

New York State Department of Labor
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**New York State Department of Labor
Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity and
Nondiscrimination Complaint Processing Procedures
DEOD Advisory 01-1, December 2017**

To: Workforce Innovation and Opportunity Act (WIOA) Recipients
SUBJECT: Implementation of the Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures of the Workforce Innovation and Opportunity Act (WIOA) of 2014

PURPOSE

To advise WIOA recipients of the current Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures established by the New York State Department of Labor (NYSDOL), and to provide for the joint adoption of the policy and procedures by NYSDOL and the WIOA recipients.

Note: Attachments D & E must be re-submitted with updated signatures to the State WIOA EO Officer as indicated below.

POLICY

In accordance with the Workforce Innovation & Opportunity Act (WIOA) Section 188, the NYSDOL 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), 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.

BACKGROUND

WIOA Section 188 updates WIA Section 188 by including the following provisions:

- **Limited English Proficiency (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

**WORKFORCE INNOVATION and OPPORTUNITY ACT
EQUAL OPPORTUNITY AND NONDISCRIMINATION POLICY AND
COMPLAINT PROCESSING PROCEDURES**

The New York State Department of Labor ("NYSDOL"), as designated by the Governor as the administrator of Title I funds and the State Employment Security Agency, and _____ (Local Workforce Development Area (LWDA)), an agency responsible for carrying out the administrative responsibilities for the local workforce investment area established pursuant to Section 106 of the Workforce Innovation and Opportunity Act (WIOA) of 2014, do 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 C.F.R. 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), 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 federal regulations (29 C.F.R. Part 38) clarify the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA). Examples of discriminatory acts specifically prohibited, other than those based on a disability, are set forth in 29 C.F.R. Section 38.6. The regulatory requirements associated with employment practices and communication with individuals with disabilities are set forth in 29 C.F.R. Section 38.12.

II. POLICY

It is the policy of the New York State Department of Labor and the LWDA to ensure nondiscrimination and equal opportunity 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 that they are providing universal access to their programs and activities. Efforts recommended to ensure this type of access are set forth in 29 C.F.R. Section 38.40. If an issue arises that relates to a language barrier, 29 C.F.R. Section 38.9 should be followed.

III. DEFINITIONS

29 C.F.R. Section 38.4 contains the definitions of the terms used in the implementation of the nondiscrimination and equal opportunity 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 C.F.R. Section 38.4, the definition in 29 C.F.R. Part 38.4 is controlling.

1. **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.
2. **Applicant for employment** is a person who makes application for employment with a recipient of Federal financial assistance under WIOA Title I.
3. **Beneficiary** is the person or persons intended by Congress to receive benefits or services from a recipient.
4. **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.
5. **CRC** is the Civil Rights Center of the U.S. Department of Labor, 200 Constitution Avenue, NW, Room N4123, Washington, D.C. 20210.
6. **NYSDOL** is the U.S. Department of Labor, including its agencies and organizational units.
7. **Department** means the US Dept. of Labor including its Agencies and Organizational Units
8. **Disability and Qualified Individual with a Disability.** See 29 C.F.R. Section 38.4.
9. **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.
10. **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 C.F.R. Section 38.4 contains a partial list of entities that are considered recipients.)
11. **Employment Services (ES) Complaint Officer (ESCO)** is an employee of the NYSDOL in the career center system designated to handle certain initial complaints for matters related directly to NYSDOL programs.
12. **Equal Opportunity Officer (EO Officer)** is the individual responsible for coordinating a recipient's obligations under 29 C.F.R. Part 38. In New York State this includes the person designated by the Governor (WIOA EO Officer) and the persons designated by the chief elected official of each local area (LWIOA EO Officer).
13. **Local Workforce Development Area (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 investment activities.

14. **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 is a participant are listed in 29 C.F.R. 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.
15. **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 C.F.R. 38.4.
16. **Respondent** is the individual or entity against whom the complaint is filed.
17. **Service Provider**. See 29 C.F.R. Section 38.4. (TDD 1-800-662-1220; VOICE 1-800-421-1220).
18. **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. State WIOA EO Officer – Director of NYSDOL’s Division of Equal Opportunity Development (DEOD)
19. **WIOA Title I-funded program or activity**. See 29 C.F.R. 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 sub-recipients 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 C.F.R. Section 38.35.

