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| **Equal Opportunity and Accessibility Policy**  **And**  **Discrimination Complaints Procedure** | Policy No. | 1 |
| **Greater Nebraska Workforce Development Area**  550 South 16th Street  Lincoln, NE 68508  402.471.9878  [ndol.greaternebraska@nebraska.gov](mailto:ndol.greaternebraska@nebraska.gov) | Effective Date | 7/1/2017 |
| Supersedes |  |
| Revision Date |  |
| Revision No. |  |
| Approval | NDOL |

**State of Nebraska, Department of Labor**

**Equal Opportunity and Accessibility Policy**

**And**

**Discrimination Complaints Procedure**

The basis for the State of Nebraska Department of Labor (NDOL) Equal Opportunity Policy and Discrimination Complaint Procedure is 29 CFR Part 38, Implementation of the Nondiscrimination and Equal Opportunity (EO) Provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA); Final Rule, as recorded in the [Federal Register](https://www.federalregister.gov/documents/2016/12/02/2016-27737/implementation-of-the-nondiscrimination-and-equal-opportunity-provisions-of-the-workforce-innovation).

**Purpose**

To establish Equal Opportunity provisions of Title I, Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and define processes for filing Discrimination Complaints for the prompt and equitable resolution of such complaints.

**Applicability**

Section 188 of the Workforce Investment Act of 1998 (WIA) prohibits discrimination against individuals who apply to, participate in, work for, or come into contact with programs and activities that receive financial assistance from DOL, or, under certain circumstances, from other Federal agencies or are otherwise part of the American Job Center (AJC) delivery system, including State and Local Workforce Development Boards; LWDA grant recipients; One-stop operators; Service providers, including eligible training providers; On-the Job Training (OJT) employers; Job Corps contractors and center operations; Job Corps national training contractors; Outreach and admissions agencies, including Job Corps contractors that perform these functions, Placement agencies, including Job Corps contractors that perform these functions; Other National Program recipients.

WIOA authorizes the one-stop career center (also known as American Job Center) service delivery system and six core programs, including:

* WIOA Title I (Adult, Dislocated Worker and Youth formula programs);
* Adult Education and Literacy Act programs (Adult Basic Education programs);
* Wagner-Peyser Act employment services; and
* Rehabilitation Act Title I programs (Vocational Rehabilitation).

In addition to the core programs, for individuals with multiple needs to access the services, the following partner programs are required to provide access through the one-stops: Career and Technical Education (Perkins); Community Services Block Grant; Indian and Native American Programs; HUD Employment and Training Programs; Job Corps, Local Veterans’ Employment Representatives and Disabled Veterans’ Outreach Program, Temporary Assistance for Needy Families (TANF), Trade Adjustment Assistance Programs, Unemployment Compensation Programs, and YouthBuild.

**Equal Opportunity Policy**

Recipients of financial assistance under Section 188 of WIOA (for the purposes of this policy, the State of Nebraska is the “recipient”) are prohibited from discriminating against members of the public, applicants for services, registrants, participants, claimants, applicants for employment within the WIOA job system, and WIOA financed-employees on the basis of *race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status an gender identity), National origin (including limited English proficiency), age, disability, political affiliation or belief,* and for beneficiaries applicants, or participants only, on the basis of *citizenship status*, or participation in a program or activity that receives financial assistance under Title 1 of WIOA.

**Accessibility**

**Universal Access**

As defined in the Final Rule in 29 CFR Section 38 of the Federal Register, implementing the nondiscrimination and equal opportunity provisions of Section 188 of WIOA, recipients must take appropriate steps to ensure universal access to WIOA Title I financially assisted programs and activities by doing the following:

1. Implementing an outreach and recruitment plan to solicit participation of all potentially WIOA Title I eligible reportable individuals in the entire locale;
2. Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community service groups;
3. Considering a pool of individuals for participation that includes members of both sexes, various racial and ethnic age groups, and individuals with disabilities;
4. Establishing a hiring and eligibility process that is accessible to qualified individuals with disabilities;
5. Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations;

**National Origin and/or Limited English Proficiency**

In providing any aid, benefit or training under WIOA Title I-financially assisted program or activity, an individual must not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination based on national origin, including treating individuals adversely because they (or their families or ancestors) are from a particular country or part of the world, because of ethnicity or accent (including physical, linguistic and cultural characteristics closely associated with a national origin group) or because the individual is perceived to be of a certain national origin.

