



# **2020 Washington State Nondiscrimination Plan**

**Jay Inslee, Governor  
State of Washington**

**Suzan G. LeVine, Commissioner  
Employment Security Department**

**Teresa Eckstein, State-Level Equal Opportunity Officer  
Employment Security Department**

**Workforce Innovation and Opportunity Act (WIOA) Title I  
Financial Assistance Recipients**

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Civil Rights Center  
U.S. Department of Labor  
In accordance with

Section 188 of WIOA of 2014 and its regulations at 29 CFR Part 38

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## INTRODUCTION

### **WorkSource Washington**

The Governor of Washington State has appointed Suzan G. LeVine, Commissioner, Employment Security Department (ESD), as the Governor's designee for Workforce Innovation and Opportunity Act (WIOA) nondiscrimination. Ms. LeVine re-appointed Teresa Eckstein as the State-Level Equal Opportunity Officer (EO) to administer the implementation of nondiscrimination and equal opportunity provisions of WIOA.

By submitting a Nondiscrimination Plan, the Governor agrees to follow its provisions. Failure to do so may result in a finding of noncompliance by the U.S. Department of Labor's (USDOL) Civil Rights Center (CRC). See 29 CFR 38.51(a).

The Governor, ESD and the recipient are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38 by the recipient, unless the Governor has:

- Established and implemented a Nondiscrimination Plan, under CFR 38.54, designed to give a reasonable guarantee of the recipient's compliance with such provisions;
- Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;
- Acted with due diligence to monitor the recipient's compliance with these provisions; and
- Taken prompt and appropriate corrective action to effect compliance.

If the Director of the Civil Rights Center determines that the Governor has demonstrated substantial compliance with the requirements, they may recommend to the USDOL Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient. The Civil Rights Center may monitor Washington State's as well as recipients' compliance with the requirements.

**Background: WorkSource Washington**

WorkSource Washington is Washington State's One-Stop delivery system. It provides a comprehensive and integrated system that allows both employers and job seekers easier access to workforce services and information through WorkSource Centers, and affiliate and connection sites.

In 1999, Governor Gary Locke issued Executive Order No. 99-02 in compliance with WIA requirements. Section 1 of the Executive Order directs that, “The Workforce Training and Education Coordinating Board (Workforce Board) shall act as the Workforce Investment Board for purposes of the federal WIA of 1998”. (Attachment Intro 1)

In accordance with RCW 28C.18.020, the Workforce Training and Education Coordinating Board consists of nine voting members. Each is appointed by the Governor, with the Washington State Senate’s consent, and consists of three representatives from each of the following sectors: business, labor, and state government. The Superintendent of Public Instruction, the Executive Director of the State Board for Community and Technical Colleges, and the Commissioner of the Employment Security Department represent state government. There are also two nonvoting participants including the Board Chair, selected by the Governor with consent of the senate, who represents the Governor, and one other individual appointed by the chair to represent racial and ethnic minorities, women, and people with disabilities. The Board and the Local Workforce Development Boards (LWDB) work in partnership to develop the state-unified plan, designed to meet WIOA implementation requirements.

WorkSource Washington consists of 12 geographic local workforce development areas (LWDAs): Olympic, Pacific Mountain, Northwest, Snohomish County, Seattle-King County, Tacoma-Pierce County, Southwest, North Central, South Central, Eastern Washington, Benton-Franklin, and Spokane. A local workforce investment board heads each LWDA. For purposes of this document, the local workforce investment boards will be referred to as the Local Workforce Development Boards (LWDB). Attachment 1B-15 provides a list of the LWDBs, their addresses, and the names of the directors.

**Workforce Innovation and Opportunity Act**

The Workforce Innovation and Opportunity Act (WIOA) of 2014 supersedes the Workforce Investment Act (WIA) of 1998 and took effect on July 1, 2015. WIOA was designed to strengthen and improve our nation's public workforce system and assist Americans, including youth and those with significant barriers to

employment, in obtaining high-quality jobs and careers and help employers hire and retain skilled workers.

The regulations at 29 CFR Part 38, implementing the nondiscrimination and equal opportunity provisions of Section 188 of WIOA, were effective January 2, 2017.

Following is a summary of the changes in the regulations:

- Updates the nondiscrimination and equal opportunity provisions to align them with current law and legal principles.
- Ensures protection from discrimination based on pregnancy.
- Safeguards meaningful access to the workforce system for persons with limited English proficiency (LEP).
- Ensures access to the workforce system for people with disabilities by bringing the regulations in line with updated disability civil rights law.
- Ensures that recipients and beneficiaries are aware of the full scope of their responsibilities and rights.
- Outlines protections for transgender and gender non-conforming people.
- Improves the effectiveness of the Department's enforcement program to support compliance.

### **WIOA Section 188/29 CFR Part 38 Pertinent Definitions**

The following definitions in pertinent part are found at 29 CFR 38.4 and apply to this Nondiscrimination Plan:

**Financial assistance under Title I of WIOA** means any of the following, when authorized or extended under WIOA Title I:

- (1) Any grant, subgrant, loan, or advance of federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- (2) Provision of the services of Federal personnel, or of other personnel at Federal expense;
- (3) A grant or donation of Federal real or personal property or any interest in or use of such property, including:
  - (i) Transfers or leases or property for less than fair market value or for reduced consideration;

- (ii) Proceeds from a subsequent sale, transfer, or lease of such property, if the Federal share of the fair market value of the property is not returned to the Federal Government; and
- (iii) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:
  - (A) Without consideration;
  - (B) At a nominal consideration; or
  - (C) At a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;
- (4) Waiver of charges that would normally be made for the furnishing of Government services; and

Any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIOA Title I.

**Recipient** means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to the Governor under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, one-stop partners, as defined in section 121(b) of WIOA, are treated as “recipients”, and are subject to the nondiscrimination and equal opportunity requirements of 29 CFR Part 38, to the extent that they participate in the one-stop delivery system. “Recipient” includes, but is not limited to:

- (1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
- (2) State Workforce Agencies;
- (3) State and Local Workforce Development Boards;
- (4) LWDA grant recipients;
- (5) One-stop operators;
- (6) Service providers, including eligible training providers;

- (7) On-the-Job Training (OJT) employers;
- (8) Job Corps contractors and center operators;
- (9) Job Corps national training contractors;
- (10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- (11) Placement agencies, including Job Corps contractors that perform these functions;
- (12) Other National Program recipients.

**Service provider** means:

- (1) Any operator of, or provider of aid, benefits, services, or training to:
  - (a) Any program or activity that receives WIOA Title I financial assistance from or through any State or LWDA grant recipient; or
  - (b) Any participant through that participant's Individual Training Account (ITA); or
- (2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

**State Programs** means programs financially assisted in whole or in part under Title I of WIOA in which either:

- (1) The Governor and/or State receives and disburses the grant to or through LWDA grant recipients; or
- (2) The Governor retains the grant funds and operates the programs, either directly or through a State agency.
- (3) "State Programs" also includes State Workforce Agencies, State Employment Service agencies, and/or State unemployment compensation agencies.

**WIOA Title I-financially assisted program or activity** means:

- (1) A program or activity, operated by a recipient and financially assisted, in whole or in part, under Title I of WIOA, that provides either:
  - (i) Any aid, benefit, service, or training to individuals; or
  - (ii) Facilities for furnishing any aid, benefits, services, or training to individuals;
- (2) Aid, benefit, service, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIOA Title I; or

- (3) Aid, benefit, service, or training provided with the aid of any non-WIOA Title I financial assistance, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIOA Title I financial assistance.

## **Attachments for Introduction**

Intro 1 - [Executive Order 99-02 Workforce Development](#)

**ELEMENT ONE**  
**DESIGNATION OF STATE- AND LOCAL-LEVEL**  
**EQUAL OPPORTUNITY (EO) OFFICERS**  
**29 CFR 38.54(c)(1)(ii)**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.28 through 38.33. Any individual appointed as an EO Officer must have the skill, ability, knowledge and authority to properly oversee and direct the EO program to which that individual has been assigned.*

**Background**

The nondiscrimination and equal opportunity provisions contained in 29 CFR 38.28 require that all recipients, except small recipients and service providers, designate EO Officers. These provisions describe who can serve as EO Officers and what their responsibilities are.

**EO Officer Designation at State Level**

Teresa Eckstein is the designated State-Level Equal Opportunity Officer. Attached is ESD's Equal Opportunity Office organizational chart to show the location of the State-Level EO Officer and the positions assigned to her team. Ms. Eckstein has oversight responsibility for coordinating, implementing, maintaining and monitoring the nondiscrimination and equal opportunity requirements under the U.S. Department of Labor (USDOL) regulations 29 CFR Part 38 and Title VI of the Civil Rights Act of 1964, as amended. (Attachments 1A-1 and 1A-2)

Ms. Eckstein reports to Suzan G. LeVine, Commissioner, who is the Governor's designee for EO. On matters related to EO and nondiscrimination, Ms. Eckstein has direct access to the Governor. (Attachments 1A-3 and 1A-4)

Ms. Eckstein's position description does not include duties and responsibilities that would constitute or appear to constitute a conflict of interest. If instances arise where the appearance of a conflict is presented, the Commissioner will assign the duties to other staff or contract the work out to an independent investigator. Examples of potential conflicts of interest include investigating discrimination complaints by Ms. Eckstein's staff or discrimination complaints

about personnel selections in which the State-Level EO Officer or the Commissioner was involved in the selection process.

Ms. Eckstein's duties include the following:

- Coordinating and ensuring Washington State compliance with Section 188 of WIOA, 29 CFR Part 38 and Title VI of the Civil Rights of 1964, as amended.
- Serving as the state's liaison with the USDOL Civil Rights Center.
- Providing technical guidance to Local Workforce Development Board (LWDB) EO Officers statewide to ensure compliance with the USDOL and other federal and state laws, regulations, policies, procedures and directives.
- Monitoring and investigating recipients' activities to ensure compliance with WIOA Nondiscrimination and EO requirements.

Ms. Eckstein has over 20 years of experience in Equal Opportunity, Civil Rights and Human Resources work, including administering external and internal programs in state government agencies. Ms. Eckstein's experience and extensive training have provided her with a strong background in the areas needed to successfully carry out her assigned duties as the State-Level EO Officer. She has a Bachelor of Arts degree from The Evergreen State College in Cultural Studies and Social Science and earned her Senior Professional in Human Resources (SPHR) certification.

The Civil Rights Center (CRC) will be promptly notified if the designation of the State-Level EO Officer changes.