A. POSTING OF NOTICE

At a minimum, the notice of discrimination 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 made a part of the participant's file. 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 file.

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 C.F.R. 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/TTY 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 C.F.R. Section 38.38(b).

D. NOTICE IN ORIENTATION PRESENTATIONS

During orientation presentations 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 equal opportunity provisions of WIOA and 29 C.F.R. Section 38. They will also be informed of their right to file a complaint of discrimination with the EO Officer or the Director of the Civil Rights Center (CRC).

V. PROCEDURES FOR COMPLAINTS AND INVESTIGATIONS

A. Equal Opportunity Officer

1. All local areas will designate an 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 EO Officer.
2. Service providers will follow the procedures set forth in this policy when a complaint of discrimination is received.
3. An 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 an EO Officer.

B. Complaints

1. **Who may file.** Any person who believes that he or she or any specific class of individuals has been or is being subject to discrimination prohibited by the nondiscrimination and equal opportunity 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 LWIOA EO Officer or the Director of the CRC. Complaints made involving New York State NYSDOL of Labor programs should be filed directly with the State WIOA EO Officer, or through the designated ES Complaint Officer in the career center system.
3. **Time for filing.** A complaint filed pursuant to this part must be filed within 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 WIA EO Officer or Director (complaints filed with CRC) and must:
 - a. Contain the complainant's name and address (or specify another means of contacting him or her);
 - b. Identify the respondent (the individual or entity that the complainant alleges is responsible for the discrimination); and
 - c. Describe the complainant's allegations in sufficient detail to allow the Director of the CRC or EO Officer to determine whether:
 - i. CRC, the State WIOA EO Officer or the LWIOA EO Officer, as applicable, has jurisdiction over the complaint; and
 - ii. the complaint was timely filed; and
 - iii. the complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA or the regulations.
 - d. Be signed by the complainant or his or her authorized representative.
5. **Complaint Forms.** The State WIOA EO Officer shall provide a Complaint Information Form to each LWIOA 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 his or her own choice.
7. **Complaint processing.** Upon receipt of a written complaint, the EO Officer must provide a written acknowledgement within 5 days of receipt of the complaint with notice that the complainant has the right to be represented in the complaint process. The EO Officer will have 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 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.

1. If the complaint is filed with the LWIOA EO Officer, the LWIOA EO Officer will log the complaint and commence the complaint process. If a complaint filed with the LWIOA EO Officer involves a program administered by the New York State Department of Labor, the LWIOA EO Officer will log the complaint and forward it to the State WIOA EO Officer for processing.
 2. If the complaint is filed with the State WIOA EO Officer or ESCO, and involves a program or activity administered by the recipient or a partner in the one-stop delivery system, the State WIOA EO Officer will immediately notify the LWIOA EO Officer and forward the complaint for processing. If a complaint is related to programs administered by the New York State Department of Labor, 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 15 days of receipt of the complaint indicating that a complaint has been filed against them, 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 included to complete the period. In addition, the time periods are counted in calendar days, not work days.
12. **Notification to the Complainant**
1. **Notification of no jurisdiction.** The EO Officer will notify the complainant within 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 nondiscrimination and equal opportunity provisions of WIOA or the regulations. 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 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 WIOA EO Officer.

2. **Statement of issues.** If the EO Officer that receives the complaint has jurisdiction, they will notify the complainant within 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 he or she has the option of resolving his or her complaint through a fact-finding/ investigation process or alternative dispute resolution. If the complaint is filed with the LWIOA EO Officer, then the statement of issues will be sent to the complainant by certified mail and a copy of the notice will be sent to the WIOA EO Officer. The respondent will receive a letter (certified mail) notifying he/she 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 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.
3. **Informal meeting/Resolution.** The EO Officer may meet with the complainant informally to discuss and clarify the issues. During this process, the EO Officer may, in appropriate cases, offer a resolution of the matter, provided the EO Officer files a Notice of Final Action in accordance with section V(B) (14) herein. If the complainant is not satisfied with the informal resolution, the complainant may proceed with a full investigation or request alternative dispute resolution.