A recipient must take reasonable steps to ensure meaning full access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity. Reasonable steps generally may include, but are not limited to:

1. An assessment of an LEP individual to determine language assistance needs;
2. Providing oral interpretation or written translation of both hard copy and electronic materials in the appropriate non-English languages;
3. Ensuring that every program delivery avenue (e.g., electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides;
4. Ensuring language assistance services providing oral interpretation or written translation are accurate, provided in a timely manner (e.g., provided at a place and time that ensures equal access and avoids delay or denial) and free of charge;
5. Providing notice of the existence of interpretation and translation services;

**Disability**

“Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

In compliance with Section 504 of the Rehabilitation Act of 1973, as amended, Title 29 CFR Part 38, recipients must provide programmatic and physical accessibility to individuals with disabilities.

A recipient, when providing aid, benefits, or services under WIOA Title I-financially assisted program or activity, must not directly or through contractual, licensing, or other arrangements, on the grounds of disability:

1. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
2. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded of others;
3. Provide a qualified individual with a disability with any aid, benefit, service or training 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. Provide different, segregated or separate aid, benefit, service, or training to individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;
5. Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
6. Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

***Programmatic Accessibility***

All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which includes:

1. Ensuring accessibility to their training programs, activities and services in the most integrated setting appropriate to the needs of qualified individuals with disabilities, including employment tests or other selection criteria used by recipient that do not screen out individuals with disabilities, and training programs accessible to individuals with visual, hearing, or speech impairments;
2. Providing means for individuals with disabilities to receive information about availability of facilities accessible to them;
3. Making reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIOA Title I-financially assisted service, program, or activity;
4. Providing auxiliary aids, services and reasonable accommodations to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs).

***Physical Accessibility:***

All WIOA Title I-financially assisted programs and activities must be physically accessible:

1. No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient’s service, program, or activity or be subjected to discrimination by any recipient because the recipient’s facilities are inaccessible or unusable by individuals with disabilities.
2. Facilities must meet ADA [Standards](https://www.ada.gov/2010ADAstandards_index.htm) for Accessible Design, including, but not limited to:
   1. Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, bucked or uneven concrete walkways, loose gravel);
   2. Signage at the primary entrance to each of their inaccessible facilities, directing individuals to a location at which they can obtain information about accessible facilities;
   3. The international symbol for accessibility at each primary entrance of an accessible facility;
   4. Building entrance doors that can be opened with one hand;
   5. Accessible information at public counter or reception areas;
   6. Facility elevators that are accessible from the primary entrance, meeting the above criteria;
   7. Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
   8. At least one accessible public telephone per floor;
   9. Accessible meeting rooms with Braille symbols at an accessible height;
   10. Facility restrooms that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet seat should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, seat cover dispensers, etc.);
   11. Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

All ADA technical requirements must be applied during the design, construction, and alternation of buildings and facilities.

***Reasonable Accommodations and Reasonable Modifications:***

With regard to any aid, benefit, service, training, and employment, 29 CFR Section 38.8 states that a recipient must do the following:

1. Provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship on business operations;
2. Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIOA Title I-financially assisted service, program, or activity.

29CFR Section 38.4 defines “undue hardship” as significant difficulty or expense incurred by a recipient when considered in light of certain factors. These factors include, but are not limited to:

1. The nature and net cost of the accommodations needed;
2. Overall financial resources of recipient;
3. Type of operation(s) of recipient;
4. The number of persons aided, benefited, served, trained, or employed;
5. The impact on the ability of other participants to receive aids, benefits, services, or training or of other employees to perform their duties;
6. The impact on the facility’s ability to carry out its business or mission.