State-Level EO Office and EO resources:

- ESD Equal Opportunity Officer: Megan Eason serves as the ESD Agency-Level Equal Opportunity Officer required by the Workforce Innovation and Opportunity Act (WIOA). She helps to ensure equal access for customers statewide in workforce development and ESD programs, including WIOA, Unemployment Insurance (UI) and other state workforce development services. (Attachment 1A-5)
- Equal Opportunity Consultants: Kelly Moore, Senior EO Consultant and Jasper Marino, EO Consultant, provide nondiscrimination and equal opportunity (EO) consultation and services for Employment Security Department (ESD) and the state workforce system, including

nondiscrimination compliance monitoring, equal employment opportunity (EEO) consultation and technical assistance, and discrimination complaints processing and investigations. Ms. Moore is the co-chair of the agency's LEP committee. (Attachments 1A-6 and 1A-7)

- Employment Connections (EC) Division: The EC Division administers the state workforce programs including WIOA Title IB, Wagner-Peyser, Migrant Seasonal Farmworker (MSFW), Veterans services, Trade Adjustment Assistance (TAA), and WorkFirst.

Amy Lagerquist is the program complaint lead for WIOA and Wagner-Peyser complaints elevated to the state level. Ms. Lagerquist forwards discrimination complaints to the State-Level EO Officer and collaborates, when needed, on investigations.

- Unemployment Insurance Customer Support (UICS) Division: The UICS Division administers the unemployment benefits as well as the tax assessment and collections programs.

Jennifer Tecca is the Statewide Intake Manager. Ms. Tecca is the EO liaison for the Unemployment Benefits program, she assists the State-Level EO Officer in providing reasonable accommodations to customers, and gathering and providing information for unemployment customer discrimination complaints.

- Policy, Data, Performance and Integrity (PDPI) Division: The PDPI Division works with other divisions, agencies and the Department of Labor to provide interpretation, integrity, support and resources to effectively and accurately administer unemployment, tax and workforce-development programs. This division includes the Labor Market and Economic Analysis unit that provides economic and employment information.

Tracy Hall is a manager in the Labor Market and Economic Analysis unit who manages a data reporting and analysis team for the UI Benefits Program. The team provides EO data reports on UI claimants and assists in conducting data analysis for State-Level EO Officer UI Benefits Program compliance monitoring reviews.

- Product, Planning, and Performance (PPP) Office: The PPP office supports the connection between programs and customers, and provides expertise

and support in the areas of project management, process improvement, change management and product management.

Maribel Collins is a Spanish Translator who provides internal translation services by translating letters, notices, and customer-facing communications from English to Spanish for customers applying for and receiving unemployment insurance benefits.

Oscar Cerda is an LEP/ADA Coordinator who works with agency product managers, program managers and subject matter experts to ensure new and current products and services are accessible to customers with limited English proficiency and customers with disabilities. Mr. Cerda is the co-chair of the agency's LEP committee.

- Communications Office: The Communications office serves both agency employees and the public by helping to produce agency websites, internal and external videos, social media sites, and other marketing materials.

Rafael Colon is a Small Business Outreach Manager who plans and develops statewide marketing and outreach efforts to promote the agency's business-facing programs, including outreach in Spanish to businesses and media. Mr. Colon also services as a member on the LEP Committee.

This structure adheres to USDOL requirements by appointing the State-Level EO Officer, reporting to the Commissioner as the Governor's designee. The State-Level EO Officer is accountable for equal opportunity and nondiscrimination in the WorkSource Washington system and in all agency programs and employment practices.

### **EO Officer Designation at the Local Level**

In compliance with the nondiscrimination requirements for the Nondiscrimination Plan, each LWDB has a designated local EO Officer. Washington State addresses designation of LWDB EO Officers, potential conflicts of interest and accountability on a case-by-case basis. Conflicts of interest continue to be reviewed through the monitoring process by the State-Level EO Officer. To date, there have been no conflicts of interest.

LWDB EO Officers are responsible for, but are not limited to:

- Conducting EO and nondiscrimination monitoring reviews and investigating the activities of service providers and other recipients in their area to ensure compliance with the nondiscrimination and EO obligations under WIOA and 29 CFR Part 38.
- Reviewing written policies to ensure they are nondiscriminatory.
- Developing and publishing procedures for processing discrimination complaints and ensuring adherence to the procedures.
- Coordinating local-level WIOA EO responsibilities to include ensuring service providers' compliance with the nondiscrimination and EO provisions of WIOA.

Outlined in the table below are the names of the LWDB EO Officers for each Local Workforce Development Area (LWDA) and the percentage of time committed to EO matters. Attached are their job descriptions. (Attachments 1B-1 – 1B-12)

<b>LWDA</b>	<b>Local Workforce Development Board</b>	<b>EO Officer</b>	<b>% of Time EO Officer Duties</b>
1	Olympic Consortium	Alissa Durkin	10%
2	Pacific Mountain	Craig Clark	16%
3	Northwest Workforce Council	Malinda Bjaaland	15%
4	Workforce Snohomish	Ismaila Maidadi	20%
5	Seattle-King County	Bryan Pannell (Interim)	25%
6	Workforce Central	Debbie Lean	10%
7	Workforce Southwest Washington	Amy Gimlin	10%
8	North Central	Dave Petersen	15%
9	South Central Workforce Council	Toni Burow	10%
10	Eastern Washington Partnership	Tracy Ferrell	10%
11	Benton-Franklin	Cynthia Garcia	20%
12	Spokane Workforce Council	Dawn Karber	10%

Forty-four (44) WorkSource Centers and affiliate sites are located within the 12 local workforce development areas. All offices refer EO-related matters to their LWDB-designated EO Officer or the State-Level EO Officer, as appropriate. The

LWDB EO Officers may refer issues to ESD, One-Stop partner EO Officers, or other entities depending on jurisdiction. This ensures nondiscrimination and accessibility in services provided to WorkSource customers. Each LWDB develops a policy to administer this requirement. A list of the WorkSource Centers and affiliate sites is attached. (Attachment 1B-13)

Attachment 1B-14 includes the October 2000 letters sent to the 12 LWDBs and to the former ESD WIA Manager, regarding identification of individuals designated as local EO Officers. The same information is collected today when new LWDB EO Officers are appointed. Staff of the Workforce System Monitoring office notify the State-Level EO Officer if they become aware of an EO issue during one of their reviews. Attachment 1B-15 identifies the LWDB EO Officers, along with their position titles and contact information.

### **EO Notices and Training**

The WIOA “Equal Opportunity is the Law” posters are distributed to LWDBs for posting in their offices and their recipient offices. The posters, which are placed in prominent locations for public viewing, provide all applicants, registrants, eligible applicants and registrants, participants, employees, and applicants for employment, as well as interested members of the public, with the identity and contact information of the LWDB EO Officer and State-Level EO Officer. Attachments 1C-1 and 1C-2 are the Equal Opportunity Notice poster in English and Spanish.

Teresa Eckstein became the State-Level EO Officer in 2015 and regularly attends National Association of State Workforce Agencies (NASWA) Equal Opportunity Committee meetings. Ms. Eckstein co-chairs the William J. Harris Equal Opportunity Award subcommittee of the NASWA EO Committee. Ms. Eckstein provided presentations to the NASWA EO Committee on the EEOC complaint respondent process in June 2019, accessibility for the NASWA Summit in September 2019, and Washington’s process for providing reasonable accommodations for unemployment insurance during the pandemic in September 2020. In February 2020, the State-Level EO office and the Local Workforce Development Board EO Officers were awarded the William J. Harris Equal Opportunity Award for their achievements as a team in identifying and eliminating barriers to equal opportunity.

The State-Level EO Officer is proactive in identifying and meeting the training needs of the LWDB EO Officers. EO Officers are trained on the Washington State Nondiscrimination Plan, the Equal Opportunity and Nondiscrimination

provisions of WIOA, EO Laws 101 and Section 188 Overview presentations developed by USDOL CRC, and the ADA accessibility guide. EO Officers are also trained to provide EO training to staff in their areas. This training is required and provided to new EO Officers and as a refresher as needed. Other EO Officers and staff who assist with EO duties, are invited to attend as well. The State-Level EO Officer provided one session in 2019 and one session in 2020. New EO Officers are also provided hands-on monitoring training in their local areas. (Attachment 1C-3).

Ms. Eckstein provides two training conferences for the LWDB EO Officers annually. In the fall each year, Ms. Eckstein provides a one-day training conference for the LWDB EO Officers as a pre-conference in conjunction with the state's Washington Workforce Association's annual conference. She also provides a two-day spring training conference each year. The State-Level EO Officer provides regular EO Officer conference calls to share information and discuss current issues. Sample agendas are attached. (Attachments 1C-4 – 1C-7)

Customer focused Equal Opportunity and nondiscrimination training is provided regularly to staff. The training addresses the nondiscrimination requirements of WIOA and focuses on ensuring nondiscrimination while serving customers and providing them equal access. The interactive training includes tabletop exercises and a training quiz. The training is presented a minimum of every two years for all recipient staff. LWDBs are responsible for providing the training for recipients in their workforce development areas. (Attachment 1C-8).

Most ESD programs and services are provided through WorkSource Centers. ESD staff providing State Program services as defined by 29 CFR 38.4, such as employment service, Trade Act, and Migrant and Seasonal Farmworker receive EO and nondiscrimination training at WorkSource Centers and affiliate sites. Unemployment insurance benefit program staff receive training tailored for call center staff, and other ESD staff receive EO and nondiscrimination training appropriate for their work.

## Attachments for Element One

- 1A-1 [ESD Organizational Chart](#)
- 1A-2 [Position Description Form - Teresa Eckstein](#)
- 1A-3 [Governor's Designee WIOA Nondiscrimination Letter – Suzan LeVine](#)
- 1A-4 [Governor's Designee and State-Level EO Officer Reappointment Letter](#)
- 1A-5 [Position Description Form - Megan Eason](#)
- 1A-6 [Position Description Form – Kelly Moore](#)
- 1A-7 [Position Description Form – Jasper Marino](#)
- 1B-1 [Olympic EO Officer Job Description](#)
- 1B-2 [Pacific Mountain EO Officer Job Description](#)
- 1B-3 [Northwest EO Officer Job Description](#)
- 1B-4 [Snohomish EO Officer Job Description](#)
- 1B-5 [Sea-King EO Officer Job Description](#)
- 1B-6 [Workforce Central EO Officer Job Description](#)
- 1B-7 [Southwest EO Officer Job Description](#)
- 1B-8 [North Central EO Officer Job Description](#)
- 1B-9 [South Central EO Officer Job Description](#)
- 1B-10 [Eastern EO Officer Job Description](#)
- 1B-11 [Benton-Franklin EO Officer Job Description](#)
- 1B-12 [Spokane EO Officer Job Description](#)
- 1B-13 [List of WorkSource Centers and Affiliate Sites](#)
- 1B-14 [Letters to LWDBs October 26, 2000](#)
- 1B-15 [List of LWDB EO Officers with Directors](#)
- 1C-1 [Equal Opportunity Poster – English](#)
- 1C-2 [Equal Opportunity Poster – Spanish](#)
- 1C-3 [NDP Training for EO Officers](#)
- 1C-4 [EO Officer In-person Training Meeting Agenda May 2019](#)
- 1C-5 [EO Officer WWA In-person Meeting Agenda October 2019](#)
- 1C-6 [EO Officer Conference Call May 2020](#)
- 1C-7 [EO Officer Conference Call September 2020](#)
- 1C-8 [EO Training 2020](#)

## **ELEMENT TWO NOTICE AND COMMUNICATION (29 CFR 38.54(c)(1)(iii))**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.34 through 38.39. States must ensure the establishment of a notice and communication system that makes all registrants, applicants, eligible applicants/registrants, applicants for employment, employees and interested members of the public aware of both the recipient's obligation to operate its programs and activities in a nondiscriminatory manner, and the extent of the rights of members of these groups to file complaints of discrimination.*

### **Notice and Communication**

Within WorkSource Washington, the Employment Security Department (ESD) and other recipients provide notice that they do not discriminate on any prohibited basis and provide notice of the nondiscrimination and equal opportunity requirements of the Workforce Innovation and Opportunity Act (WIOA) to registrants, applicants, eligible applicant/registrants, participants, applicants for employment and employees, unions, professional organizations, subrecipients, and members of the public.

