



# Florida's Nondiscrimination Plan

Implementing  
Nondiscrimination Regulations  
under the  
Workforce Innovation and Opportunity Act of  
2014

Updated December 2023



## **Introduction**

Section 188 of the Workforce Innovation and Opportunity Act (hereinafter referred to as "WIOA") prohibits discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, or for beneficiaries, applicants, and participants only, citizenship status or participation in a program or activity that receives financial assistance under Title I of WIOA. The regulations implementing Section 188 of WIOA require each state that receives WIOA funds to submit a Nondiscrimination Plan to the United States Department of Labor (hereinafter referred to as "USDOL") on a periodic basis in order to provide a reasonable guarantee that recipients of WIOA funding will comply with applicable nondiscrimination and equal opportunity provisions in their workforce systems.

The Florida Department of Commerce (hereinafter referred to as the "Department") submits this Nondiscrimination Plan as part of its continuing commitment to nondiscrimination, equal opportunity, and affirmative outreach in its workforce programs and services.

## **Department Overview**

During the 2011 session, the Florida Legislature called upon Florida's economic development leaders to reevaluate existing economic development programs and to formulate new strategies for strengthening job creation efforts. As a result, the Department of Commerce, formerly known as the Department of Economic Opportunity, was created from three previously existing entities - the Agency for Workforce Innovation, the Department of Community Affairs, and the Governor's Office of Tourism, Trade, and Economic Development.

Today, the Department combines Florida's economic, workforce, and community development efforts, helping to expedite economic development projects to fuel job creation in competitive communities. The Department is divided into three primary areas: Workforce Services, Community Development, and Economic Development. The aforementioned areas receive support from the Offices of the General Counsel, Inspector General, and Civil Rights.

The Division of Workforce Services partners with CareerSource Florida, Inc., and the State's 24 Local Workforce Development Boards (hereinafter referred to as "LWDB") to strengthen Florida's business climate by supporting employers and helping Floridians gain employment, remain employed, and advance in their careers. The Division of Community Development fosters economic development in the State's rural and urban communities through opportunities and assistance that balance local and State growth management needs. The Division of Economic Development provides support for attracting businesses to Florida, promoting the creation and expansion of Florida businesses, and facilitating the State's economic development partnerships.

<b>Element 1</b>
------------------

**Assurances**

29 CFR 38.25 - 38.27

**General Requirements**

Certain documents must include proper assurances regarding compliance with nondiscrimination laws. Job training plans, contracts, and other agreements entered into by recipients must be nondiscriminatory.

**Equal Opportunity Assurance Statement**

Each recipient of Federal funds under Title I of WIOA must ensure that it complies with nondiscrimination requirements. Federal regulations require that as a condition to the award of financial assistance from the USDOL under Title I of the WIOA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

1. Section 188 of WIOA and the expanded language;
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.

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.

**Notice of the Equal Opportunity Assurance Statement Requirement**

The Department has informed the LWDBs of the requirement to include the equal opportunity assurance statement in all contracts, grants, cooperative agreements, applications, and other agreements. A core contract template for WIOA subrecipients is available on the Department's website.

During onsite monitoring, the State Equal Opportunity (EO) Officer reviews copies of the aforementioned documents to ensure compliance with the equal opportunity assurance statement.

## **Duration of Obligation**

Each recipient of Federal financial assistance incurs certain obligations by accepting the assistance. The duration of the obligation differs according to the type of assistance received. For personal property, real property, structures on real property, or interest in any such property or structures, the recipient (or subsequent transferee) is obligated for the longer of the following time periods:

1. The time period during which the property is used either for the purpose of WIOA Title I financial assistance or for another purpose involving the provision of similar services or benefits, or
2. The time period during which either the recipient retains ownership or possession of the property, or a transferee retains ownership or possession of the property without compensating the government for the fair market value of the ownership or possession.

In all other cases, the assurance obligates the recipient for the period during which the WIOA Title I financial assistance is extended.

## **Real Property**

Where the financial assistance involves a transfer of real property or improvements or interests in real property, the recipient is obligated to ensure compliance with the following requirements:

1. Where the assistance is in the form of real property, each instrument recording the transfer must contain a covenant assuring nondiscrimination and equal opportunity for the time period previously specified.
2. Where real property or an interest therein is acquired or improved using WIOA Title I assistance, recipients must include a covenant assuring nondiscrimination and equal opportunity in the instrument effecting or recording any subsequent transfer of the property.
3. Where the property is obtained from the Federal government, a covenant assuring nondiscrimination and equal opportunity may also include a condition coupled with a right of reverter to USDOL in the event of a breach of the covenant.

## **Access to Information**

All recipients of Federal financial assistance under WIOA must provide access to all documents, papers, letters, or other materials prepared or received by the recipient regarding the subject matter of the contract to the program-monitoring team and to the Department's Office for Civil Rights (OCR) upon request. The monitors and the OCR have the right to review and copy all such material as part of the OCR's responsibilities to monitor compliance with the nondiscrimination and equal opportunity provisions of WIOA.

Each recipient must ensure that each of its subrecipients is aware of and has submitted to the recipient the proper assurance of compliance with Federal regulations and laws prohibiting discrimination. A record of notice must be maintained by the recipient and made available for review by the program monitoring team and to the OCR upon request.

As part of any review of grant applications and requests for approval of eligibility for training providers, contracts, grants, cooperative agreements, job-training plans, assurances, and similar agreements entered into by recipients providing WIOA program funds, the Department's Office of the General Counsel ensures that such documents are nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.

## **Review of Training Providers' Grant Applications and Requests for Approval**

Each grant applicant and approved training provider must provide programmatic and architectural accessibility for all participants.

### **Nondiscrimination Clause Review**

No policy issued at the State or local level may discriminate either in its intent or its effect. To this end, the OCR reviews recipient policies and other documents during the site-review phase of a compliance review.

### **Policy Development and Review**

All recipients of Federal financial assistance under Title I of WIOA must develop and disseminate nondiscrimination policies. Policy statements and guidance developed by the Department are available online for use as models by the LWDBs.

Policy review is a component of the onsite monitoring reviews conducted by the OCR. The LWDBs are responsible for the review of One-Stop Career Center operator and service-provider policies. The OCR reviews such policies as part of the onsite monitoring reviews.

The OCR reviews drafts of proposed Department policies and guidance that have potential equal-opportunity implications and makes recommendations or suggested revisions as necessary to ensure compliance with the applicable laws and regulations.

All recipients and service providers are required to provide written assurance in their agreements, grants, and contracts that they are committed to and will comply with the requirements of WIOA, the regulations implementing Section 188 of WIOA, the Americans with Disabilities Act of 1990, as amended, and the Rehabilitation Act of 1973, as amended.

Among the types of discrimination prohibited by these regulations are:

1. Denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. Affording a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3. Providing a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

4. Providing different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
5. Aiding or perpetuating discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
6. Denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

## **Communication**

The OCR is responsible for ensuring that information regarding the requirements for compliance with the above-mentioned laws and regulations is adequately communicated to all recipients.