The definition of “fundamental alteration” incorporates the concept of “undue financial and administrative burdens” in 29 CFR Part 38 and means:

1. A change in the essential nature of a program or activity as defined in 29 CFR Part 38.4, including but not limited to an aid, service, benefit, or training; or
2. A cost that the recipient can demonstrate would result in an undue burden.

If a recipient believes that the proposed modification would cause undue hardship or would fundamentally alter the program, the recipient has the burden of proving that compliance would result in such hardship and alternation. The recipient must make the decision that the accommodation would cause hardship or result in such alteration only after considering all factors listed in the definitions of “undue hardship” and “fundamental alternation.” The decision must be accompanied by a written statement of the recipient’s reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual(s) who requested the accommodation.

If a requested accommodation would result in “undue hardship” or a modification would result in a “fundamental alteration”, the recipient must take any other action that would not result in such burden or alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

*Communications with Individuals with Disabilities and Auxiliary Aids or Services:*

Appropriate steps must be taken to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are *as effective as communications with others*.

“Companion” means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training program, or activity of a recipient, who along with such individual, is an appropriate person with whom the recipient should communicate.

To afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIOA Title I program or activity a recipient must furnish appropriate auxiliary aids or services where necessary to ensure *effective communication*:

1. A recipient must give primary consideration to the requests of individuals with disabilities;
2. Appropriate auxiliary aids and services must be provided in accessible formats and in a timely manner;
3. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual and the context in which the communication is taking place;
4. A list of auxiliary aids and services is available in 29 CFR Section 38.4, and includes:

With respect to information and communication technology, the final rule specifies that “when developing, procuring, maintaining, or using electronic and information technology, a recipient must utilize electronic and information technologies, applications, or adaptations which:

1. Incorporate accessibility features for individuals with disabilities;
2. Are consistent with modern accessibility standards such as Section 508 standards and W3C’s Web Content Accessibility Guidelines (WCAG) 2.0AA; and
3. Provide individuals with disabilities access to, and use of, information, resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits provided by the electronic and information technologies are provided to individuals with disabilities in an equally effective and equally integrated manner.

Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and/or members of the public, text telephones (TTYs) or equally effective telecommunications systems must be used to communicate with individuals who are deaf or hard of hearing or have speech impairments. When a recipient uses an automated-attendant system, including but not limited to voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems. A recipient must respond to telephone calls from a telecommunications relay service established under Title IV of the ADA in the same manner that it responds to other telephone calls.

Recipients must not require an individual with a disability to bring another individual to interpret or facilitate communication except in specified circumstances or rely on a on an adult accompanying an individual with a disability to interpret or facilitate communication except in specified circumstances or rely on a minor child to interpret or facilitate except in specified circumstances.

***Service Animals:***

Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of a recipient’s facilities where members of the public, participants in services, programs or activities, beneficiaries, registrants, applicants, eligible applicants/registrants, applicants for employment and employees, or invitees, as relevant, are allowed to go. Exceptions to this policy include:

1. Recipients may ask an individual to remove the service animal from the premise if
   1. The animal is out of control. The service animal must be on a harness, leash, or other tether, unless
      1. The handler is unable because of a disability to use a harness, leash, or other tether, or
      2. The use of the same or the use would interfere with the service animal’s safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler’s control (e.g., voice control, signals, or other effective means).
   2. The animal is not housebroken.
2. If a recipient properly excludes a service animal because of the above-listed reasons, the recipient must be given the individual with a disability the opportunity to participate in the WIOA Title I-financially assisted service, program, or activity without having the service animal on the premises.
3. Where an employer recipient, after an individualized assessment, can demonstrate, that the presence of the service animal in a food preparation area being used by an employee, applicant or beneficiary, presents a direct threat to health or safety that cannot be eliminated or reduced by a reasonable accommodation to the employee, applicant or beneficiary;

The recipient is not responsible for the care of supervision of the service animal.