WIOA Policy Number 5402 - Equal Opportunity and Nondiscrimination is distributed to recipients and subrecipients when the EO and nondiscrimination training for staff is conducted. (Attachment 2A-1)

ESD has updated its new employee orientation and it is now available online. All ESD employees are provided with copies of relevant EO policies and procedures including Harassment Prevention, Reasonable Accommodation and Nondiscrimination on the Basis of Disability, Discrimination Complaint Processing, and Equal Opportunity and Affirmative Action. Agency staff are required to review and sign that they have read these policies annually. Staff continue to receive training and technical assistance relative to these policies and procedures. (Attachments 2A-2 – 2A-5)

Both the WIOA and ESD EO and Nondiscrimination policies incorporate the following laws and regulations:

- Title VI and Title VII of the Civil Rights Act of 1964, as amended;
- Section 504 of the Rehabilitation Act of 1973, as amended;
- Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination Act of 1975, as amended;
- The Age Discrimination in Employment Act of 1967, as amended;
- Title IX of the Education Amendments of 1972, as amended;
- Section 188 of the Workforce Innovation and Opportunity Act (WIOA) of 2014; and
- Title 29, Code of Federal Regulations, Part 38.

The notice and communication requirements are covered during EO Officer training and discussed during the EO and nondiscrimination training course for recipients and their staff. EO and Nondiscrimination Training is presented regularly (see Element 1 Training). The State-Level EO Officer provides informational updates, as well as notices of EO training sponsored by other organizations, such as EEOC Summits. The State-Level EO Officer also provides ongoing technical assistance to Local Workforce Development Board (LWDB) EO Officers. Training delivery and staff attendance is monitored for compliance during EO and nondiscrimination monitoring reviews.

The WIOA “Equal Opportunity is the Law” posters (in English and Spanish) with the wording specified in 29 CFR 38.35 are distributed statewide on 11-inch by 17-inch posters within the WorkSource Washington system. (Attachments 1C-1 and 1C-2). In addition to English and Spanish, the posters are available in Russian, Ukrainian and Vietnamese. (Attachments 2A-6 – 2A-8). ESD has links to the posters on [ESD’s EO webpage](#), along with audio recordings of the EO Notice poster being read in English and Spanish.

EO Notice posters are prominently displayed in all WorkSource Centers, WorkSource affiliate sites and other recipient sites in the One-Stop system in Washington State. During EO monitoring reviews, reviewers check to see that EO posters are displayed in reasonable numbers and places. Posters are available upon request and can be ordered through the State-Level EO Officer.

Applicants for employment, employees, unions, and professional organizations can view the notice on [ESD’s EO webpage](#). Policies and forms to file a discrimination complaint are also available in English and Spanish on [ESD’s EO webpage](#). (Attachment 2A-9)

The EO Notice is provided to all registrants, applicants, eligible applicants/registrants, participants, subrecipients, and interested members of the public. They are advised of their rights to file a discrimination complaint during orientations and/or registration for WIOA services, and are provided with the notice of rights to file a discrimination complaint (Equal Opportunity is the Law Notice).

WIOA recipients require registered participants to sign a statement to provide acknowledgement that they understand their rights and have received the EO Notice. This is done electronically when the participants register through the state's management information system for WorkSource, Efforts to Outcomes (ETO). A copy of this notice is placed in participant files. (Attachment 2A-10)

Efforts are made to ensure that communications with individuals with disabilities are just as effective as communications with others. LWDB EO Officers and WorkSource Center Administrators are informed during each monitoring review that they may develop an audio recorded EO Notice for individuals who are blind or low vision. They may also read the notice to the person. Spokane Workforce Council made the EO notice available in Braille throughout its service area.

ESD, recipients, and subrecipients include the following tagline on their official websites, job announcements, brochures, broadcasts, publications, and advertisements that describe programs, or the requirements for participation, financially assisted under Title I of WIOA:

“WorkSource (or name of recipient) is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.”

When materials indicate that the recipient may be reached by phone, Washington Relay Service 711 is added to the end of the tagline or next to the phone number.

In an email dated July 21, 2017, addressed to the 12 EO Officers and LWDB Executive Directors, all grantees were instructed to use the correct EO tagline. Requirements for tagline usage are also spelled out in WIOA and ESD EO and nondiscrimination policies and are covered in the EO Officer training and EO and nondiscrimination training for staff. During each monitoring review, recipients are checked for compliance. (Attachment 2A-11)

Attached are sample materials that include the EO tagline. As additional materials are produced to market programs and services, the EO tagline language will continue to be used. (Attachments 2A-12 – 2A-14)

The Employment System Administration and Policy unit placed an expanded EO tagline in UI publications. The expanded tagline is as follows:

“The Employment Security Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge. Washington Relay Service: 711.”

The UI Handbook for Unemployed Workers includes information on filing a discrimination complaint. The handbook is translated into Spanish and was updated in 2019. The handbook includes a statement instructing individuals with limited English proficiency (LEP) on how to get help in understanding the claims kit and is translated into eight languages. (Attachments 2A-15 and 2A-16)

ESD developed several videos in English and Spanish including Appealing a benefits decision, How to complete your job-search log, Shared Work program overview, and WorkFirst daily activity and job search. In August 2012, ESD added pictorial and voice language assistance in 15 different languages to describe to LEP customers how to obtain assistance in navigating the claims process in their own language.

## Attachments for Element Two

- 2A-1 [Policy 5402 - Equal Opportunity and Nondiscrimination](#)
- 2A-2 [Policy and Procedure 0014 - Harassment Prevention](#)
- 2A-3 [Policy and Procedure 0013-1 - RA and Nondiscrimination](#)
- 2A-4 [Policy and Procedure 0013 - Discrimination Complaint Processing](#)
- 2A-5 [Policy and Procedure 0021 - EO Affirmative Action](#)
- 2A-6 [Equal Opportunity Poster - Russian](#)
- 2A-7 [Equal Opportunity Poster - Ukrainian](#)
- 2A-8 [Equal Opportunity Poster - Vietnamese](#)
- 2A-9 [EO and Nondiscrimination ESD Webpage](#)
- 2A-10 [EO Notice in ETO](#)
- 2A-11 [EO Tagline Notice to LWDB EO Officer](#)
- 2A-12 [Veteran Virtual Resume Workshop](#)
- 2A-13 [Spanish Flyer Adult/Dislocated Worker Programs](#)
- 2A-14 [UI COVID Eligibility Checker](#)
- 2A-15 [ESD Handbook for Unemployed Workers – English](#)
- 2A-16 [ESD Handbook for Unemployed Workers – Spanish](#)

## **ELEMENT THREE ASSURANCES (29 CFR 38.54(c)(1)(i) and (c)(2)(i), (ii) and (iii))**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.25 through 38.27 regarding the review of assurances, job training plans, contracts, and policies and procedures. Additionally, Washington State addresses the procedures it and its recipients are following and will continue to follow in assessing the ability of grant applicants, if funded, or training providers, if declared eligible, to comply with WIOA Section 188 and 29 CFR Part 38.*

### **Background**

The State of Washington does not knowingly do business with any entity that discriminates. It is the Employment Security Department's (ESD) policy to include a nondiscrimination and equal opportunity (EO) statement in all training plans, contracts and agreements. In addition, policies issued at the state and local levels reinforce ESD's commitment to ensure nondiscrimination throughout the One-Stop system.

ESD requires all grant applicants to include the EO assurance language verbatim, or its citation, in their grants, contracts and cooperative agreements. The assurance language commits the recipient to "comply fully with the nondiscrimination and equal opportunity provisions" of Section 188 of the Workforce Innovation and Opportunity (WIOA); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and 29 CFR Part 38 and other regulations implementing these laws. The assurance acknowledges the US government's right to seek judicial enforcement if these laws are not followed. The specific language for this assurance is found at 29 CFR 38.25 (a)(1). If a citation is used instead, it should read, "The nondiscrimination assurances at 29 CFR Part 38.25(a)(1) apply to this [contract/agreement/etc.]."

### **Assurances**

The ESD Contracts Office routinely reviews all contracts and agreements prior to finalization and execution to ensure EO assurances are included. The agency requires all applications for federal financial assistance under WIOA to include

EO assurances, thereby committing recipients to full compliance with the nondiscrimination provisions of WIOA.

The State-Level EO Officer works with the Contracts Office and the Employment System Administration and Policy staff to develop language that incorporates nondiscrimination clauses, EO assurances, and sanctions, in contracts, grant agreements, interagency agreements, personal service contracts, and requests for proposal processes where state and federal funds are expended to provide services. Attached is WIOA Terms and Conditions language that is a template for ESD staff and WIOA recipients to use when developing contracts. (Attachment 3A-1)

ESD issued guidance to Local Workforce Development Boards (LWDB) regarding EO assurances. Each recipient is expected to ensure their training plans, contracts and agreements are consistent with the EO and nondiscrimination provisions of WIOA. (Attachment 3A-2)

Compliance with assurance language requirements is monitored for during annual EO and nondiscrimination monitoring.