13. Resolution of Complaints

1. **Options.** The complainant has the option of resolving his or her complaint through a full fact-finding/investigation process or alternative dispute resolution (ADR). If the complainant chooses the alternative dispute resolution option, he or she must notify the EO Officer within 10 days of receipt of the Statement of Issues.
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.

3. **Alternative Dispute Resolution Process.** If the complainant chooses the ADR method, the EO Officer will refer the matter to an impartial mediator approved by the 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.
- i. **Notice of Mediation Conference.** Written confirmation of the mediation conference will be sent to each party within 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 complainant and respondent are represented, they are responsible for providing that person with notice of the mediation.
 - ii. **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.
 - iii. **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 EO Officer within 60 days from the date of the complainant's election to participate in ADR.
 - iv. **Failure to reach an agreement.** If the parties fail to reach an agreement, the EO Officer will submit a Notice of Final Action to the parties within 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 30 days.
 - v. **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.
 - vi. **Non-Breaching Party Complaint.** The non-breaching party may file a complaint with the Director of CRC within 30 days from the date on which the non-breaching party learns of the breach.
 - vii. **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 his or her original allegation(s) and the Director will waive the time deadline for filing the complaint.

- viii. **Mediation Files.** The EO Officer is responsible for maintaining a record of the cases submitted for mediation and a copy of each mediation agreement.
- ix. **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 days of the complainants' election for a full fact-finding/investigation. This process is subject to the review and approval of the WIOA EO Officer.

14. Notice of Final Action

1. Upon completion of its investigation and review of the complaint, the EO Officer must file a Notice of Final Action within 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. The notice must also advise complainant that he or she has the right to file a complaint with the Director of CRC within 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.
2. Within 90 days, the EO Officer may, upon a preliminary investigation, offer a resolution of the complaint to the complainant. If the complainant accepts the resolution, the EO Officer must file a Notice of Final Action and notify the complainant of his or her right to file a complaint with the Director of the CRC, and inform the complainant that his right must be exercised within 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.
3. If the complainant has not received a Notice of Final Action within ninety days of filing the complaint, the complainant or his or her representative may, within 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 120 days of the date on which the complaint was filed with 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 WIOA or the regulations; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA or the regulations; 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 nondiscrimination and equal opportunity provisions of WIOA or the regulations; or exercised authority under or privileges secured by the nondiscrimination and equal opportunity provisions of WIOA or the regulations.
- B. The sanctions and penalties contained in Section 188(b) of WIOA or the regulations 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 nondiscrimination and equal opportunity provisions of WIA or the regulations.
- 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/registant, 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 WIOA EO Officer and the Director of the 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 C.F.R. Section 38.42.

- B. Each LWIOA 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 years from the close of the applicable program year, applicant, registrant, eligible applicant/registant, participant, terminee, employee and applicant for employment records; and such other records as are required by the regulations or the WIA EO Officer.
- B. Each recipient will maintain records regarding complaints and actions taken thereunder for a period of not less than 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:

NONDISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE:

As a condition to the award of financial assistance from the NYSDOL of Labor under Title I of WIOA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Innovation and Opportunity Act (WIOA) 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), 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;

Title VI of the Civil Rights Act of 1964, as amended which prohibits discrimination on the basis of race, color, and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

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

EO Officers may publish supplemental procedures for use by recipients and for internal use to coordinate responsibilities of other programs. The Complaint Procedure Overview, Complaint Processing Procedural Steps and Implementation of the Mediation Component of the Workforce Investment Act are attached hereto for use in implementing these procedures.

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

These are procedures for handling complaints filed against a recipient that is a one-stop partner assisted by a federally funded grant making agencies* other than DOL. There are two types of complaints that may fall under this category. One is called joint jurisdiction and the second is sole jurisdiction.

JOINT JURISDICTION

Where the complaint alleges discrimination on a partner that is also federally funded that is 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)

SOLE JURISDICTION

When the complaint alleges discrimination on a partner 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.

Complaint Procedure Overview

Who may file a Complaint

Any person who believes that either he or she, or any specific class of individuals has been or is being subjected to discrimination 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), 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, may file a complaint. Complaints filed by the complainant or his/her authorized representative must be filed in writing and must contain the complainants and respondents name and address, date of occurrence, a description of the allegations with enough detail to establish WIOA Title I funding jurisdiction over the complaint, whether or not the complaint was timely filed, apparent merit, and if true, whether the allegations would violate any of the nondiscrimination and equal opportunity provisions of WIOA, and the complainant or his/her authorized representatives signature.