## **Written Policies and Procedures**

The primary method for promulgating policy and procedures relating to WIOA and other workforce programs is the workforce consultation/guidance paper process. Consultation papers are developed for policy issues relating to WIOA and other workforce programs. Consultation papers are written in coordination with CareerSource Florida staff and are distributed to the LWDBs and other interested parties for review and comment. Upon conclusion of the review period and following any resulting revisions to the papers and final approval, a consultation paper becomes a guidance paper.

The Department uses communiques to transmit general and procedural information.

<b>Element 2</b>
------------------

<b>Designation of State and Local Equal Opportunity Officers</b>
--

29 CFR 38.28 - 38.33

## **General Requirement**

Every Governor of a State that receives financial assistance under Title I of WIOA must designate an individual as a State Level Equal Opportunity Officer (hereinafter referred to as the "State EO Officer"), who reports directly to the Governor, or his designee and is responsible for statewide coordination of compliance with equal opportunity and nondiscrimination requirements. In 2021, the Governor appointed Dane Eagle, the Department's Secretary, as his designee to appoint the State EO Officer. In March 2022, Secretary Eagle appointed Julisa Nnorom as the State EO Officer. Secretary Eagle no longer serves as the Department's Secretary. The Department's current Secretary is J. Alex Kelly. In December 2023, the Governor appointed Secretary Kelly as his designee to appoint the State EO Officer. Secretary Kelly reappointed Julisa Nnorom as the State EO Officer.

## **State EO Officer**

Julisa Nnorom serves as the State EO Officer and reports to the Department's current Secretary, J. Alex Kelly, on equal opportunity and nondiscrimination matters. For administrative purposes, the State EO Officer reports to the Department's Office of the General Counsel. Mrs. Nnorom is a graduate of Florida State University College of Law. Mrs. Nnorom came to the Department after serving as an Assistant General Counsel for the Florida Department of Health, where she was responsible for ensuring that medical professionals complied with applicable State and Federal regulations.

Julisa A. Nnorom, State EO Officer  
Florida Department of Commerce  
Caldwell Building- MSC 150  
107 East Madison Street  
Tallahassee, Florida 32399-4129  
Phone: (850) 245-7180  
Fax: (850) 921-3122  
E-mail: [Julisa.Nnorom@commerce.fl.gov](mailto:Julisa.Nnorom@commerce.fl.gov)  
TTY via the Florida Relay Service (FRS): 711

### **Responsibilities**

The State EO Officer is responsible for the following:

1. Serving as the liaison with USDOL's Civil Rights Center (hereinafter referred to as "CRC");
2. Monitoring and investigating the Department's and its subrecipient's activities to ensure compliance with equal opportunity obligations under WIOA and 29 CFR Part 38;
3. Reviewing the Department's written policies to ensure the policies are nondiscriminatory;
4. Developing, publishing, and executing the Department's procedures for processing discrimination complaints;
5. Conducting outreach and education regarding equal opportunity and nondiscrimination requirements and the complaint filing process;
6. Undergoing training at the Department's expense in order to maintain competency; and
7. Overseeing the development and implementation of the State's Nondiscrimination Plan.

### **Administrative Support**

When requested by the State EO Officer, administrative support for the OCR is provided through the Office of the General Counsel.

### **Budget**

The programmatic funding for the OCR is included in the allocation for the Department's Office of the Secretary. Funding is available for all aspects of the OCR, including, but not limited to, EO monitoring, training, outreach, travel for complaint investigations, and onsite reviews.

### **Publication of the EO Officer's Identity**

The State EO Officer's identity and contact information are publicized as follows:

1. The LWDBs and One-Stop Career Centers display the Department's notice entitled, "Equal Opportunity is the Law," which provides the addresses and contact information for the OCR and the CRC. Through onsite reviews, the OCR ensures that the notice is posted prominently in a reasonable number of places and is located in participants' files. This notice is also available electronically on the Department's website.
2. The Department's "Equal Opportunity is the Law" notice is also part of the Employ Florida Marketplace (EFM), which is accessible at <http://employflorida.com>. EFM is Florida's online tool designed to assist job seekers and students in searching for the right job and to help employers find the best job candidates. EFM requires users to view a screen containing the notice as part of the initial registration process.
3. The OCR's website includes the identity and contact information for the State EO Officer.
4. The Department published policies 2.04, 2.05, and 2.06, which include contact information for the OCR.
5. The Department published its Policy Statement on Nondiscrimination, which includes contact information for the OCR.
6. The Department's Policy Statements include contact information for the OCR.
7. The LWDBs published an Employment Service Complaint-Resolution System Handbook, which includes contact information for the State EO Officer and the OCR.

### **Recipient-Level EO Officers**

Every recipient of financial assistance under Title I of WIOA, other than small recipients and service providers, must designate a recipient-level EO Officer, who reports directly to the individual in the highest-level position of authority for the entity that is the recipient, such as the Governor, the Administrator of the State Department of Employment Services, the Chair of the LWDB, the Chief Executive Officer, the Chief Operating Officer, or equivalent official. The OCR works with the 24 LWDBs to ensure compliance with this section.

The recipient-level EO Officers' responsibilities include, but are not limited to:

1. Serving as the LWDB's liaison with the Department's EO Officer and USDOL's CRC;
2. Monitoring and investigating the LWDB's and its subrecipient's activities to ensure compliance with EO obligations under WIOA;
3. Reviewing the LWDB's written policies to ensure the policies are nondiscriminatory;
4. Processing discrimination complaints in accordance with State and Federal guidelines;
5. Reporting directly to the appropriate official on equal opportunity matters; and
6. Undergoing training to maintain competency, as necessary.

The OCR provides training for the recipient-level EO Officers on a periodic basis and as requested by recipients.

<b>Element 3</b>
------------------

**Notice and Communication**

29 CFR 38.34 - 38.39

## **General Requirement**

The Department must establish a notice and communication system that provides initial and continuing notice to registrants, applicants, participants, applicants for employment, employees, unions or professional organizations, subrecipients of WIOA Title I funds, and members of the public of the Department's obligation to operate in a nondiscriminatory manner and the right to file complaints of discrimination. The Department must also take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and to provide meaningful access for individuals with limited English proficiency.

## **Notices and Publications**

### **"Equal Opportunity is the Law" Notice**

The OCR created its notice entitled, "Equal Opportunity is the Law." This notice has been updated to state that it is against the law for the recipient to discriminate on the basis 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 programs. This notice also provides information regarding filing a discrimination complaint with the OCR and the CRC.

The Department ensures that the State's One-Stop Career Centers display this notice prominently in a reasonable number of places in conspicuous physical locations and on its website. The Department also disseminates copies of the notice in internal memoranda and written or electronic communications with staff. The Department includes the notice in employee and participant handbooks and files, including electronic and paper form if both are available. The notice is also part of EFM. EFM requires users to view a screen containing the notice as part of the initial registration process. Additionally, the Department's Bureau of Human Resource Management has provided the notice to the collective bargaining unit, with a copy to the State Department of Management Services. During each presentation to orient new participants, new employees, or the general public to its WIOA Title I-financially assisted programs or activities, the Department ensures that a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA is communicated in appropriate languages and in formats accessible for individuals with disabilities.

The "Equal Opportunity is the Law" notice is available in English, Spanish, and Haitian Creole and is accessible to individuals with disabilities.