The recipient must not ask about the nature or extent of a person’s disability, but may make two inquiries to determine whether an animal qualifies as a service animal:

1. A recipient may ask if the animal is required because of a disability and what work or task the animal has been trained to perform.
2. A recipient must not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.
3. A recipient may not make these inquiries when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person’s wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

In accordance with 29 CFR Sections 38.54, the NDOL/State EO Officer monitors local areas for nondiscrimination and equal opportunity compliance as required by WIOA provisions and related regulations.

**Procedures for Discrimination Complaints**

**And**

**Investigation and Resolution of Discrimination Complaints**

**Purpose**

To provide procedures for processing complaints that allege a violation of the nondiscrimination and equal opportunity provisions of Title VI of the Civil Rights Act of 1964, as amended; Title IX, Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1982, as amended; Title II of the Americans with Disabilities Act of 1990, and their implementing regulations; and to provide procedures for investigating and resolving discrimination complaints in accordance with Part 38, Title 29, Code of Federal Regulations, “Implemention of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act.

**Who May File**

Any person, or any specific class of individuals, that has been or is being discriminated against on the basis of *race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status an gender identity), National origin (including, limited English proficiency), age, disability, political affiliation or belief, citizenship status*, may file a written complaint, either by him/herself or through a representative.

**Where to File**

The complainant may file with either the State of Nebraska/Nebraska Department of Labor (State/NDOL) EO Officer or the Civil Rights Center (CRC) in Washington DC. Written complaints may be mailed to either the State/NDOL EO Officer or the CRC at the addresses listed below.

State of Nebraska, Department of Labor The Director, Civil Rights Center

Equal Opportunity Officer US Department of Labor

PO Box 94600 200 Constitution Ave., NW, Room N-4123

Lincoln, NE 68509-4600 Washington, DC 20210

Complainants may request a meeting with the State/NDOL Labor EO Officer by calling 402-471-9000. Individuals with speech and/or hearing impairments may call 1-402-471-2786 or 1-800-833-7352.

Filing a complaint with the State/NDOL does not affect the complainant’s right to file a complaint with the CRC if he/she is not satisfied with the resolution provided by the State/NDOL.

**Timeliness for Filing and Requirements**

To be accepted, a complaint must:

1. Be filed in timely fashion (within 180 days of the alleged violation);
2. Fall under the State/NDOL’s jurisdiction; and,
3. Have apparent merit; i.e. whether the allegation, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA Section 188.

**How to File**

1. State/NDOL EO Officer – A complaint may be filed at the state level by competing and submitting the Discrimination Complaint Information Form available at all AJC one-stops, or from any AJC partner or affiliate, or from any State/NDOL career centers or from the NDOL Administrative Office. The form is also available at <https://dol.nebraska.gov>.
2. CRC – A complaint may be filed by submitting CRC’s Complaint Information and Privacy Act Consent Forms, which may be obtained either from the CRC or by contacting the State/NDOL EO Officer. Forms are available electronically on the CRC’s web site, <https://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>, and in hard copy via postal mail upon request. The latter requests may be sent to CRC at the address listed above.
3. Complaints must be filed in writing and must contain the following information:
   1. The complainant’s name, mailing address, and if available, email address, and telephone number (or other means of contacting the complainant);
   2. The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination, i.e., WIOA program employer, employee, vendor, provider, training facility, etc.).
   3. A description of the complainant’s allegations. The description must include enough detail to allow the State/NDOL EO Officer or the CRC to determine whether:
      1. State/NDOL EO Officer or the CRC as applicable has jurisdiction over the complaint;
      2. The complaint was filed in time; and
      3. The complaint has merit; in other words, whether the complainant’s allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA Section 188 or 29 CFR, Part 38;
      4. The written or electronic signature or signature of the complainant or the written or electronic signature of the complainant’s representative.
   4. If the complaint is for disability discrimination, include information that will identify complainant as an “individual with a disability”, which means:
      1. Has a physical or mental impairment which substantially limits one or more major life activities;
      2. Has a record of such impairment;
      3. Is regarded as having such impairment.