## **Attachments for Element Three**

3A-1 [Contract Assurance Language](#)

3A-2 [Updated Assurance Language Notice to LWDBs](#)

## **ELEMENT FOUR AFFIRMATIVE OUTREACH (29 CFR 38.54(c)(1)(v))**

*Washington State addresses how it and its recipients are complying with and will continue to comply with the requirements of 29 CFR 38.40 relating to the provision of affirmative outreach and equal access to programs and activities.*

### **Background**

Through a \$9 million grant from the United States Department of Labor (USDOL), Washington State began developing its One-Stop system prior to the Workforce Investment Act (WIA) being signed. Core elements of the system were customer focus, integration of services, universal access and a strong accountability for outcomes. The One-Stop system was designed by a multitude of partners at both the state and local level with oversight by the Executive Policy Council (EPC). The EPC also required One-Stop partners to consider the needs of the target populations including, at a minimum, dislocated workers, veterans, migrant and seasonal farmworkers, disadvantaged adults and youth, job seekers with disabilities, older workers, and welfare recipients seeking employment. (Attachment 4A-1, pages 1, 6 and 9)

The planning and decision-making process in the development of One-Stop Centers laid much of the groundwork for WorkSource Washington. During the implementation of WIA, planning directions were sent to the chief local elected officials. Planning directions included a required assessment of current and future employment opportunities and skills needs, current and future workforces, current workforce development systems, goals, objectives and strategies. Universal services for WIA Title I-B funded employment and training services to youth, adults and dislocated workers were also a requirement. (Attachment 4A-2, pages 1, 2 and 4)

In implementing WIOA, Washington State is working to improve coordination between and among agencies through integrated service delivery, so that workers and job seekers have more seamless access to a system of high-quality career services, education, and training through the one-stop service delivery system and partners. It is also improving access to education and workforce services for individuals with significant barriers to employment, including some veterans, individuals with disabilities, out-of-school and at-risk youth, and other

populations, to help ensure that everyone has an opportunity to get a good job. Performance measurement also takes into account differences in the populations served to remove any disincentives to serving those who need the most help. (Attachment 4A-3)

WorkSource Washington's electronic One-Stop system was developed to reach out universally to all individuals interested in employment and training services. It is a customer service network designed to assist a broad range of job seekers and employers. The [WorkSource Washington website](#) includes a link to the EO and nondiscrimination notice. The EO tagline language is on all official websites, job announcements, brochures and advertisements. See Element 2 for sample publications.

On the [WorkSource Washington website](#), job seekers are able to post their resumes for employers to review, apply for jobs, obtain information about employment and training opportunities including job fairs and workshops in their local area, obtain information from classified ads, government jobs, company websites, and US jobs, and obtain information on apprenticeship programs, training benefits and labor market information. The site can be accessed any time and offers opportunities for targeted populations to benefit from WIOA services. The website is translated into Spanish. (Attachments 4A-4 - 4A-6)

Local Workforce Development Board (LWDB) recipients are co-located at WorkSource Centers and affiliate sites across the state. This enables access by WorkSource customers without having to go to another site to obtain services. Customers can access services through self-service, staff-assisted service, workshops and training classes, and through one-on-one staff-directed services. Levels of services are based on the needs of the customer. The State-Level EO Officer has communicated LWDB obligations to provide affirmative outreach and to include different genders, various racial, ethnic, age and religious groups, individuals with disabilities, and individuals with limited English proficiency. LWDBs incorporate this information into their WIOA operations and strategic plans. (Attachments 4A-7 – 4A-9)

LWDBs are aware of their obligation to provide appropriate language assistance to individuals with limited English proficiency (LEP) in order to ensure meaningful access to programs and services, in accordance with U.S. Department of Labor (USDOL) requirements and guidance. They are also aware of their obligation to provide equal access to individuals with disabilities and provide appropriate accommodations. Washington Relay Service is utilized in local offices and in

unemployment insurance (UI) claim centers to help ensure communications for individuals who use American Sign Language.

At WorkSource Centers, customers are provided UI information and assistance using self-service direct telephone lines and the internet. Staff designated as UI Ambassadors receive formal classroom training to assist walk-in customers who need basic UI assistance. Many of these claimants are limited in English proficiency or are individuals with disabilities who require assistance with agency forms and publications. UI Ambassadors show claimants how to access and use agency online resources and telephone self-service technology. They also provide training and assistance to UI claimants in developing training plans and job searches.

The UI Program provides primary service delivery from UI call centers and the internet for initial claims, weekly claims and adjudication of issues. Claimants access services online through [ESD's website](#) or call a toll-free number and, after selecting their language and identifying the reason for the call, are connected through an automated call distribution system to an agent.

All agents in the UI claim centers participate in an intensive intake training program. The program includes a component on customer service with a focus on how to better serve people who need language assistance. Staff at each site use third party telephonic interpretation services or Washington Relay Service 711 as needed. Calls are routed across the state regardless of the caller's location so that customer wait times are reduced. Special emphasis has been placed on publishing forms and scripts in plain language.

### **Ensuring Access to LEP Customers**

WorkSource Washington is committed to providing meaningful access to services, facilities, and information to individuals with limited English proficiency. An LEP customer is an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English.

ESD's Policy 0022, Providing Language Services to Limited English Proficiency Customers and the Language Access Plan, provide requirements and guidance for providing language services for ESD programs and services. LWDBs may use ESD's LEP policy and plan as a model to develop their own. The State-Level EO Officer has monitored for access to language services through EO and nondiscrimination compliance reviews. (Attachments 4B-1 and 4B-2)

ESD established a LEP Committee to address requirements in the LEP guidance issued by the United States Department of Labor Civil Rights Center. The State-Level EO Officer serves as executive sponsor. Individuals on the committee are charged with updating the agency LEP plan and policy that provides guidance on:

- Procedures for providing language access to LEP customers.
- Conducting the required assessment of LEP demographics and language needs using guidance from USDOL.
- Developing guidance for local planning.

Census statistics continue to indicate that Spanish is the primary language used among the LEP population in Washington State. Should this change, the LEP Committee will assess and identify the need to provide the assistance required in additional languages.

Bilingual positions have been established throughout the Employment Security Department (ESD) wherever needed to ensure effective communication with LEP customers. ESD's Human Resource Division approves the establishment of these positions based on skills and abilities and other identified criteria. ESD currently has 140 bilingual staff, with 60 in the UI claim centers and 80 in WorkSource offices, who provide language assistance in several languages including Spanish, Chinese, Korean, Russian, Vietnamese and other languages.

UI claimants are provided language assistance by bilingual staff or are connected to an interpreter by phone. To meet the needs of LEP customers, the agency continues to recruit additional bilingual staff. ESD regularly reviews interpreter service call data to identify customer language needs. Claimants can receive free interpretation of any UI documents. Claim instructions and forms are provided in English and Spanish. Claim questions are being translated into Amharic, Farsi, Chinese, Cambodian, Arabic, Korean, Laotian, Oromo, Punjabi, Russian, Somali, Tagalog, Vietnamese, Marshallese, Chuukese, Palauan.

ESD created a multi-language flyer for its UI Benefits Program. This flyer has instructions on how to contact the UI claims center for information and how to apply for benefits. In addition to the toll-free number, it also provides numbers for assistance in the customer's preferred language. The UI Benefits information is translated into 15 languages informing customers that language services are

available free of charge. A copy of the multi-language flyer was distributed to WorkSource Centers across the state and is available online. (Attachment 4B-3)

The current Handbook for Unemployed Workers includes information on filing a discrimination complaint. The handbook is translated into Spanish. It includes a statement in eight languages other than English, instructing LEP individuals on how to get help in understanding the handbook. (Attachments 2A-15 and 2A-16)

ESD developed several videos in English and Spanish including Appealing a benefits decision, How to complete your job-search log, Shared Work program overview, and WorkFirst daily activity and job search.

The Office of Administrative Hearings (OAH), a separate state agency funded partially by ESD, conducts UI appeals hearings and provides appeal information. OAH's booklet, "How to Prepare and Present your Case," is available in 5 languages: English, Russian, Somali, Spanish, and Vietnamese. (Attachment 4B-4)

OAH provides interpreters free of charge in any language to those appealing an unemployment decision and requesting assistance. ESD provides online information on filing an appeal in English and Spanish. Also available is information on how to contact outside advocacy organizations should a customer want assistance preparing for and participating in the appeal hearing. (Attachment 4B-5)

### **Outreach**

WorkSource Washington is committed to providing services to members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups. Outreach plans are developed based on census data, labor market analysis, service need assessments, and information from community and social service organizations, educational institutions, employers, and labor and community service advocates. LWDBs are made up of representatives of public and private agencies, educators, employers, and community-based organizations that provide services to the disadvantaged, underserved, underemployed and targeted groups within their communities. They share a mutual interest in improving employment opportunities to meet the needs of employers and in improving the economic conditions in their communities. Through the development of local strategic plans, cooperative efforts are in place

for all recipients in the workforce development system. Improvements in communications were made with the business sector and economic development organizations. Better collaborations from these new relationships have created an environment for a stronger, more responsive, and more proactive workforce development system.

Ongoing activities continue to provide affirmative outreach. Samples of demographic information can be found in the attached local area strategic plans for Pacific Mountain Workforce Development Council, Workforce Snohomish and Northwest Workforce Council. The plans include samples of data such as: current and future workforce; school dropout rates; percent of population by gender, race, and Hispanic origin; state and county population by age; public/private school enrollment by race/ethnic origin; persons with disability status; people of all ages in poverty; and other data used by the LWDBs to help determine program priorities and provide equal access for all. (Attachments 4A-7 – 4A-9)

LWDBs continue to ensure their recipients provide equal access and are conducting affirmative outreach. One example of innovative and inclusive outreach efforts is the Pierce County Community Engagement Task Force which uses an innovative community engagement framework to integrate services with a comprehensive, multi-faceted approach to foster economic mobility of Pierce County individuals and families. The task force includes an outreach group which focuses on helping other organizations and the community become aware of the task force and services available, including WIOA Title I services and other services in the WorkSource Washington one-stop system. The Spokane LWDB remodeled and reorganized their One-Stop Center using Human Centered Design to make the center more accessible, maximize the customer experience, and make the staff more effective in their work. (Attachments 4C-1 and 4C-2)

### **Governor's Executive Orders for Veterans and Individuals with Disabilities**

In 2013, Governor Jay Inslee issued Executive Order 13-01 – Veterans Transition Support, to improve hiring of veterans by state agencies and support the transition of veterans from service to civilian employment. In 2019, Governor Inslee issued Executive Order 19-01 – Veterans and Military Family Transition and Readiness Support, superseding 13-01, to include military spouses. Each agency is required to establish a veteran employment plan to increase the representation of veterans and military spouses and support employees in participating in the state-wide Veterans Employee Resource Group (VERG). ESD established a veteran employment plan in 2013, updates the plan annually, and

has a staff member serve on the state resource group. The department is participating in enterprise strategies to increase its number of veterans and military spouses as employees, including forming an agency VERG in 2017. The agency VERG works to ensure an organizational culture that welcomes veterans, supports their transition from military service, and encourages their career growth. The International Association of Workforce Professionals (IAWP) presented the agency VERG with the Group Service to Veterans Award at the 2018 Veterans Education Summit. The award recognizes teams for furthering veterans' interests and rights in the workforce. (Attachment 4D-1 and 4D-2)