Where to file

Complaints may be filed with the Equal Opportunity Officer for the local area (LWIOA EO Officer) or directly with the Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C. 20210. For complaints related to programs administered directly by the New York State Department of Labor, either the NYSDOL ES Complaint Officer at the One-Stop Center, or Director, NYS WIOA State administrative agency Equal Opportunity Officer (State WIOA EO Officer), New York State Department of Labor, Division of Equal Opportunity Development, State Campus, Building 12, Room 540, Albany, New York 12240.

When to file

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Director of the Civil Rights Center may extend the filing time. Complainants who file with an EO Officer must wait until a written Notice of Final Action is received or until 90 days has passed (whichever is sooner) before filing with CRC. The Director of CRC, for good cause shown, may extend the filing time beyond 180 days.

Information that the complaint must contain

All complaints must be in writing, and must contain the following:

- The complainants name and address or another means of contact;
- The identity of the respondent, the individual/entity the complainant alleges is responsible for the discrimination;

- A description of the allegations in sufficient detail to determine whether or not the complaint is within the jurisdiction of the EO Officer, whether or not the complaint was timely filed, has apparent merit, and if true, whether the allegations would violate the non-discrimination and equal opportunity provisions of WIOA.
- The complaint must be signed by the complainant or his/her authorized representative.

If it is determined that the EO Officer does not have jurisdiction over a complaint, the complainant will be notified of the lack of jurisdiction. The notification will include a reason(s) for the determination and notice that he/she has a right to file the complaint with CRC within 30 days from the date on which the jurisdiction notice is received.

If it is determined that the EO Officer has joint jurisdiction of the complaint, the complaint will be forwarded to the appropriate equal opportunity officer and the complainant will be notified that the complaint was received and forwarded for processing in accordance with the complaint procedures established by the recipient having joint jurisdiction.

All parties to the complaint are entitled to representation of their own choosing and at their own expense.

Upon receipt by the EO Officer, Complaints are assigned a case number, recorded on the complaint log and forwarded to the appropriate Equal Opportunity Officer. All complaints are handled and maintained as strictly confidential.

Retaliation/Intimidation/Reprisal

No person shall be discharged, intimidated, retaliated against, threatened, coerced or otherwise discriminated against for having filed a complaint, furnished information to, assisted or participated in any manner in investigation, review, hearing or any other activity related to the administration of, or exercise of authority under, or privileges secured by, 29 CFR Part 38.

Discrimination Complaint Processing Procedural Steps

Step I - The Opportunity to File a Complaint

All complaints must be in writing. Any person who believes that either he or she, or any specific class of individuals, or authorized representative, hereafter referred to as the complainant, who believes he or she has been discriminated against, must submit the allegations in writing to the equal opportunity officer. The Equal Opportunity Officer will, within five (5) days of receipt of the complaint, send an acknowledgment letter to the complainant and advise him/her of their right to be represented in the complaint process

Step II - The Opportunity for an Informal Resolution Conference

The Equal Opportunity Officer may meet with the complainant or his/her authorized representative, within fifteen (15) days from the date of receipt of the written allegations, to conduct a preliminary investigation and to discuss the circumstances underlying the allegations, and attempt to informally resolve the issue(s). If the complaint cannot be resolved informally, the Equal Opportunity Officer will within fifteen (15) days of receipt of the complaint advise the complainant of a list of the issues raised in the complaint and a statement whether the issue will be accepted for investigation or rejected by the EO Officer; if rejected, the reason for the rejection. If any portion of a complaint is accepted, the EO Officer will further advise the complainant of his or her right to seek resolution through mediation or to continue with a formal investigation and be advised of their right to have representation during the complaint process.

Step III - The Opportunity for Mediation or Investigation

If the Complainant is dissatisfied with the attempted informal resolution, he/she must so inform the Equal Opportunity Officer within ten (10) days of receipt of the written acknowledgement containing the statement of issues and indicate whether or not he or she wishes to elect the mediation option. If no response is received, the Equal Opportunity Officer will continue to investigate the complaint.