### **"Florida Law Prohibits Discrimination" Notice**

The OCR ensures that the State's One-Stop Career Centers display the notice created by the Florida Commission on Human Relations entitled, "Florida Law Prohibits Discrimination," in a reasonable number of places in conspicuous physical locations and on its website.

The "Florida Law Prohibits Discrimination" notice is available in English, Spanish, and Haitian Creole and is accessible to individuals with disabilities.

### **"Equal Employment Opportunity is the Law" Notice**

The OCR is working with the 24 LWDBs to ensure that the State's One-Stop Career Centers display

the updated notice created by the U.S. Equal Employment Opportunity Commission entitled, "Equal Employment Opportunity is the Law," in a reasonable number of places in conspicuous physical locations and on its website.

The "Equal Employment Opportunity is the Law" notice is available in English, Spanish, and Haitian Creole and is accessible to individuals with disabilities.

## **Equal Opportunity and Nondiscrimination Policies and Procedures**

On October 27, 2011, the Department published its policy entitled, "Policy Statement on Nondiscrimination," reaffirming the Department's commitment to nondiscrimination in employment and services to the public, zero tolerance for sexual harassment, and equal access for qualified individuals with disabilities. This policy contains the contact information for the Department's OCR and is located on the Department's intranet.

In 2018, the Department published an additional policy on sexual harassment, which sets forth the Department's updated procedures for reporting and addressing allegations of sexual harassment. On October 18, 2019, the Department published its Code of Personal Responsibility, which covers many topics relating to employees, including prohibitions against sexual harassment and retaliation. The Code of Personal Responsibility contains the contact information for the Department's OCR and is located on the Department's intranet.

In March of 2021, the Department published several additional policies on topics, such as discrimination and sexual harassment, in an effort to ensure that the Department maintains an atmosphere free from sexual harassment, discrimination, and threat of workplace violence. The policies contain the contact information for the Department's OCR and are also located on the Department's intranet.

The OCR published Guidance Paper 042 entitled, "Guidelines for Compliance with the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Section 188 of the Workforce Investment Act," in order to provide direction to the LWDBs, One-Stop Career Centers, and their service providers, regarding the following requirements:

1. Including the required language (tag lines) if the recipient publishes, distributes, or makes available to the public in recruitment materials, informational publications, or other materials to describe the workforce programs or the requirements for participation by recipients and participants.
2. Ensuring the recipient includes the required language (tag lines) indicating that the WIOA financially assisted program or activity in question is an "equal opportunity employer/ program" and "auxiliary aids and services are available upon request to individuals with disabilities."

The Department's Division of Workforce Services, One-Stop and Program Support published an Employment Service Complaint-Resolution System Handbook, which outlines the mechanisms by which registrants, program applicants, applicants for employment, employees, and interested members of the public, may file complaints of discrimination. This Handbook contains the contact information for the State EO Officer and the OCR. The Handbook also contains a copy of the "Equal Opportunity is the Law" notice.

Through onsite monitoring and document review, the OCR ensures that brochures and other materials that are ordinarily distributed or communicated indicate that the program or activity in question is an equal opportunity employer or program and that auxiliary aids and services are available upon request to individuals with disabilities. Where such materials indicate that the recipient may be reached by telephone, the OCR ensures that the materials state the telephone number of the TDD/TTY or relay service used by the recipient.

## **Internet Resources**

The OCR has established a website for employees, LWDBs, One-Stop Career Center operators, service providers, Department partners, customers, and the general public. The website provides access to a wealth of nondiscrimination program information, with links to other helpful Florida, Federal, and private sector websites. The website is accessible at <http://www.floridajobs.org>.

As a State department, the Department utilizes the website, <https://peoplefirst.myflorida.com/logon.htm> (People First), the internet-based information system for State employees and those seeking a career in State of Florida government. Although People First users primarily utilize the internet to obtain employment information, users may also contact People First staff via commercial telephone and TTY. Each online Department position listed on People First includes the appropriate tag lines and EO notice requirements.

## **Serving Individuals with Disabilities and Limited English Proficiency**

The Department's Policy Statement on Nondiscrimination affirms the Department's commitment to providing equal opportunity in employment and in services to qualified individuals with disabilities, with reasonable accommodation when needed.

The Department's Policy Statements, updated in March of 2021, confirm the Department's commitment to nondiscrimination in its programs, policies, services, and employment practices and to fostering an atmosphere in which discriminatory acts are not tolerated.

The Department published policy 2.05, which emphasizes the Department's commitment to providing equal opportunity in employment, services, and benefits without regard to race, color, religion, national origin, age, disability, marital status, genetic information, or political affiliation or belief. The Department also published policy 2.06, which provides guidance and assures compliance with applicable Federal and State nondiscrimination laws and regulations regarding individuals with disabilities.

The OCR has reformatted the language-identification cards produced by the U.S. Census Bureau and has made them available through the OCR website. Through onsite monitoring visits, the OCR ensures vital information is translated into languages representative of the population served and available to individuals with disabilities, as well as those who do not speak English.

Communication with and access to services for individuals who speak a language other than English or who communicate in a form other than spoken English is discussed in greater detail in Element 5 - Affirmative Outreach.

## **Department Policy and Guidance**

Policy 2.06, Policy on Program Accessibility and Services to Individuals with Disabilities, is applicable to Department staff and provides a model for LWDB adaptation and use with the One-Stop operators and service providers.

Guidance Paper 042, Guidelines for Compliance with the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Section 188 of the Workforce Investment Act of 1998, addresses the requirements under the subject laws regarding both employment and service delivery as they apply to workforce programs in Florida.

## **Auxiliary Aids and Services**

In order to provide equitable services and access, a recipient is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication.

Auxiliary aids and services for individuals who are deaf or hard of hearing include: qualified interpreters, note takers, computer-aided transcription services, written materials, telecommunications devices for deaf persons (*TDD /TTY*), and open and closed captioning.

Auxiliary aids and services for individuals with vision impairments include qualified readers, taped texts, audio recordings, materials in Braille or large print, and staff assistance.

## **TTY/TDD**

Where a recipient communicates by telephone, the recipient must use telecommunications devices for individuals with hearing impairments (ITYS/TDDs) or equally effective communications systems such as telephone relay services. Where a TTY is not provided by the recipient, the recipient must ensure that its written communication identifies the Florida Relay Service (FRS) and provides the access numbers (711) whenever a commercial phone number is included.

## **Notification of Meetings, Hearings, or Training**

Department guidance includes the requirement that notification be made in announcements of meetings, hearings, or training sessions that persons requiring reasonable accommodation to participate may request an accommodation. Online course or class registration systems allow individuals with disabilities to request an accommodation.

## **Alternate Formats**

The OCR assists in identifying resources that may be contacted by recipients for developing materials, including training materials, brochures, and informational publications, in alternate formats, such as Braille, large-print, and audio. When possible, local resources should be identified by recipients and their service providers to ensure maximum responsiveness to requests for such materials.