Also, in 2013, the Governor issued Executive Order 13-02 – Improving Employment Opportunities and Outcomes for People with Disabilities in State Government. Each agency is required to establish a Disability Employment Plan and to provide a staff member to serve on the Disability Employment Taskforce. Agencies were required to adopt a goal of having at least five percent of employees as persons with a disability by July 30, 2017. Currently, ESD's Affirmative Action Utilization Report shows 4.9% of employees have identified as persons with disabilities. ESD implemented a Disability Employment Plan and has a staff member serving on the taskforce. ESD created an agency Disability Employee Resource Group in 2017 that works to ensure an inclusive work environment where people with disabilities can flourish, their talents and abilities are valued and recognized, and they feel safe and welcomed to contribute in making a difference for customers. In 2019, the Governor's Committee on Disability Issues & Employment honored ESD with the Governor's Award for recruiting, hiring, retaining and promoting employees with disabilities. (Attachment 4D-3)

### **Governor's Directive for LBGTQ Inclusion and Safe Places Initiative**

In 2016, the Governor issued Directive 16-11 – LGBTQ Inclusion and Safe Places Initiative, directing the Office of Financial Management to develop a statewide LGBTQ employee resource group, to identify and share best practices, and to develop a Safe Place program in which local businesses and organizations can signal the public that they serve as locations for members of the LGBTQ+ community to find safe and secure spaces to request and wait for police assistance. ESD has a staff member serving as a member of the statewide resource group. ESD created an agency LGBTQ+ Employee Resource Group in 2018 that works to foster an inclusive culture at ESD that values and respects LGBTQ+ employees and customers. The agency ERG worked with Pacific Mountain LWDB and a local law enforcement department to create a Safe Space program in a local city. The goal of the Safe Space program is to let LGTBQ+

individuals know they are welcome by placing a sticker on the door that signals their business will provide a safe location for a person to wait while local police are contacted, or if someone feels that they are at risk of violence. Training for staff on the Safe Place Program will also be provided. The ERG is addressing other ways to create a safe and inclusive environment for LGBTQ+ employees and customers. In 2019, ESD earned an award from the statewide LGBTQ resource group for outstanding work in creating an inclusive work environment for LGBTQ+ staff. (Attachment 4D-4)

**Monitoring**

LWDBs continue to monitor their customer composition by comparing the local labor market information with data from the state’s management information system for WorkSource, Efforts to Outcomes (ETO). These reports show the makeup of their participants, including members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. They work with their recipients and other community organizations to share information, sponsor job fairs, and provide outreach to target various populations.

Through onsite compliance reviews, the State-Level EO Officer continually monitors and evaluates efforts by ESD and LWDBs to broaden representation of persons in programs, services and employment. (See Element 7)

## Attachments for Element Four

- 4A-1 [WA One-Stop System Decisions](#)
- 4A-2 [Local WDC Formation and Certification](#)
- 4A-3 [WIOA Fact Sheet](#)
- 4A-4 [WorkSourcewa.com Home Page](#)
- 4A-5 [WorkSourcewa.com Training Page](#)
- 4A-6 [WorkSourcewa.com Workshops Page](#)
- 4A-7 [Pacific Mountain LWDB Strategic Plan](#)
- 4A-8 [Snohomish LWDB Strategic Plan](#)
- 4A-9 [Northwest LWDB Strategic Plan](#)
- 4A-10 [RCW 50.12.250 Information Clearinghouse](#)
- 4A-11 [GCDE Overview](#)
- 4B-1 [Policy 0022 - LEP](#)
- 4B-2 [ESD Language Access Plan](#)
- 4B-3 [UI Multi-Language Flyer](#)
- 4B-4 [OAH's Booklet "How to Prepare and Present Your Case" - Spanish](#)
- 4B-5 [Unemployment Law Project Information](#)
- 4C-1 [Pierce County Community Engagement Task Force](#)
- 4C-2 [Spokane LWDB Spokane Human-Centered Design Webpage](#)
- 4D-1 [Executive Order 13-01 Veterans Transition Support](#)
- 4D-2 [Executive Order 19-01 Veterans and Military Family Transition and Readiness Support](#)
- 4D-3 [Executive Order 13-02 People with Disabilities in State Employment](#)
- 4D-4 [Governor's Directive 16-11 - LGBTQ Inclusion and Safe Places Initiative](#)

**ELEMENT FIVE**  
**COMPLIANCE WITH SECTION 504 OF THE**  
**REHABILITATION ACT OF 1973, AS AMENDED, AND 29**  
**CFR Part 38**  
**(29 CFR 38.54 (c)(2)(v))**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of the disability-related requirements of WIOA Section 188; Section 504 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, including but not limited to 29 CFR 38.12 through 38.17; Subparts B and C of 29 CFR Part 32; the Americans with Disabilities Act of 1990, as amended; and RCW 49.60.*

**Background**

Washington State is committed to making all services, facilities and information accessible and usable by individuals with disabilities. (Attachments 5A-1 – 5A-4) This applies to all programs, services and activities provided by or made available within the WorkSource Washington system, to customers, potential customers, job applicants, employees, volunteers, and recipients.

Washington State ensures nondiscrimination on the basis of disability by:

- Providing opportunities for participation or benefits equal to that afforded to others;
- Providing financial aid, benefits, services or training equal to that provided to others;
- Ensuring that qualified individuals with disabilities are offered the option of participating in the same programs or activities offered to non-disabled individuals;
- Ensuring that licensing and/or certification programs operate in a matter which does not discriminate against qualified individuals with disabilities;
- Ensuring that eligibility criteria do not screen out individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered; and

- Eliminating barriers to employment and providing accommodations in the workplace.
- Ensuring that assistance is not given to an agency, organization, or person that discriminates on the basis of disability.

During monitoring reviews, the State-Level Equal Opportunity (EO) Officer evaluates employment practices to ensure there are no barriers to employment. (See Element 7)

### **Reasonable Accommodation for a Disability**

Washington State is committed to providing reasonable accommodations to qualified individuals with disabilities in all aspects of its programs, services, activities and employment, unless providing the accommodation would cause undue hardship. Reasonable accommodations are modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. See the definitions sections of this element for a comprehensive definition/explanation of reasonable accommodations. Accommodations may include, but are not limited to, qualified sign language interpreters, auxiliary aids, and information in alternate formats. Reasonable modifications in policies, practices, or procedures are made, when necessary, to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.

### **Program Accessibility**

Steps taken by the Employment Security Department (ESD) and WorkSource Washington to ensure services, programs, and activities are readily accessible by individuals with physical, mental, or sensory disabilities include the following:

- Policy and Procedure Number 0013-1 - Reasonable Accommodation, and Nondiscrimination on the Basis of Disability for employees, and Policy 5402 Equal Opportunity and Nondiscrimination for customers and employees, indicate ESD's firm commitment to providing timely, reasonable accommodations to the known physical, mental or sensory limitations of an otherwise-qualified employee or customer with a disability. The accommodations may include adjustments and modifications that allow a person with a disability to perform the essential functions of the job, enjoy the benefits and privileges of employment, or participate in department programs, services and activities. Qualified sign language interpreters,

readers, and other auxiliary aids are provided upon request. (Attachments 2A-3 and 2A-1)

- WorkSource Washington operates each service, program, or activity so that it is readily accessible to and usable by individuals with disabilities. All programs, services and activities are offered to individuals with disabilities in the most integrated setting appropriate to them. To achieve program accessibility, WorkSource Washington considers the redesigning of equipment and the provision of appropriate auxiliary aids and services, including assistive technology and sign language interpreters.
- The Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity and Nondiscrimination Policy Number 5402 states that recipients funded under WIOA, whether in whole or in part, are responsible for ensuring equal opportunity and nondiscrimination in programs and activities. Each program or activity must be operated in a manner that makes it readily accessible to qualified individuals with a disability. (Attachment 2A-1)

The U.S. Department of Labor (USDOL) Office of Disability Employment Policy's Section 188 Disability Checklist has been distributed to all Local Workforce Development Boards (LWDB).

Washington State continues to assist registrants, applicants, eligible applicants/registrants and participants with disabilities by providing the following:

- Comprehensive accessibility assessments — Assessments have been completed for all WorkSource Centers and affiliates.
- Individual disability access improvement plans — Plans have been developed by each center based on the results of their assessment. Model policies and procedures for serving customers with disabilities have been developed and disseminated.
- Staff training — Training on issues related to serving people with disabilities has been incorporated into all major WorkSource conferences and training events held in the state. Many WorkSource Centers have instituted a practice of holding training sessions for staff each month on a different disability issue or program.
- Technical assistance — ESD, the Governor's Committee on Disability Issues and Employment (GCDE) and the Department of Social Health Services' Division of Vocational Rehabilitation have established a Technical Assistance Clearinghouse. The Clearinghouse serves as a single point of contact on issues related to serving people with disabilities and provides

access to information, linkage to useful resources and assistance with creative problem solving.

The Washington State Office of the Chief Information Officer has adopted standards for technology accessibility. Recipients need to adhere to the following standards: (Attachment 5B-1):

- All covered technology must be accessible to and usable by individuals with disabilities, either directly or by supporting the use of assistive technology. Standard 188.10 - Minimum Accessibility Standard outlines the minimum levels for compliance. This includes all covered technology acquired, procured, developed or substantially modified or substantially enhanced after the effective date of the policy, including software available at no cost.
- Where a covered technology is not able to be brought into compliance, the system or content owner is responsible to provide individuals with disabilities equivalent access.
- For each instance of non-compliance of a new covered technology, a waiver must be requested and approved.

### **Architectural Accessibility**

State entities and ESD WIOA Title I recipients are required to follow specific requirements of the Americans with Disabilities Act (ADA), as amended. LWDBs have been informed of their obligation to abide by WIOA EO and nondiscrimination provisions and other federal agency requirements of the ADA. ESD communicates these requirements through Policy and Procedure 5612 - One-Stop Evaluation and Certification, the self-assessment process for certification of WorkSource Centers and affiliate sites, and the assurance language in WIOA grant agreements. WorkSource Centers that are not state-owned/leased must abide by local building codes and standards for accessibility as well. (Attachment 5C-1)

Steps taken by ESD and WorkSource Washington to ensure all programs and activities are architecturally accessible to individuals with disabilities include:

- ESD Policy and Procedure Number 0013-1 - Reasonable Accommodation and Nondiscrimination on the Basis of Disability provides:

“...The Department shall provide its services and operate its programs and/or activities so that, when viewed in their entirety, they are accessible to qualified persons with a disability.”