If the complainant selects the mediation option, an impartial mediator will be appointed. The mediation will be conducted within sixty (60) days from the date of such election. Written notification of the mediation conference will be sent to parties involved by the impartial decision-maker within ten (10) days of the date of mediation. The notice will state the date, time and place of the mediation, the specific issues to be heard and that the mediation is voluntary and confidential. Each party, (complainant/respondent) has the right to representation by an attorney or other individual of his/her own choice, at his/her own expense.

If the parties reach agreement on some or all, of the issues presented, the mediator will assist the parties in drafting an agreement to be submitted for resolution of such issues. If any or all issues remain unresolved at the end of mediation, the mediator will send a notice of failure to reach agreement to the Equal Opportunity Officer within sixty (60) days of the complainant's election for mediation.

Step IV - The Investigation: Fact Finding Procedure:

After the EO Officer has determined that the discrimination complaint is within his or her jurisdiction, the State EO Offices should promptly conduct an investigation.

A complaint investigation or fact-finding includes the following elements:

- Interview the Complainant to gather facts.

- Ask the Complainant for the names, addresses and phone numbers of people who are knowledgeable about the situation. The EO Officer should contact the potential witnesses to request interviews.
- Collect any evidence that the complainant has to support their allegation(s).
- State the resolution sought by the complainant.
- 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.
- The investigator should make certain strategic decisions as to which witnesses to interview for which purpose.
 1. First, individuals should be interviewed who have firsthand knowledge.
 2. Second, individuals should be interviewed who were directly involved in the situation that the complainant has alleged occurred.
 3. Thirdly, 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, in the alternative, prepare statements based on your interview notes and ask the witnesses to sign and date the prepared statement.
- In your interview with the complainant you may wish to obtain a signed statement from the complainant that he/she 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, in the alternative, prepare a statement based on your interview notes and ask the complainant to sign and date the prepared statement.
- 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 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, in the alternative, prepare a statement based on your interview notes and ask the respondent to sign and date the prepared statement.
- Review documents, reports, correspondence, personnel records and policies/procedures related to activities which gave rise to the allegation of discrimination.
- If additional allegations are made during the investigation, or other pertinent information is discovered, you should inform the Respondent and give him/her a chance to respond, following the format of the original investigation.
- A witness will make statements based not upon what he/she knows, but upon what he/she 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 you to sources that will allow you to use the information as evidence.

- 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.
- Any additional information essential to understanding of the specific matter of the case or environment in which it occurred.
- The respondent's position statement including their account of the facts and the respondent's agreement or disagreement with each of the complainant allegations.
- The Respondent can produce documentation for review in their defense.
- Maintain a complaint file and complaint log with reference number.

All Notices of Final Action must be reviewed by the State EO Officer to insure a thorough investigation and decision is supported by the findings of fact.

A Notice of Final Action will be issued by the Equal Opportunity Officer within ninety (90) days of the filing of the complaint. The written Notice must include for each issue raised, a decision on the issue(s), an explanation of the reasons underlying the decision or a description of the way the parties resolved the issue(s), notice of recourse as provided below.

Step V - Notice of Recourse

If the resolution offered to the complainant or his/her representative is not satisfactory to the complainant, the complainant or his/her representative may, within 30 days of the date on which the Notice of Final Action is issued, file a complaint with the Director of Civil Rights Center (CRC). The Director of CRC may extend the thirty-day time limit for good cause shown.

Procedures for Handling Complaints Referred for Mediation

Utilization of mediators in the mediation of complaints in New York's administration of the WIOA should result in a highly professional and cost effective method of dispute resolution.