The OCR encourages Department staff, the LWDBs, One-Stop operators, and service providers to have flexible deadlines for requesting alternative forms of communication. This may mean that the training

or meeting announcements will include two deadlines: one for informing the sponsoring organization of a need for sign-language interpretation and another for the preparation of documents in an alternative format. For this reason, it is incumbent upon the Department, the LWDBs, and the other recipients to identify the available resources and the timelines for requesting the services.

## **Programmatic Accessibility**

The WIOA regulations stipulate that State programs must be accessible to all persons after the first two months of operation regardless of the status of any self-evaluation program. Program accessibility must be accomplished within 60 days of the date the regulations first apply to a recipient. Program reviews conducted on a scheduled basis aid in verifying that program/site accessibility is in compliance. The WIOA Section 188 Disability Checklist is available online through the OCR website. Recipients are required to complete and maintain the self-evaluation of all program activities on file. New recipients are required to complete the self-evaluation within 60 days after becoming grantees under WIOA and preferably as expeditiously as possible.

During onsite reviews, the OCR assesses program accessibility for individuals with disabilities by observation designed to assess the intake, assessment, counseling, recruitment, placement, and selection processes.

## **Architectural Accessibility**

The OCR makes periodic reviews of the physical structures used by recipients using a facilities-accessibility survey and recommends and monitors a corrective-action plan where recipients' facilities are found to be out of compliance. The OCR reviews locally completed facility-accessibility surveys during the regularly scheduled program reviews.

All new construction and alterations to existing facilities of recipients must be carried out so that, to the maximum extent feasible, the facility is readily accessible to and usable by qualified individuals with disabilities. For older buildings where no alterations are undertaken, recipients are required to remove architectural barriers to physical accessibility for persons with disabilities unless the removal is not readily achievable. The standards to be applied are the Americans with Disabilities Act Accessibility Guidelines along with applicable portions of Florida law.

Recipients must ensure that all interested individuals, including those with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

Where any of a recipient's facilities are inaccessible, a recipient must provide signs at the primary entrance of each such facility directing users to a location where they can obtain information about accessible facilities. During scheduled program reviews, the OCR checks selected facilities for accessibility, compares the findings with locally conducted surveys, and provides training and technical assistance on accessibility compliance, if needed.

## **Reasonable Accommodation**

Reasonable accommodation may be required to provide benefits, services, training, and/or employment offered by a recipient. Reasonable accommodation may include but is not limited to the following:

making existing facilities used by employees or participants readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified schedules, acquisition or modification of equipment or devices, and the provision of qualified readers or interpreters. The State Comptroller's Office has issued requirements covering approval of expenditure of general funds by State agencies in providing reasonable accommodation.

Reasonable accommodation is required for applicants, registrants, participants, employees, or applicants for employment unless providing the reasonable accommodation would cause undue hardship. Where any recipient refuses to provide a reasonable accommodation to an individual because of an undue hardship, the burden is on the recipient to prove the accommodation would result in such hardship. Before making a decision to deny an individual an accommodation based on undue hardship, the recipient must consider all factors listed in the definition of "undue hardship." The recipient must document in writing the reasons for any such denial and furnish a copy of the statement of reasons to both the individual who requested the accommodation and to the OCR. Even in such cases, the recipient must, to the extent possible, ensure that individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

## **Reasonable Modification**

As part of its routine assistance for recipient-level EO officers, the OCR instructs each recipient on the necessity for providing reasonable modification in policies, practices, or procedures. One-Stop Career Center disability specialists are also knowledgeable about these requirements. Modifications are required when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the program, activity, or service.

## **Employment-Related Provisions**

### **Evaluation of Job Qualifications**

All recipients must ensure that job qualifications used to select employees do not wrongfully exclude individuals because of disabilities. Review of selected position descriptions is included as part of the OCR nondiscrimination-program reviews.

### **Limiting Employment Medical Inquiries**

Pre-employment medical examinations or inquiries as to whether an applicant has a disability or questions regarding the nature and severity of any disability are generally prohibited. The U.S. Equal Employment Opportunity Commission has issued an ADA Enforcement Guidance Paper entitled, Pre-employment Disability-Related Questions and Medical Examinations. The guidance states there are only two exceptions in which a recipient is permitted to conduct a pre-employment medical examination or inquire about an applicant's disability:

1. A recipient may invite applicants to reveal details about any disabilities where the inquiry is part of a voluntary affirmative-action plan to increase the number of employees with disabilities or as part of remedial action to correct the effects of past discrimination, or
2. Where a recipient requires every applicant (whether having a disability or not) for employment

or employment-related training to undergo a pre-employment medical examination as part of its standard selection procedure. Any medical examination made under this exception must be made only as a separate, second step of the selection process and is allowed only after a conditional offer of employment/ participation has been made to the applicant.

Each examination made under exception (2) must be conducted by a physician qualified to make a functional assessment of the individual's residual capacity to perform the work/training. The results of the medical examination must be specific and objective so that it can be reviewed by independent medical evaluators and shall be transmitted to the applicant or employee at the same time as the employing official. The medical examination cannot be used to screen out qualified applicants with disabilities but may only be used to determine proper placement and reasonable accommodation.

The prohibition on medical inquiries or questions regarding a disability does not mean a recipient is prohibited from evaluating an applicant's ability to perform the job or participate in employment training. A recipient is always permitted to conduct performance testing which determines an applicant's physical and mental ability to perform job-related functions, so long as the inquiry is limited to measuring this ability and does not delve into medical examinations or questions regarding disabilities. However, performance testing or other measurements of job performance are only permitted where every applicant (whether having a disability or not) is given the same test.

Post-offer examinations and inquiries also are permitted to determine if an applicant can perform certain jobs effectively and safely. A post-offer medical examination or inquiry, made before an individual starts work need not focus on ability to perform job functions. Such inquiries and examinations themselves, unlike examinations/inquiries of employees, do not have to be "job related" and consistent with business necessity. A post-offer medical examination does not have to be given to all entering employees in all jobs, only to those in the same job category.

## **Confidentiality of Information**

Any information collected by a recipient through medical examination or through inquiries regarding disability or other information regarding the medical condition or history of an applicant must be kept confidential, and all recipients must take steps to guarantee the security of such information. Employee medical information must be kept on a separate form from other employment or training records and must be kept in a medical file in a separate locked cabinet apart from the location of other personnel or training files.

Access to confidential information is to be as follows:

1. Employing officials may obtain the information after making a conditional decision to make a job offer to an applicant or after the applicant was placed in a job pool or placed conditionally on an eligibility list.
2. Supervisors and managers may be informed regarding work restrictions of qualified persons with disabilities, or regarding necessary reasonable accommodations.
3. First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment.
4. Government officials may have access when investigating compliance with various disability-related laws.

The OCR makes periodic reviews of recipients' practices regarding confidentiality and recommends and monitors a corrective-action plan when recipients are not in compliance.

These requirements are also discussed in the following Department documents:

1. Policy on Program Accessibility and Services to Individuals with Disabilities;
2. Guidance Paper 042, Guidelines for Compliance with the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Section 188 of the Workforce Investment Act of 1998; and
3. Confidentiality of Records and Public Records Requests and Subpoenas.