“A program must be accessible to clients, or a comparable program must be made available at an alternate site that is accessible.” (Attachment 2A-3)

- The ESD Facilities Unit inspects ESD’s facilities at lease renewal to ensure compliance with requirements of the Americans with Disabilities Act of 1990, as amended. The evaluation focuses on site access, signage at primary building entrances of inaccessible facilities, interior door and corridor widths, public restroom requirements, and other architectural specifications of the ADA Accessible Guidelines. The purpose is to ensure compliance with Washington Administrative Code (WAC) 51-50-005 and the Washington State Building Code. Copies of the facility evaluations are maintained in the Facilities Unit. (Attachments 5C-2 – 5C-3)
- The LWDBs provide criteria that must be followed for WorkSource Center certification. Each LWDB provides this information in the way that worked best for their area. An example is Workforce Central’s Certification process. (Attachment 5C-4)
- Each LWDB EO Officer is provided with ADA measuring devices – a pressure gauge and an ADA tape measure. The instruments assist LWDB EO Officers in conducting EO and nondiscrimination monitoring reviews and WorkSource Center Administrators in keeping their centers accessible for individuals with disabilities.

### **Communication**

ESD and LWDBs take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. Auxiliary aids and services are provided, when appropriate and necessary, to afford individuals with disabilities opportunities to participate in and enjoy the benefits of WIOA Title I financially assisted programs and activities. The Washington Relay Service is used to communicate with individuals who are hard of hearing or deaf, or have speech impairments. Where site telephone numbers are provided, the relay service number must also be provided.

LWDBs are aware of their obligation to ensure that communications with members of the public, customers, and applicants with disabilities are as effective as communications with others. WIOA Equal Opportunity and Nondiscrimination Policy Number 5402 states that recipients must ensure programs are provided in the most integrated setting appropriate for the needs of individuals with disabilities, and that communications with individuals with disabilities are as effective as communications with others. (Attachment 2A-1)

ESD is committed to ensuring that its programs, services and activities are readily accessible by individuals with physical, mental, or sensory disabilities. When requested, qualified sign language interpreters, readers, and other auxiliary aids and services will be provided. Documents and publications will also be made available in alternate formats.

### **Records**

ESD and the LWDBs ensure the confidentiality of information related to an individual's medical condition that may reveal the presence of a disability as noted at 29 CFR 32.15(d) and the Americans with Disabilities Act, as amended. Medical condition information is kept in a single, secured location separate and apart from other files. Electronic systems also support separate recordkeeping for medical condition information. Pre-employment/employment medical inquiries are conducted in accordance with the WIOA, ADA and the regulations of Section 504 of the Rehabilitation Act of 1973, as amended. Specific guidance is referenced in recipients' policies. EO monitoring ensures adherence to these provisions. (See Elements 2, 6 and 7)

ESD's Policy and Procedure Number 0013-1 – Reasonable Accommodation and Nondiscrimination on the Basis of Disability states in the employee section that upon completing the reasonable accommodation process, all supporting information needs to be forwarded to the Human Resource Division and “It will be filed in a secure location, separate from an employee's personnel file. Information about an individual's disability is limited to designated personnel and only provided on a need-to-know basis.” (Attachment 2A-3)

### **Element Five Definitions**

**Auxiliary aids or services** includes: (1) Qualified interpreters on-site or through video remote interpreting (VRI) services, notetakers, real-time computer-aided transcription services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, including

real-time captioning, voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices, videotext displays, accessible electronic and information technology, or other effective means of making aurally delivered materials available to individuals with hearing impairments; (2) Qualified readers, taped texts, audio recordings, materials and displays in Braille, screen reader software, magnification software, optical readers, secondary auditory programs (SAP), large print materials, accessible electronic and information technology, or other effective methods of making visually delivered materials available to individuals who are blind or have low vision; (3) Acquisition or modification of equipment or devices; and (4) Other similar services, devices, and actions.

**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.

**Employment practices** of a recipient include, but are not limited to: (1) Recruitment or recruitment advertising; (2) Selection, placement, layoff or termination of employees; (3) Upgrading, promotion, demotion or transfer of employees; (4) Training, including employment-related training; (5) Participation in upward mobility programs; (6) Deciding rates of pay or other forms of compensation; (7) Use of facilities; or (8) Deciding other terms, conditions, benefits and/or privileges of employment.

**Facility** means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located. The phrase "real or personal property" in the preceding sentence includes indoor constructs that may or may not be permanently attached to a building or structure. Such constructs include, but are not limited to, office cubicles, computer kiosks, and similar constructs.

**Fundamental alteration** means: (1) A change in the essential nature of a program or activity as defined in this part, including but not limited to an aid, service, benefit, or training; or (2) A cost that a recipient can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in such a burden include: (i) The nature and net cost of the modification needed, taking into consideration the

availability of tax credits and deductions, and/or outside financial assistance, for the modification; (ii) The overall financial resources of the facility or facilities involved in the provision of the modification, including: (A) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and (B) The effect the modification would have on the expenses and resources of the facility or facilities; (iii) The overall financial resources of the recipient, including: (A) The overall size of the recipient; (B) The number of persons aided, benefited, served, trained, or employed by the recipient; and (C) The number, type and location of the recipient's facilities; (iv) The type of operation or operations of the recipient, including: (A) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and (B) Where the modification sought is employment-related, the composition, structure and functions of the recipient's workforce; and (v) The impact of the modification upon the operation of the facility or facilities, including: (A) The impact on the ability of other participants to receive aid, benefit, service, or training, or of other employees to perform their duties; and (B) The impact on the facility's ability to carry out its mission.

**Qualified individual with a disability** means: (1) With respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position; (2) With respect to aid, benefits, services, or training, an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

**Qualified interpreter** means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals who are limited English proficient. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary, either in-person, through a telephone, a video remote interpreting (VRI) service, or via internet, video, or other technological methods.

**Reasonable accommodation:** (1) The term "reasonable accommodation" means: (i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or (ii) Modifications or adjustments that enable a

qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to: (A) The environment where work is performed or aid, benefits, services, or training are given; or (B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or (iii) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities. (2) “Reasonable accommodation” includes, but is not limited to: (i) Making existing facilities used by applicants, registrants, eligible applicants/registrants, participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and (ii) Restructuring of a job or a service, or of the way in which aid, benefits, services, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities. (3) To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (4) A recipient is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong or the “record of” a disability prong, but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong. See definition of Disability above.

**Undue hardship** means, with regard to reasonable accommodation of individuals with disabilities, significant difficulty or expense incurred by a recipient, when considered in light of the following factors. Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include: (A) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation; (B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including: (1) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and (2)

The effect the accommodation would have on the expenses and resources of the facility or facilities; (C) The overall financial resources of the recipient, including: (1) The overall size of the recipient, (2) The number of persons aided, benefited, served, trained, or employed by the recipient, and (3) The number, type and location of the recipient's facilities; (D) The type of operation or operations of the recipient, including: (1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient, and (2) Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and (E) The impact of the accommodation upon the operation of the facility or facilities, including: (1) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and (2) The impact on the facility's ability to carry out its mission.

## **Attachments for Element Five**

- 5A-1 [RCW 49.60 Discrimination – Human Rights Commission](#)
- 5A-2 [RCW 50.12.210 Employment Services for Handicapped](#)
- 5A-3 [Title 162 WAC Human Rights Commission \(Applicable Chapters\)](#)
- 5A-4 [Disability Access Information - Department of Enterprise Services Website](#)
- 5B-1 [188 Accessibility OCIO](#)
- 5C-1 [Policy and Procedure 5612 - One-Stop Evaluation and Certification](#)
- 5C-2 [WAC 51-50-005 International Building Code Requirements for Barrier Free Accessibility](#)
- 5C-3 [ADA Checklist](#)
- 5C-4 [Workforce Central One-Stop Certification Process](#)

## **ELEMENT SIX DATA AND INFORMATION COLLECTION AND MAINTENANCE (29 CFR 38.54(c)(1)(iv) and (vi))**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.41 through 38.45 and 29 CFR 38.53 related to data and information collection and maintenance.*

### **Background**

Washington State has established policies and procedures on data collection that apply to job seekers, employers and agency employees for all Workforce Innovation and Opportunity Act (WIOA) Title I state programs. The Employment Security Department (ESD) also maintains and updates a Data Information/Technology Security plan through the Washington State Technology Solutions (WaTech). This plan ensures that data collected is secure and provides contingency plans for unexpected failures. ESD currently maintains two data systems that capture, store and report information considered confidential. These systems fall under the guidelines and requirements of policy and procedures, as well as the Technology Security Plan.

### **Data Collection**

All agency systems have been modified to meet the requirements for capturing and reporting equal opportunity (EO) data elements. The unemployment insurance (UI) benefits program EO data reports are produced from the Unemployment Tax and Benefits (UTAB) system, which was launched January 2017. WIOA and Labor Exchange EO reports are available from the state's management information system for WorkSource, Efforts to Outcomes (ETO). The State-Level EO Officer met with a statewide team to share the data requirements for the system and is involved in the development of system updates, to ensure compliance.

ESD data, including employee information, is captured in the following systems:

UTAB Unemployment Tax and Benefits, for tracking UI benefits and claimant activities.

**HRMS** Human Resources Management System, for capturing and maintaining data on agency employees.

**ETO** Efforts to Outcomes, a management information system for job matching, case management and information-tracking that supports the collection of data used for reporting purposes for the One-Stop system for Washington State.

Washington State's One-Stop system is compliant with 29 CFR 38.41 through 38.45. EO demographic information is collected when a person registers for services or applies for employment. For customers seeking to enroll in a program, if the information has not already been captured, it will be collected at the point at which the job seeker or customer is registered.

Policies, procedures and security plans are in place to safeguard collected information pertaining to specific job seekers, program participants, enrollees, benefit claimants, employers and recipient staff. These policies, procedures and plans are reviewed and modified, if necessary. Data is accessible only to program managers, program monitors, case managers, and a limited number of other authorized personnel needing access to these systems to provide direct services. (Attachments 6A-1 and 6A-2)

The UTAB system is used to process UI claims. It stores EO demographic information as required by the U.S. Department of Labor (USDOL) Civil Rights Center (CRC). The information is collected voluntarily when applying online or by phone. Each claimant is asked to voluntarily provide their:

- Race/ethnicity
- Sex
- Age
- Disability status
- LEP status and preferred language

This information is confidential and is used for the purposes of recordkeeping and reporting, and determining program compliance with nondiscrimination requirements. Claimant information is automatically transferred to the job registration system unless the claimant requests to be excluded.

Access to this information is limited to those persons with a legitimate business need to access the systems. Access and use of information maintained by ESD is covered in the following policies and procedures:

- ESD Policy and Procedure Number 0006, Public Record requests (Attachment 6A-3);
- ESD Policy and Procedure Number 0029, Online or Bulk Data/Information Sharing Policy, covering the confidentiality of information obtained by ESD (Attachment 6A-4);
- ESD Policy and Procedure Number 2010, Automated Systems Security (Attachment 6A-5); and
- ESD Policy and Procedure Number 1016, Employee Conduct, page 7 states that the penalty for failure to comply with these privacy protection requirements will be grounds for nothing less than disciplinary action, up to and including dismissal, and/or legal actions against the individual. (Attachment 6A-2)

### **Data Storage and Reports**

ESD managers and Local Workforce Development Boards have access to ETO to analyze compliance with the nondiscrimination provisions of Section 188 of the WIOA and 29 CFR Part 38. ETO produces several reports, including EO reports.

