will include the name and address of the complainant; the ground of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

## IX. RETENTION OF RECORDS

- A. Each recipient will maintain, for a period of not less than three (3) years from the close of the applicable program year, applicant, registrant, eligible applicant/registrant, participant, terminatee, employee and applicant for employment records, and such other records as are required by WIOA or the State WIOA EO Officer.
- B. Each recipient will maintain records regarding complaints and actions taken thereunder for a period of not less than (3) three years from the date of resolution of the complaint.

## X. ASSURANCE

Every grant, cooperative agreement or contract for financial assistance for funding under Title I of WIOA, as described in 29 CFR Section 38.25, must contain the following assurance:

### EO AND NONDISCRIMINATION ASSURANCE:

- A. As a condition to the award of financial assistance from NYSDOL under Title I of WIOA, the grant applicant assures that it will comply fully with the EO and nondiscrimination provisions of the following laws:
  - 1. WIOA [Section 188](#) which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency (LEP) individuals), age disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;
  - 2. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;

3. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
  4. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
  5. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
- B. The grant applicant also assures that it will comply with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

## **XI. SUPPLEMENTAL PUBLICATIONS**

LWDA EO Officers may publish supplemental procedures for use by recipients and for internal use to coordinate responsibilities of other programs.

## **XII. METHOD OF RESOLUTION FOR DISPOSITION OF COMPLAINTS ON A PARTNER**

These are procedures for handling complaints filed against a Career Center system partner assisted by a federally-funded grant making agency\* other than USDOL. There are two (2) types of complaints that may fall under this category:

### **1. Joint Jurisdiction**

Where the complaint alleges discrimination on a federally-funded partner on a basis of race, color, national origin, disability, sex, age or retaliation that is prohibited by [Section 188](#) of WIOA and by civil rights laws, the complaint must be referred to that agency's EO Officer for processing under that agency's procedures. The complainant must be notified about the referral.

\* Examples of other Federally-Funded Grant making Agencies:

- Department of Health and Human Services (HHS)
- Department of Education (DOE)
- Department of Housing and Urban Development (HUD)
- Department of Agriculture (DOA)
- Department of Transportation (DOT)

### **2. Sole Jurisdiction**

When the complaint alleges partner discrimination on the basis of religion, political affiliation or belief, citizenship, and/or participation in WIOA Title I, the complaint must be retained and processed under these complaint procedures.