### **State Level Public and Private Sector Coordination**

17 Florida Workforce regions are designated as Employment Networks by the Social Security Administration enabling their participation in the Federally funded Ticket to Work program. Through Ticket to Work, recipients of Social Security Disability Insurance and/or Supplemental Security Income receive priority assistance such as job search, career planning, and skill building through participating CareerSource Florida network career centers to enhance their efforts to find and retain a job and work towards becoming self-sufficient. Participating LWDBs receive funding for workforce services provided to "ticketholders" from the Social Security Administration.

With the Ticket to Work program implemented by 17 regions, the CareerSource Florida network has formally phased out the disability program Navigator, which CareerSource Florida funded in 2012-2013 and 2013-2014; however, some LWDBs have chosen to maintain the Navigator despite the funding cuts. The Navigator program funds "Navigators" (employment experts and advocates for people with disabilities), including those referred through the Ticket to Work program, in career centers. Navigators assist job seekers with disabilities with their job search, provide training and technical assistance to other career center staff that may assist people with disabilities, advocate for the hiring of people with disabilities to regional employers, and offer referrals to other community services. Florida's Navigator program was among the first of its kind in the nation. Each of Florida's 24 LWDBs has designated a disability specialist to serve as a point of contact for their organization's programs and services available to assist job seekers with disabilities.

### **Training**

Florida's Department of Management Services, working with State agency equal opportunity officers and training staff, developed online training modules for Department use as part of staff development and training. The module on the ADA is designed to provide State employees with a common knowledge and information base. Individual agencies may then build upon this base with agency-specific information.

Disability Navigators/Specialists assigned to each LWDB also receive and provide training to staff at the local level.

## **Resources Online**

The OCR has information available regarding services for individuals with disabilities through its website. Included are links to public and private sector resources at the Federal, State, and local levels.

## **Documentation by the LWDBs**

The LWDBs are responsible for ensuring that the following checklists are completed, as appropriate, and kept on file for each One-Stop Career Center and service provider site, and for the administrative offices:

1. Facility Accessibility Survey;
2. Information-Technology (IT) Equipment-Accessibility Checklist;
3. Software-Accessibility Checklist;
4. Web-Page Accessibility Checklist; and
5. WIOA Disability Checklist.

A timetable for correction of identified deficiencies must also be prepared and updated as appropriate. If a deficiency cannot be corrected, documentation that includes the reason or reasons should be prepared and kept on file. Alternative measures are to be identified to ensure that deficiencies in access do not become barriers to service or employment. These documents are requested and reviewed during nondiscrimination program monitoring and technical assistance visits, and the status of any findings is confirmed during the site visits.

## **Training**

The Department has implemented a multi-faceted training approach to ensure that information regarding equal opportunity requirements is distributed throughout the State. OCR conducts bi-annual training to the 24 LWDBs to provide updated guidance on the roles and responsibilities of local EO Officers, discrimination complaint process and procedures, and ensuring compliance with State and Federal equal opportunity laws.

## **Orientation**

Under the regulations, the Department and LWDBs are required to include a presentation for new participants and employees on rights under the nondiscrimination and equal opportunity provisions of WIOA.

The Department's human resources training manager regularly conducts classes addressing sexual harassment awareness, diversity, hostile work environment awareness, and the prevention of unlawful discrimination. Although the LWDBs have primary responsibility for sexual harassment awareness training for non-Department staff in their respective regions, the Bureau of Human Resource Management is available to assist in identifying training resources and has provided the training for LWDB and service-provider staff through special arrangements on occasion.

New employees are given a copy of the Equal Opportunity is the Law notice at the time of hire, and the Department's Orientation and Certification for New Hire/Transferee form includes an acknowledgement of receipt. Although this form was produced for Department use, it is available for adaptation and use by the LWDBs.

## **Onsite Monitoring**

During onsite monitoring visits, the State EO Officer discusses the elements of the Nondiscrimination Plan with the recipient-level EO Officer. The State EO Officer also provides technical assistance and guidance to each recipient-level EO Officer during onsite monitoring visits as needed.

## **Electronic and Telephonic Communication**

In addition to onsite monitoring, the OCR distributes information to the LWDBs electronically and telephonically. The OCR provides training for the local EO officers bi-annually and as requested by recipients. OCR prepares and distributes an EO officer training presentation and holds teleconferences to answer questions concerning equal opportunity and nondiscrimination requirements. The OCR also participates in the LWDB monthly management conference calls as needed.

<b>Element 4</b>
------------------

### **Data and Information Collection and Maintenance**

29 CFR 38.41 - 38.45

## **General Requirement**

Each recipient must collect data and maintain records necessary to determine whether the recipient is complying with the nondiscrimination and equal opportunity provisions of WIOA.

The OCR has access to the data warehouse for the WIOA Title I and Wagner-Peyser Programs. This enables the OCR to obtain, sort, and compare data and prepare reports in spreadsheet format for analysis by the LWDBs and within the Department.

For each entity or program under review, the OCR looks at data for a program year. Program participants who began receiving services prior to the current program year can be separated from participants who are also current-year applicants when appropriate for data analysis.

Data is grouped by workforce region, but may be disaggregated if appropriate (for example, to analyze services in an area that includes multiple centers serving diverse populations). If statistical studies of this data, using standard-deviation tests, reveal significant disparities between or among groups, the individuals who comprise the applicable data subset may be readily identified, and their records further reviewed as appropriate.

## **Demographic Information**

Demographic information (race/ethnicity, sex, age, and, where known, disability status) is collected for:

1. Applicants and registrants for programs and services, including data on eligibility determinations for applicants and registrants;
2. Program participants and service recipients; and
3. Program terminees.

Data on disability status, where known, are included. Data is collected using the 1998 Federal Office of Management and Budget guidelines for reporting ethnicity and race.

Limited English proficiency and preferred language of each applicant, registrant, participant, and terminee are also recorded.

Each LWDB must maintain, and submit to OCR upon request, a discrimination complaint log for complaints that allege discrimination on the basis(es) of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity. The log includes: The name and address of the complainant; the basis of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information.

## **Data Confidentiality**

Demographic information is stored in a manner that ensures confidentiality and is used only for the purposes of record keeping and reporting, determining eligibility, determining the extent to which the recipient is operating in a nondiscriminatory manner, or other use authorized by law. This requirement is also applicable to employment service and reemployment assistance program applicants/claimants and participants/beneficiaries; it is also applicable to applicants for employment with and employees of the recipient. Guidance on confidentiality of information is included in Policy 1.02: Confidentiality of Records and Public Records Requests and Subpoenas. Confidentiality is also addressed in Guidance Paper 042, Guidelines for Compliance with the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Section 188 of the Workforce Investment Act of 1998.

## **Data Analysis**

The OCR uses an initial two-tier approach to customer data analysis:

### Tier One

1. Sex,
2. Ethnic designation,
3. Racial designation, and
4. Age group.

### Tier Two (cross tabulation)

5. Sex by ethnic and racial designation,
6. Sex by age group, and
7. Age group by racial and ethnic designation.

Tier two analyses are performed as necessary, based upon the results of the tier one analyses, and are designed to allow compliance staff and management to more closely identify the groups about where there is potential concern. Additional analyses, using such factors as the customer's education level and whether or not the customer speaks English are also possible, based upon the data that are collected.