ETO allows EO data to be downloaded and forwarded to CRC upon request to allow CRC to conduct its own statistical/quantifiable data analyses. The State-Level and LWDB EO Officers use the WIOA and Labor Exchange EO data reports to analyze customer participation by race/ethnicity, sex, age, disability status, LEP and preferred language. Data is reported to the USDOL quarterly according to the individual program's reporting requirements.

The UI Policy Unit and the State-Level EO Officer receive automated statewide EO reports by race/ethnicity, gender, age, disability, LEP and preferred language, to analyze pass/fail rates in various steps of the benefits process. When significant differences in participation exist, as measured by the 80% Rule and the Two-Standard Deviation Test for Statistical Significance, the disparities are discussed among the UI Benefits Program management and the State-Level EO Officer. The differences are investigated and justified or mitigated.

### **Discrimination Complaint Logs**

Each LWDB EO Officer and the State-Level EO Officer maintains a log of discrimination complaints filed on the basis(es) of race, color, religion, sex

(including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for customers, citizenship and/or participation in a WIOA Title I-financially assisted program or activity. See Element 8. (Attachment 6B-1)

### **Records**

Records containing medical condition information that may reveal the presence of a disability are stored, secured and kept separate and apart from other information. If an entity is found to be out of compliance, corrective actions are administered. See Elements 3 and 5, 2B-2 for the Reasonable Accommodation Policy, and Record's Policies 6A-3 through 6A-5.

Records are maintained for at least three years, in compliance with state and federal regulatory requirements. All customer and recipient staff discrimination complaints are maintained for three years after the cases are closed. ESD employee and job applicant discrimination complaints are maintained for six years after closure in accordance with the State Government General Records Retention Schedule. (Attachment 6C-1)

### **Enforcement Actions**

The Director of CRC will be informed of all administrative enforcement actions or lawsuits that allege discrimination on one or more of the bases outlined above and prohibited by Section 188 of WIOA.

## **Attachments for Element Six**

- 6A-1 [Data Sharing Notice](#)
- 6A-2 [Policy and Procedure 1016 – Employee Conduct](#)
- 6A-3 [Policy and Procedure 0006 - Public Record Requests](#)
- 6A-4 [Policy and Procedure 0029 - Online or Bulk Data-Information Sharing](#)
- 6A-5 [Policy and Procedure 2010 - Automated Systems Security](#)
- 6B-1 [Sample LWDB Discrimination Complaint Log](#)
- 6C-1 [SOS Retention Schedule - Discrimination](#)

## **ELEMENT SEVEN MONITOR RECIPIENTS FOR COMPLIANCE (29 CFR 38.54 (c)(1)(viii))**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.51(b). The State is required to establish procedures to annually monitor all aspects of the recipient's compliance with WIOA Section 188 and 29 CFR Part 38.*

### **Background**

The State-Level Equal Opportunity (EO) Officer conducts in-depth EO and nondiscrimination compliance monitoring reviews of each Local Workforce Development Board (LWDB) to assess their compliance with the EO and nondiscrimination provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and 29 CFR Part 38 and provides training and technical assistance to LWDB EO Officers regarding their monitoring responsibilities and activities.

Beginning in March 2020, WorkSource offices moved to remote services due to the pandemic. The State Equal Opportunity office and LWDB EO Officers have worked together to adapt the Equal Opportunity and Nondiscrimination Monitoring expectations for 2021, recognizing that WorkSource offices will be reopening at different times and for different levels of in-person service throughout 2021, and many services will continue to be provided remotely. The focus of monitoring for 2021 continues to be ensuring services are accessible and in compliance with Washington State's Nondiscrimination Plan and the Nondiscrimination and Equal Opportunity Provisions of WIOA. (Attachment 7A-1 and 7A-2)

The State-Level EO Officer and LWDB EO and nondiscrimination monitoring follow procedures listed in the Employment Security Department and Local Workforce Development Board Equal Opportunity and Nondiscrimination Monitoring Guide. (Attachment 7A-3)

A necessary component of conducting EO and nondiscrimination monitoring is conducting data analysis. Data analysis consists of:

- Comparing the percentage of eligible applicants or applicants in an EO demographic group to the percentage of the civilian labor force in the county or counties. This determines if eligible populations are being reached.
- Using the 80% Rule and the Two-Standard Deviation Test for Statistical Significance to determine if there are significant differences in participation among EO groups. For example, success rates are compared among eligible applicants to applicants, applicants to participants, or participants to positive exits.
- When significant differences are found, investigating the reasons for the disparity to determine if it is caused by a neutral policy or practice. When the policy or practice is found to be a justifiable business necessity, it is documented. If there is no justifiable business necessity found, a mitigation plan will be developed and documented.

### **State-Level EO Officer Monitoring**

The State-Level EO Officer conducts EO and nondiscrimination reviews of LWDBs and the State Board. The ESD EO Officer works with the State-Level EO Officer and conducts reviews of the UI Benefits Program, and Employment Service programs. (Attachment 7B-1)

### **WIOA Programs**

The State-Level EO Officer annual compliance monitoring reviews consist of desk reviews and on-site reviews of each LWDB.

Reviews of WIOA programs consist of, but are not limited to:

- An interview with a manager or supervisor using a questionnaire covering the elements of the Nondiscrimination Plan;
- A review of data analysis using the 80% Rule and Two-Standard Deviation Test for Statistical Significance;
- Participant file reviews and medical/disability records file review;
- A review of job orders;
- Interviews with staff and customers using a questionnaire;
- A review of LWDB EO monitoring reports; and
- A walkthrough of facilities using a checklist.

Questionnaires and checklists are found in the ESD and LWDB EO and Nondiscrimination Monitoring Guide. (Attachment 7A-3)

Following the LWDB monitoring review, the State-Level EO Officer conducts an exit meeting with the LWDB EO Officer and Executive Director to discuss the monitoring review, best practices, issues, and any findings. Follow-up monitoring may be scheduled if deficiencies are found or corrective action is needed. The State-Level EO Officer provides a monitoring report to the LWDB Executive Director and LWDB EO Officer. (Attachments 7A-3 and 7B-1)

### **UI Benefits Program**

ESD's EO Officer conducts annual UI Benefit Program EO and nondiscrimination monitoring reviews. Reviews consist of, but are not limited to, monitoring:

- Data analysis and investigation of monetary determinations, non-monetary determinations, separation and non-separation issues, lower-level and higher-level appeals;
- Services to LEP customers and customers with disabilities;
- An onsite interview with claims center administrators and staff;
- Management and staff EO and nondiscrimination training;
- Benefits accuracy; and
- EO taglines and posters.

Reviews of the UI Benefits Program consist of, but are not limited to:

- An interview with claim center managers using a questionnaire covering the elements of the Nondiscrimination Plan;
- Data analysis using the 80% Rule and Two-Standard Deviation Test for Statistical Significance; and
- Interviews with staff using a questionnaire to determine staff knowledge of EO and nondiscrimination requirements.

### **Employment Service**

ESD's EO Officer monitors employment service programs annually including:

- UI Reemployment
- Veteran
- WorkFirst
- Migrant and Seasonal Farmworker

The Labor Exchange Equal Opportunity Report provided by the state's management information system for WorkSource, Efforts to Outcomes (ETO), is analyzed to determine if significant differences exist. If any are found, the ESD EO Officer collaborates with the appropriate program office to have them investigate and justify the findings or attempt to mitigate the effects.

### **Trade Adjustment Assistance**

ESD's EO Officer monitors the Trade Adjustment Assistance Program annually while monitoring the LWDBs as this program is administered through WorkSource Centers and affiliates.

Reviews of the Trade Adjustment Assistance program consists of, but are not limited to:

- An interview with a manager or supervisor using a questionnaire covering the elements of the Nondiscrimination Plan;
- Data analysis using the 80% Rule and Two-Standard Deviation Test for Statistical Significance;
- Participant file reviews and medical/disability records file review; and
- Interviews with staff using a questionnaire to determine staff knowledge of EO and nondiscrimination requirements.

### **State Board**

The State-Level EO Officer monitors the State Workforce Board for adherence to the EO and nondiscrimination requirements of Section 188 of the WIOA and 29 CFR Part 38.

Reviews of the State Workforce Board consist of, but are not limited to:

- An interview with a manager or supervisor using a questionnaire covering the elements of the Nondiscrimination Plan; and
- Interviews with staff using a questionnaire to determine staff knowledge of EO and nondiscrimination requirements.

### **LWDB EO Officer Monitoring**

LWDB EO Officers develop procedures and monitoring tools for monitoring their recipients' compliance with Section 188 of the WIOA, 29 CFR Part 38 and applicable WIOA state policies. Monitoring tools for LWDBs are available in the ESD and LWDB EO Monitoring Guide. They include a questionnaire covering the elements of the Nondiscrimination Plan, a participant file review and disability/medical file review worksheet, staff and customer questionnaires, and a facility walkthrough checklist.

Each LWDB EO Officer monitors the activities of recipients in the local workforce development area to ensure equal opportunity and nondiscrimination. Policies

and procedures regarding monitoring and oversight requirements for compliance reviews have been disseminated to the local level. Those monitoring and oversight requirements together with EO monitoring instruments are the methods and processes used to conduct and organize the review.

LWDBs must use a monitoring instrument that covers the elements of the Nondiscrimination Plan and the procedures outlined in the EO and nondiscrimination monitoring guide. See attachment 7C-1 through 7C-12 for LWDB monitoring plans.

### **Eligible Training Provider Monitoring**

The USDOL Civil Rights Center defines training providers on the Eligible Training Provider list as recipients and has informed State-Level EO Officers at National Association of State Workforce Agencies Equal Opportunity Committee meetings and training conferences that training providers are to be monitored also. Training providers include private schools, community colleges and four-year colleges.

The State Board's WIOA Policy #5611 requires that Eligible Training Providers maintain performance levels, provide records to the Board annually, and allow reviews and audits. (Attachment 7D-1)

The State-Level EO Officer is responsible for monitoring Eligible Training Providers. The State-Level EO Officer is beginning this monitoring program with conducting data analysis for private schools and training providers. The State-Level EO Officer will follow up with training providers when the results of the review indicate a potential issue, or if there is a discrimination complaint involving the provider. This follow up may involve a discussion, request for additional information, and/or a full review.

Even when records provide small numbers for analysis, the State-Level EO Officer 1) must compare the percentages of the demographic groups in each step of the training delivery process against each other and 2) compare the percentages of the civilian labor force against the percentages of eligible applicants or applicants, to determine if the percentages or numbers are sensible. For example, if there is a small but diverse group of eligible applicants or applicants but only members of one group go on to be participants and have positive exits, this will be examined to determine whether there is a justifiable reason for the occurrence.

