

**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.