Data is available for additional analysis of services to: Native Americans, migrant and seasonal farm workers, individuals with disabilities (if known), military veterans, and applicants for and participants in target programs, such as nontraditional job training programs, programs for ex-offenders, or programs for which there are special requirements, such as in-school status or age-range limits imposed under Title I of the WIOA. Data on employment-related services for Welfare Transition and Job Corps program participants can be separated from similar services to other customers, if such analyses are deemed appropriate.

The data breakout by age separates customers and program participants aged 18 from those who are younger or older. This is done because some programs for youth serve participants from ages 14 to 18, while some adult programs also offer services to 18-year-old applicants. In this manner, 18-year-old applicants and participants can be included in the appropriate program analysis: youth or adult.

## **Retention of Information**

Service and employment-related files are kept for a minimum of three years from the close of the applicable program year or, if part of an investigation of a complaint of alleged discrimination, a minimum of three years from the completion of that investigation. This record retention requirement extends to information provided by applicants for service and information about eligible applicants/registrants who do not proceed with program enrollment. Files are kept longer if requested by the Director of the CRC. Information contained in the files is made available only to authorized individuals, in accordance with applicable Federal and State regulations.

Employment-related data are also maintained for a minimum of three years. Applicants for employment are asked to voluntarily indicate their sex, ethnic and racial categories, age, and if applicable, disability. Applicants and employees are made aware, by pamphlet, poster, orientation sessions, and in calls and letters to schedule appointments, that reasonable accommodation for a disability is available upon request. Demographic information for applicants for employment and employees is maintained separately from another applicant or employee information but can be cross-referenced as necessary.

## **Census Data**

The LWDBs have a language-data resource at their disposal in materials based on the most recently available census, provided by USDOL.

## **Medical Information**

Confidentiality of medical information is addressed in the policy on Program Accessibility and Services to Individuals with Disabilities.

## Element 5

### Affirmative Outreach

29 CFR 38.40

#### General Requirement

Recipients of WIOA funds must take appropriate steps to ensure they are providing affirmative outreach to their WIOA Title I financially assisted programs and activities. LWDBs are instructed to make reasonable efforts to advertise and provide services to members of protected classes.

#### Outreach and Recruitment

Recipients must develop outreach and recruitment programs designed to include both sexes, various racial and ethnic groups as defined in the Federal Office of Management and Budget guidelines, individuals with disabilities, and individuals in various age groups.

The OCR assists recipients with outreach and recruitment plans that will broaden the composition of their applicant, registrant, and participant pools. The recommended outreach and recruitment strategies include, but are not limited to the following:

1. Providing recipients with a list of media and organizations that serve or target specific minority or women's groups and working with regional workforce boards to update, publicize, and distribute the lists of such groups;
2. Advertising and publishing recipients' programs and activities in media such as newspapers and radio programs that target specific populations;
3. Sending notices regarding openings in the programs and activities, as well as information on how to apply for such programs and activities, to schools, universities, colleges, and technical schools;
4. Sending notices and periodic articles and reports to community service groups that serve various populations;
5. Developing brochures, posters and public-service announcements, and other publicity materials, including provision of written or printed materials in alternative formats and in languages other than English, as appropriate; and
6. Consulting with community service organizations and groups regarding ways in which recipients may improve outreach and services to special groups the organizations serve in the area.

Recipients must ensure appropriate steps have been taken to communicate with individuals with disabilities and that such communication is as effective as communications with others. In addition, recipients should be aware of resources available to assist individuals with limited English proficiency. For example, approved vendors for translation services are listed on the MyFloridaMarketPlace website.

Recruitment materials and informational publications must include the required tag lines, which indicate that the program or activity is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities." This requirement applies to information provided in either written or oral form, electronically, or on paper.

As part of the onsite monitoring, the OCR reviews brochures and other materials for the tag lines and

a TTY /TDD or relay-service number where telephone numbers are included. These requirements may be met either by including appropriate inserts in existing materials and publications or by revising and reprinting such materials.

During desk and site reviews of LWDBs, the OCR evaluates the success of efforts to broaden the composition of the applicant, registrant/claimant, and participant pools. The OCR identifies any groups or populations that are being underserved and works with the recipient to develop plans to address significant findings with regard to universal access.

Guidance Paper 042, Guidelines for Compliance with the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and Section 188 of WIOA enumerate specific requirements relating to equal access and equal opportunity. The guidelines include information on requirements for communicating in alternative formats and address confidentiality of medical information.

The OCR has included on its website a list of potential resources for information on accommodation or modification to programs and activities to meet the special requirements of individuals with disabilities.

For Department training needs, the Department of Education's Division of Blind Services Braille Library provides audio tapes to its clients, within reason, regardless of where the client is employed or attending training. Contractual arrangements with the Division or other groups providing services to the blind, such as the Centers for Independent Living or Lighthouse for the Blind, have been identified as potential resources to provide special materials as needed, within a reasonable period of time, under State purchasing procedures.

### **Limited English Proficiency and Alternative Formatting**

The Department continues to develop and implement programs to ensure access to information and services for individuals who have limited English proficiency or who, because of disability, require a form of communication other than spoken English. Resources for assisting individuals with limited English proficiency are provided on the Department's website.

On its main webpage, the Department added links to instructions in English, Spanish, and Creole for Reemployment Assistance claimants. Reemployment Assistance claims agents and adjudicators provide services in English, Spanish, and Creole. Online Reemployment Assistance applications are also available in those languages. For customers needing assistance in other languages, the Department has a contract to provide telephone translation relay services in virtually any language.

Reemployment Assistance appeals decisions are available in English, Spanish, and Creole depending on which language the claimant selects as their primary language.

The Equal Opportunity is the Law notice is available in English, Spanish, and Creole. The notice is also available in Braille at each One-Stop Career Center.

The Interpretive Services poster has been distributed throughout the State. There are sufficient copies for all One-Stop Career Centers, as well as for distribution to WIOA-program service providers. The poster states the following in 21 languages in addition to English:

Attention. If you do not speak English, or if you are deaf, hard of hearing, or sight impaired,

you can have interpretive and translation services provided at no charge. Please ask for assistance.

On the OCR website are cards for use in identifying any of 35 languages besides English that customers may read or speak. The cards state:

Mark this box if you read or speak (name of language).

Data on languages spoken at home, based on the U.S. Census Bureau's 2006-2008 American Community Survey, is a key element in the Department's statewide assessment of significant LEP populations. Following English, the top two languages spoken at home in Florida according to the Survey are:

1. Spanish: Approximately 18.8% of Florida's population, and
2. French Creole: Approximately 1.7% of Florida's population.

## **Element 6**

### **Governors' Oversight Responsibilities Regarding Recipients' Recordkeeping**

29 CFR 38.53

During onsite visits, the State EO Officer ensures that each recipient collects data and maintains records in a manner consistent with the nondiscrimination and equal opportunity provisions of WIOA. The State EO Officer reviews each LWDB's file maintenance protocols and makes recommendations for improvement to ensure compliance.

## **Element 7**

### **Complaint Processing Procedures**

29 CFR 38.72 - 38.73

Section 188 of WIOA states:

Discrimination on the basis of race, sex, color, religion, national origin, age, disability, political affiliation or belief, and (for beneficiaries only) citizenship or participation in a WIOA program is prohibited.