**Procedures for Investigation and Resolution of Discrimination Complaints**

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

1. By federal regulation, the State/NDOL EO Officer shall respond to the complaint within 90 days of receipt by issuing a Notice of Final Action.
2. Upon receipt of the discrimination complaint form, the State/NDOL will provide written notice within 10 working days from the date of receipt. The notice will include the following:
   1. Acknowledgement that the discrimination complaint form has been received.
   2. Notice that the complainant has the right to be represented in the complaint process and other rights;
   3. Notice of rights contained in 29 CFR, 38.35;
   4. Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages;
   5. A written statement of the issue(s) provided to the complainant, including the following information:
      1. A list of the issue(s) raised in the complaint;
      2. A statement regarding each issue as to whether the State/NDOL will accept or reject the issue(s) and reasons for each rejection;
   6. A period of fact finding or investigation of the circumstances underlying the complaint;
   7. An offer of Alternative Dispute Resolution (ADR) or mediation and an explanation of the ADR process. The choice whether to use ADR or the customary process rests with the complainant;
   8. Notice that if by the end of 90 days the State/NDOL has not completed its processing of the complaint or failed to issue a Notice of Final Action signed by the State/NDOL EO Officer, the complainant, or his or her representative, may within 30 days of the expiration of the 90 day period, file a complaint with the CRC.
3. The State/NDOL’s procedures for ADR are as follows:
   1. The complainant may attempt ADR at any time after filing a written complaint, but before a Notice of Final Action has been issued.
   2. ADR will begin no later than 15 calendar days after the mediator is assigned the case.
   3. Parties will receive notice of where and when the ADR will be conducted.
   4. A maximum of 2 calendar days will be allowed for the ADR session to achieve resolution. If the parties do not reach an agreement within the 2-day ADR session, a notice will be issued within 15 calendar days from the date of the session outlining the facts or circumstances relevant to the attempt to settle the issues.
   5. If the parties do not reach an agreement under ADR, the complainant will be advised in writing of the option to file a complaint with the CRC. The State/NDOL will not investigate a complaint once it has been referred for mediation.
   6. A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached.
   7. The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
   8. The CRC will determine if the agreement has been breached. If determined the agreement has been breached, the complaint will be reinstated and processed in accordance with State/NDOL procedures.
4. If ADR is not chosen, Respondent and the AJC, career center, and/or other affected entities will be notified that a complaint has been filed. The notice will include:
   1. A summary of the alleged discrimination;
   2. Notice that retaliation is against the law;
   3. The respondent will also be notified if mediation has been chosen as a means of resolution.
   4. If the State/NDOL EO Officer determines that it does not have jurisdiction over a complaint, Notice to the complainant must be provided in writing within 5 business days of making such determination. The Notice of Lack of Jurisdiction will include:
      1. A statement of the reasons for that determination; and,
      2. Notice that the complainant has the right to file a complaint with the CRC within 30 days of the date on which the complainant receives Notice.
5. A written Notice of Final Action will be provided to the complainant within 90 days of the date on which the complaint was filed, containing:
   1. Each issue raised and a statement of either:
      1. The State/NDOL’s decision on the issue and an explanation of the reasons underlying the decision; or
      2. A description of the way the parties resolved the issue; and
   2. Notice that the complainant has a right to file a complaint with the CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the final action on the complaint;
   3. The Notice will be translated into non-English languages.
6. All records are retained by the State/NDOL for a period of not less than 3 years.
7. If the State/NDOL fails to issue a Notice of Final Action within 90 days after the complaint was filed, the complainant may file a complaint with the CRC within 30 days of the expiration of the 90-day period.
   1. The CRC may extend the 30-day time limit for filing a complaint:
      1. If the State/NDOL does not include in its Notice of Final Action the required notice about the complainant’s right to file with the CRC; or
      2. For other good cause shown,
   2. The complainant has the burden of proving to the CRC that the time limit should be extended.

**Disclaimer**

This policy is based on Greater Nebraska’s reading of the applicable statutes, regulations, rules and guidance released by the U.S. Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.