The following are procedural guidelines to facilitate implementation:

1. Equal Opportunity (EO) Officers in New York's 34 local workforce development areas will be responsible for referring complaints for mediation and ensuring that the mediation process is completed within sixty (60) days of the complainant's election for mediation.
2. The Equal Opportunity Officer, in consultation with the complainant, will either continue to investigate the complaint (not addressed in this document) or refer the matter to mediation.
3. The choice whether to use Alternative Dispute Resolution (Mediation) rests solely with the Complainant.
4. If a complainant signs an Agreement to Mediate Form the complaint will be referred to one of the authorized mediators in the Community Dispute Resolution Centers (CDRC) in the different counties of the state (This can be done by fax or mail).
5. The EO Officer or CDRC will coordinate the meeting date, time, and place with the complainant, the respondent, and the mediator.
6. The mediator will assume jurisdiction of the complaint for sixty (60) days, beginning with the initial referral, in writing, from the EO Officer.
7. Within the 60-day period the mediator will conduct a mediation session(s) and submit a Settlement Agreement to the referring EO Officer. Both parties will be required to sign a Consent to Mediate Form.
8. In the event no agreement is reached the mediator will duly notify the EO Officer when mediation is terminated.
9. Mediators will be held to the highest standards of ethical conduct and agree to recuse themselves if there is a potential conflict of interest or even the appearance of a potential conflict of interest.
10. Mediators shall be qualified by a CDRC or other appropriate organizations and receive training in the particular aspects of handling discrimination complaints.
11. The Mediation Process shall be voluntary for the complainant and both parties must participate in mediation in good faith but are not required to reach an agreement.
12. Mediation sessions will be closed to any individuals other than the parties and their representatives, except by consent of 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.

**WORKFORCE INNOVATION and OPPORTUNITY ACT
EQUAL OPPORTUNITY AND NON-DISCRIMINATION POLICY
AND
COMPLAINT PROCESSING PROCEDURES**

By signing below, I agree to adopt and abide by the Workforce Innovation and Opportunity Act Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures set forth in the attachments.

(Date)

(Signature of Chief Local Elected Official)

(Typed Name of Chief Local Elected Official)

(Title of Chief Local Elected Official)

(Name of Unit of Local Government)

(Mailing Address, part 1)

(Mailing Address, part 2)

_____, New York _____
(City) (Zip + 4)

LOCAL WORKFORCE DEVELOPMENT BOARD
WORKFORCE INNOVATION AND OPPORTUNITY ACT
EQUAL OPPORTUNITY AND NON-DISCRIMINATION POLICY
AND
COMPLAINT PROCESSING PROCEDURES

By signing below, I agree to adopt and abide by the Workforce Innovation and Opportunity Act Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures set forth in the attachments.

(Date)

(Signature of Chairperson of Local Workforce
Development Board)

(Typed Name of Chairperson of Local Workforce
Development Board)

(Name of Local Workforce Development Board)

(Mailing Address, part 1)

(Mailing Address, part 2)

_____, New York _____
(City) (Zip + 4)

interpreted broadly. This enables more individuals with disabilities to be effectively served within the workforce system.

- **Women, LGBT individuals, and persons affected by pregnancy.** 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.
- **Modernization.** WIOA recipients must also utilize electronic and information technology which incorporates accessibility features for individuals with disabilities.

ACTION

Note: Attachments D & E must be re-submitted with updated signatures to the State WIOA EO Officer's mailing address as stated below.

All WIOA recipients must be apprised of updated Equal Opportunity and Nondiscrimination responsibilities as stated under WIOA. Recipients are responsible for following attached procedures and handling discrimination complaints appropriately.

Recordkeeping and other Affirmative Obligations

- Recipients must collect data on (LEP) status and preferred language use.
- Ensure outreach is conducted to expand access to services.
- Ensure compliance with 29 CFR Sections 38.25-38.45

Compliance

- Ensure grant applicants and recipients of federal financial assistance under Title I of WIOA comply with equal opportunity obligations under WIOA Section 188 and 29 CFR Part 38

REFERENCES

Workforce Innovation and Opportunity Act (WIOA), Section 188

US Dept of Labor Equal Opportunity Regulations (29 CFR Part 38)

US Dept of Labor – www.dol.gov

US DOL Civil Rights Center – <http://www.dol.gov/oasam/programs/crc/>

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
NYS WIOA EO Officer
Director, Division of Equal Opportunity Development
W. Averell Harriman State Office Campus
Building 12, Room 540, Albany, NY 12240

Email may be sent to: DEOD@labor.ny.gov

ATTACHMENTS

- A. WIOA Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures
- B. Complaint Procedure Overview
- C. Procedures for Handling Complaints Referred for Mediation
- D. Signature Sheet – Chief Local Elected Official
- E. Signature Sheet – Local Workforce Development Board