This element describes procedures for handling discrimination complaints pursuant to the nondiscrimination regulations implementing Section 188. The procedures discussed here cover only discrimination complaints. The OCR does not handle program complaints, grievances, or any other complaint that does not allege discrimination based on one of the prohibited bases listed above.

### **Filing and Investigating Discrimination Complaints**

Anyone wishing to file a formal discrimination complaint, i.e., a written, signed complaint, under the provisions of WIOA may file that complaint with either the OCR or USDOL's CRC.

When the OCR conducts an investigation, it acts as a neutral, unbiased fact finder and is not an advocate for either the complainant or the respondent. The OCR conducts an impartial investigation to determine

whether or not there is reasonable cause to believe the respondent has violated a nondiscrimination law.

If a person wishes to file a discrimination complaint, the OCR will provide the individual with the appropriate complaint form and instructions. Persons wishing to file a complaint may also do so using a photocopy of the OCR complaint form obtained directly from a recipient or other source, including the OCR website. The OCR will continually update the form to include all information requirements contained in the most recent USDOL complaint form.

An OCR complaint filed under Federal law must be filed in writing within 180 days of the alleged violation unless the Director of USDOL's CRC has extended the deadline for filing. If jurisdiction exists, the OCR will conduct a fact-finding investigation of the complaint and will issue a written decision stating whether or not there exists reasonable cause to believe a violation of a nondiscrimination law has occurred. This report will identify each issue raised in the complaint and contain a determination on each issue and an explanation of the reasons underlying each determination.

### **Alternative Dispute Resolution: Mediation**

Mediation is offered as an alternate means of resolving the discrimination complaint that allows the parties to avoid the traditional investigative or litigation process. In mediation, a neutral third party, trained in dispute resolution, listens to both the complainant and respondent and then encourages them to reach a voluntary, negotiated settlement of the charge of discrimination. Mediation gives the parties a chance to discuss the issues raised in the complaint, clear up misunderstandings, find areas of agreement, and incorporate those areas of agreement into solutions. Mediation is voluntary on the part of the complainant.

### **Intimidation and Retaliation Prohibited**

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has: filed a complaint; opposed a practice prohibited by the nondiscrimination and equal-opportunity provisions of the WIOA; or furnished information, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal-opportunity provisions of WIOA. The sanctions and penalties contained in 29 CFR Part 38 may be imposed against any recipient who engages in any such retaliation or intimidation or fails to take necessary steps to prevent such activity.

### **Record Keeping**

Records must be maintained for all complaints and related actions for a period of three years from the date of closure of the complaint and must be made available to the OCR, and/or the CRC upon request. All complaints of discrimination and related materials shall be handled in a guarded and discreet manner; the name of the complainant shall be kept confidential where possible.

### **Dissemination of Procedures and Forms**

The OCR's complaint investigation and mediation procedures are posted on the OCR's website and are

available by contacting the OCR. The complaint form and filing instructions are available in English, Spanish, and Creole.

## **Complaint Investigation and Mediation Program Timelines**

The complaint processing procedures include time frames for the several phases in the complaint investigation and mediation processes.

Recipients determined to be in violation of the nondiscrimination portions of WIOA as a result of a discrimination complaint or a monitoring review are required to take prompt corrective and/or remedial action. A violation may range in seriousness from a technical violation to discrimination. Technical violations may take the form of failure to include required language in assurances, failure to post the required equal opportunity notices, etc. The more serious discrimination violations include findings of disparate treatment, disparate impact, and failure to provide a reasonable accommodation. Sanctions may be imposed where voluntary compliance cannot be accomplished.

### **Corrective Action**

Corrective action means prompt action designed to completely correct the violation and bring the recipient into compliance. Corrective actions must be appropriate for the violation identified and must be designed to end discrimination and/or redress the specific violations. Any corrective action must be narrowly tailored to resolve the specific violation found and must assure that discrimination does not recur. Corrective action may also require remedial action. Where appropriate, the corrective action may also include educating individuals responsible for the violation.

### **Remedial Action**

Remedial action means an action designed to make whole an individual or individuals who suffered injury or loss because of unlawful discrimination. Anyone victimized by discriminatory acts or policies must be restored to the status he or she would have received had the discrimination not occurred. Remedial action can include either retroactive relief, prospective relief, or both.

1. For employees of the recipient, retroactive relief may include, for example, back pay, front pay, retroactive benefits, other monetary relief, reinstatement, promotion, disciplinary action, retroactive seniority, transfer, or training. Monetary relief associated with remedial action cannot be paid from Federal funds. For participants, it may include, for example, accelerated, priority or special services, or expanded placement or referral services, or the provision of any service discriminatorily denied.
2. Prospective relief may include, for example, training, change of policy, development of new policy, communication, training on policy communication, additional record keeping, accommodation, personnel changes, or changes to physical facilities.

### **Procedures**

The need for a remedy arises in connection with a finding of discrimination as part of a complaint investigation or a finding of noncompliance as part of a compliance review. Recipients will be notified, in writing, of any finding of discrimination and/or noncompliance via a document called an Initial Determination. The Initial Determination will specifically list any findings and also spell out the steps the recipient must take to accomplish voluntary compliance through a corrective action plan. The recipient

may agree to the terms of the corrective action plan as proposed by the OCR or may propose alternatives and informally negotiate the terms of any plan until the plan is acceptable to both the recipient and the OCR.

For each corrective action, a time frame must be established that is the minimum time necessary to completely correct the violation. In the case of a finding of discrimination, the corrective action plan must provide, where appropriate, for retroactive relief and prospective relief.

Where a recipient does not accept the terms of a corrective action plan as proposed by the OCR and is unable through informal negotiations to achieve a plan it finds acceptable, the OCR will issue a document called a Final Determination. The Final Determination shall include:

1. The specific act(s) constituting the violation;
2. A copy of the proposed conciliation agreement;
3. A chronology of the State EO Officer's conciliation efforts;
4. A description of any proposed sanction(s); and
5. a statement that the recipient has a right to request a hearing.

A copy of the Final Determination will be sent to the recipient.

A recipient may appeal the Final Determination by requesting a hearing to be conducted by the Department's Secretary (or designee). If the recipient does not request a hearing in writing within 30 days after receiving the Final Determination, the Final Determination will become the final decision of the Department's Secretary, and any sanctions listed in the Final Determination may be imposed.

If the recipient does request a hearing, any sanctions called for in the Final Determination may be imposed only after a hearing has been held and a final written decision on the validity of each finding and the appropriateness of each sanction called for in the Final Determination has been made. Discretion is retained to impose temporary sanctions on an emergency basis where extreme circumstances warrant.

Except in emergency situations, no sanction shall be imposed against a recipient until the following conditions have been met.

1. The OCR has made a good-faith effort to resolve the matter through informal means and has determined that compliance will not be achieved voluntarily;
2. The Governor's liaison (Department Secretary or designee) approves the need for and the nature of the proposed sanction(s); and
3. The recipient has received the Final Determination listing the proposed sanctions and has either not exercised or has exhausted its appeal rights.

A copy of the Final Decision will be provided to the Director of the Civil Rights Center (CRC) upon final decision.

## **Monitoring**

Where a corrective action plan is established, the recipient will report in writing to the OCR every 30 calendar days regarding its progress on the plan until all commitments made in the plan are fulfilled. Each 30-day progress report should indicate the status of each item in the corrective action plan, what

actions the recipient has taken during the previous 30 calendar days toward achievement of the plan, what remains to be done, and a schedule listing the dates when each remaining action is to be completed.

## Sanctions

A sanction is any official action implemented to penalize or censure a non-complying recipient. The ultimate sanction available is to revoke approval of part or the entire local plan and cut off funding to the recipient. Sanctions that may be imposed are listed in the table below.

## Potential Sanctions

- 
- (1) Deferral of action on the recipient's applications for new WIOA financial assistance.
  - (2) Referral to the CRC or the Attorney General for appropriate legal action.
  - (3) Disallowance of selected costs (e.g., salaries).
  - (4) Partial funding.
  - (5) Temporary suspension of financial assistance until compliance is achieved.
  - (6) Offsets.
  - (J) Legal action under state contract law, based upon the recipient's assurance of compliance with the WIOA, Federal regulations, State law and Governor's directives.
  - (8) Any other actions as may be provided by law.
- 

### Notes:

1. This listing of sanctions should not be considered conclusive or absolute, since the unique circumstances surrounding a civil rights or equal opportunity issue may vary.
2. Monetary relief cannot be paid from Federal funds.

## Element 8

### Governor's Oversight and Monitoring Responsibilities for State Programs

29 CFR 38.51 - 38.53

## General Requirement

The Governor is responsible for oversight of all WIOA Title-1 financially assisted State programs. The Department's OCR conducts annual monitoring of the 24 LWDBs by desk reviews and onsite visits. The OCR currently conducts onsite monitoring visits on a three-year cycle, unless the OCR finds there is a need for a more frequent review. Factors that may require a more frequent review in the onsite review schedule include:

1. Results of the service-delivery data analyses;
2. Findings from past State-level reviews;
3. Findings from Federal-level reviews; and
4. Requests from the LWDBs for technical assistance.

The OCR has visited each LWDB for onsite monitoring during the previous monitoring periods.

## **Phase One: Planning and the Desk Review**

Phase one takes into account:

1. Date of the last review;
2. Number and nature of complaints; and
3. Input from Federal compliance agencies, interested individuals, or community groups regarding the entity or program that is under review.

The terms of any conciliation agreement and the nature of any deficiencies found during a previous review are also factors affecting review scheduling.

The desk review may include:

1. Review of the LWDBs strategic five-year plan, as provided by the board to the Office of One-Stop and Program Support;
2. Analysis of computer-based applicant and customer data;
3. In-depth analyses of data on program service delivery;
4. Review of reports from previous nondiscrimination-program reviews;
5. Review of discrimination complaint files; and
6. Review of the LWDB's website for compliance with the nondiscrimination requirements.

## **Phase Two: The Site Review**

Phase two provides the opportunity to clarify information from the desk review and to ensure program operation in accordance with the applicable regulations and the State's Nondiscrimination Plan. The OCR's primary contact during this phase of the review is the LWDB's EO Officer. The site review may consist of the following:

1. Entrance conference to include discussion of the results of the desk review;
2. File review;
3. Staff interviews;
4. Customer surveys and interviews;
5. Facility-accessibility survey review and assessment;
6. Review of customer information materials, including materials in alternative formats and languages other than English;
7. Review of community contact programs;
8. Observation of entity activities;
9. Entity complaint file review;
10. Discussion of program intake and assessment processes, including provisions to serve individuals with disabilities or who are non-English speaking;
11. Review of compliance-monitoring reports prepared by or under contract to the local workforce investment boards;

12. Review of the program, equipment, and facility accessibility surveys prepared per Guidance Paper 042, Guidelines for Compliance with the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Section 188 of the Workforce Investment Act of 1998;
13. Review of facility-accessibility surveys for the offices under the administrative entity; and
14. Exit conference to include discussion of preliminary findings, if any.

For each significant disparity noted in the data analyses performed during the desk review, the OCR asks the LWDB to explore the cause of the disparity to determine if the disparity is caused by a neutral practice or procedure. If so, there must be a valid program reason for the practice, or the practice must be discontinued. The OCR also asks the LWDB to determine if the disparity is caused by a difference in treatment. If so, management must articulate a nondiscriminatory reason for such practice. Any explanation must be founded upon the record and not sheer speculation.

Contracts, assurances, and similar agreements are reviewed to ensure that they are both nondiscriminatory and contain the prescribed language regarding nondiscrimination and equal opportunity.

Title-I program participants are selected at random for interview by the OCR.

The administrative facilities are checked by the OCR, and the results of this check are compared to the facilities survey conducted by the LWDB. The LWDB is responsible for ensuring facility-accessibility review and deficiency correction by the One-Stop Operators and Service Providers. The OCR spot checks those facilities.

The OCR uses portions of NASWA'S Guide to Equal Opportunity Monitoring Reviews for use in conducting State-level reviews. The LWDBs are encouraged to adapt any or all of these materials for local use.

Time permitting, technical assistance on program-related matters may be provided during the site visit. Technical assistance may also be scheduled for a future date or provided by conference call.

### **Phase Three: Report Preparation and Compliance Monitoring**

Phase three, report preparation and compliance monitoring, concludes the review process. The draft report includes suggested corrective action and allows for alternative suggestions and comments in response. Any necessary Corrective Action Plan (CAP) should include a timetable and any necessary documentation regarding deficiency correction. The CAP should be submitted to the OCR within 60 calendar days of receipt of the report.

Upon acceptance of the CAP, a letter to that effect is sent to the Chief Executive Officer (CEO) of the LWDB. The letter will include one of two determinations:

1. Compliance; or
2. Compliance with deficiencies.

A determination of "compliance" means that no deficiencies were identified or that corrective action has been taken since the report was issued. A finding of "compliance with deficiencies," means that some relatively minor equal opportunity program-related problems remain.

If the CAP is unacceptable, a letter is sent to the CEO requesting additional information or clarification. The letter states why the CAP is unacceptable and includes substantiating information.

## **Conciliation**

Where there are serious equal opportunity violations or major deficiencies, an initial determination of noncompliance is issued, and a written conciliation agreement is required. Among other things, an initial determination:

1. Identifies the nondiscrimination program violation;
2. Cites the section of the regulations that has been violated; and
3. Describes the means by which the entity can be brought into compliance.

The initial determination also affords the entity the opportunity to show that the basis of the finding was erroneous.

An entity that prefers to complete all corrective actions within the 60-day time limit rather than sign a conciliation agreement may do so provided that the deficiency does not involve discrimination and that the entity submits a written assurance that the deficiency has been corrected.

The entities that administer the regional programs are responsible for conducting monitoring reviews of recipients within their service areas. The OCR will review the monitoring reports and spot checks the findings during field visits in the regions.

## **Documentation by the LWDBs**

Copies of the monitoring reports for recipient programs, prepared by or for the LWDBs, are reviewed by the OCR during the site review.