## **Monitoring Elements**

State-Level and LWDB EO Officers conduct the following monitoring and oversight activities covering the nine elements of the Nondiscrimination Plan:

- **EO Officer Designation** (29 CFR 38.28 through 38.33)  
Ensure EO Officers have been appointed, training is ongoing, assigned EO duties do not constitute a conflict of interest, EO duties are being carried out, and the name of the EO Officer is identified.
- **Notice and Communication** (29 CFR 38.34 through 38.39)  
Ensure “Equal Opportunity is the Law” posters have been distributed and posted in prominent locations for public viewing and that recruitment brochures and other materials include the EO tagline and relay service number for individuals with disabilities. Additionally, any written materials (policies, notices, checklists, brochures, etc.) are reviewed to ensure the EO and nondiscrimination requirements have been met.
- **Assurances** (29 CFR 38.25 through 38.27)  
Review training plans, contracts, agreements, and policies and procedures to ensure EO and nondiscrimination compliance.
- **Affirmative Outreach** (29 CFR 38.40)  
In their recruitment efforts, recipients ensure that materials, brochures, and public service announcements are aimed at broadening the pool of those considered for employment or participation in programs and activities. This includes members of different sexes, various racial/ethnic groups, various age groups, individuals with disabilities and individuals with limited English proficiency.
- **Compliance with Section 504 of the Rehabilitation Act of 1973, as amended** (29 CFR 38.12 through 38.17)  
Ensure compliance with the disability-related requirements of WIOA Section 188 and Section 504 of the Rehabilitation Act.
- **Data and Information Collection and Maintenance** (29 CFR 38.41 through 38.45)  
Ensure collection and maintenance of records or data necessary to determine compliance, e.g., EO and nondiscrimination recordkeeping procedures, policy issuances, reports, complaint logs.

- **Development of a Monitoring System** (29 CFR 38.51 and 38.53)  
Ensure monitoring tools and program policies are developed to ensure their programs and activities are operating in a nondiscriminatory way and their recipients receive on-site monitoring reviews. Ensure data analysis and follow-up is conducted.
- **Complaint Processing Procedures** (29 CFR 38.69 through 38.85)  
Ensure discrimination complaint procedures are adhered to and that complaint logs are maintained.
- **Corrective Actions and Sanctions** (29 CFR 38.54(c)(2)(vii))  
Ensure LWDBs impose corrective actions with time limits, and considers sanctions if voluntary efforts at compliance fail.

### **Sanctions**

If deficiencies are identified, State-Level or LWDB EO Officers provide on-site technical assistance. When the deficiencies are included in the compliance review report, the recipient or state program must comply by the due date. If compliance is not attained through voluntary means, a corrective action plan or conciliation agreement may be necessary. After attempts to obtain voluntary compliance fail, the matter is raised to the Commissioner. See Element 9.

## Attachments for Element Seven

- 7A-1 [2021 Monitoring Memo](#)
- 7A-2 [2021 Facility Walkthrough Form](#)
- 7A-3 [EO Monitoring Guide](#)
- 7B-1 [State-Level 2021-2022 EO Monitoring Review Plan](#)
- 7C-1 [Benton-Franklin EO Monitoring Plan](#)
- 7C-2 [Eastern EO Monitoring Plan](#)
- 7C-3 [North Central EO Monitoring Plan](#)
- 7C-4 [Northwest EO Monitoring Plan](#)
- 7C-5 [Olympic EO Monitoring Plan](#)
- 7C-6 [Pacific Mountain EO Monitoring Plan](#)
- 7C-7 [Sea-King EO Monitoring Plan](#)
- 7C-8 [Snohomish EO Monitoring Plan](#)
- 7C-9 [South Central EO Monitoring Plan](#)
- 7C-10 [Southwest EO Monitoring Plan](#)
- 7C-11 [Spokane EO Monitoring Plan](#)
- 7C-12 [Workforce Central EO Monitoring Plan](#)
- 7D-1 [ETP 5611 Part D](#)

## **ELEMENT EIGHT COMPLAINT PROCESSING PROCEDURES (29 CFR 38.54(c)(1)(vii))**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.72 and 38.73 regarding complaint processing procedures.*

### **Background**

The State of Washington is committed to providing equal opportunity (EO) and ensuring nondiscrimination in employment and services. The Revised Code of Washington (RCW) 49.60 – the Washington Law Against Discrimination (WLAD), prohibits discrimination on the basis of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a service animal by a person with a disability. (Attachment 5A-1)

In addition, the following Executive Orders and Directives were issued to further ensure nondiscrimination in employment and services:

- Executive Order 19-01 — Veteran and Military Transition Readiness Support (Attachment 4D-2)
- Executive Order 17-01 – Reaffirming Washington’s Commitment to Tolerance, Diversity, and Inclusiveness (Attachment 8A-1)
- Executive Order 16-04 – Reaffirming the Interagency Committee of State Employed Women (Attachment 8A-2)
- Executive Order 13-02 — Improving Employment Opportunities and Outcomes for People with Disabilities in State Employment (Attachment 4D-3)
- Executive Order 12-02 — Workforce Diversity and Inclusion (Attachment 8A-3)
- Executive Order 96-04 — Implementing the Americans with Disabilities Act (Attachment 8A-4)
- Executive Order 89-01 — Sexual Harassment (Attachment 8A-5)
- Governor’s Directive 16-11 — LGBTQ Inclusion and Safe Places Initiative (Attachment 4D-4)

The Employment Security Department (ESD) and Local Workforce Development Boards (LWDB) maintain compliance with Section 188 of the Workforce Innovative and Opportunity Act (WIOA) and its regulations regarding the processing of discrimination complaints.

Every recipient under WorkSource Washington adheres to WorkSource System Policy 1012 – Customer Concern and Complaint Resolution and the WorkSource Complaint Handbook, which includes a discrimination complaint form. The complaint form is available in both English and Spanish. Local Workforce Development Boards (LWDB) may develop their own discrimination complaint policies and procedures, but they must not conflict with WorkSource System Policy 1012 and the WorkSource Complaint Handbook. (Attachments 8A-6 and 8A-7)

ESD maintains a separate discrimination complaint policy and procedure for its employees, ESD Policy and Procedure Number 0013 - Discrimination Complaint Processing. ESD employees are required to review the discrimination complaint policy and procedure annually. (Attachment 2A-4)

### **Process**

It is the policy of ESD and LWDBs to advise WorkSource customers and employees of their right to file a discrimination complaint. Any person who believes they have been discriminated against on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or for any beneficiary of, applicant to, or participant in programs financially assisted under Title I of WIOA, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity, has the right to file a discrimination complaint. Discrimination complaints must be filed within 180 days of the alleged discrimination or retaliation. Customers may file with their local LWDB Equal Opportunity (EO) Officer, the State-Level EO Officer, or the Director of the Civil Rights Center, U.S. Department of Labor. If the complainant is less than 18 years old, the complainant's parent or legal guardian must sign the written discrimination complaint.

The discrimination complaint process provides for prompt and equitable resolution of complaints and includes the following elements:

- A written and signed discrimination complaint;

- A Notice of Receipt that includes:
  - Acknowledgement of receipt of the discrimination complaint.
  - Notice that the complainant has the right to be represented in the discrimination complaint process.
  - Notice of rights contained in 29 CFR Part 38.35.
  - Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that the notice at 29 CFR Part 38.35 will be translated into the appropriate non-English language as required in 29 CFR Part 38.34, 29 CFR Part 38.36, and 29 CFR Part 38.9.
  - A list of each issue raised in the discrimination complaint and, for each issue, a statement that the issue is accepted for investigation or is not accepted. The reason(s) must be provided for rejection.
  - An invitation to participate in alternative dispute resolution (ADR).
- A period of fact-finding or ADR if accepted; and
- A written Notice of Final Action (NOFA) provided to the complainant within 90 calendar days of the date the discrimination complaint was filed. The NOFA will contain:
  - For each issue raised in the complaint, a statement of either:
  - The recipient's decision on the issue and an explanation of the reasons underlying the decision; or
  - A description of the way the parties resolved the issue; and
  - Notice that the complainant has a right to file a complaint with CRC within 30 calendar days of the date on which the NOFA is received if the complainant is dissatisfied with the recipient's final action on the complaint.

Upon receipt of a discrimination complaint, EO Officers are required to keep the following information confidential to the maximum extent possible, consistent with applicable law and fair determination of the complaint:

- The fact that the complaint has been filed;
- The identity of the complainant(s);
- The identity of individual respondents to the allegations; and
- The identity of any persons(s) who furnished information relative to, or assisting in a complaint investigation.

If the State-Level or LWDB EO Officer determines that they do not have jurisdiction over a discrimination complaint, the EO Officer is required to:

- Inform the complainant of this decision in writing;
- Inform the complainant of the entity that has jurisdiction;
- Promptly refer the complaint to that entity, explaining the circumstances; and
- Advise the complainant of their right to file a complaint with the Director of the CRC.

A discrimination complaint log is maintained by each LWDB EO Officer and at the state level for logging, tracking and reporting discrimination complaints. This log must contain:

- The name and address of the complainant;
- The basis of the discrimination complaint;
- A description of complaint;
- The date the complaint was filed;
- The disposition and date; and
- Any other pertinent information.

Information that could lead to the identification of an individual who filed a complaint must be kept confidential.

Recipients are monitored to ensure they comply with the discrimination complaint process. (Attachment 8B-1)

### **Responsibilities**

The State-Level EO Officer has overall responsibility for developing and implementing departmental discrimination complaint procedures, ensuring agency recipients develop their procedures, and ensuring staff (including recipient staff) are provided the training required by 29 CFR Part 38. The State-Level EO Officer provides oversight, monitoring and technical assistance for the processing of all discrimination complaints, including provision of Alternative Dispute Resolution (ADR) services required under 29 CFR Part 38.

LWDB EO Officers are responsible for:

- Publicizing and implementing their own or adopting the state WIOA discrimination complaint process in their local area, in accordance with 29 CFR Part 38;
- Assisting local WorkSource customers in filing a discrimination complaint;

- Logging, tracking, reporting and processing discrimination complaints filed against a local recipient, including training providers, in their workforce development area;
- Conducting intake to determine if the complaint is covered by 29 CFR Part 38, resolving jurisdictional issues and, if appropriate, routing the discrimination complaint to the appropriate entity that has jurisdiction for processing; and
- Providing EO and nondiscrimination training within their LWDB.

The LWDB EO Officer confers with the State-Level EO Officer promptly upon receipt of a discrimination complaint, prior to determining jurisdiction over the matter.

ESD's Employment Service Complaint Officer in the Employment Connections Division, forwards discrimination complaints they receive to the State-Level EO Officer.

The State Monitor Advocate oversees Migrant and Seasonal Farmworker (MSFW) services at WorkSource Centers and/or affiliate sites that have a significant number of MSFW populations in their area. The State Monitor Advocate forwards discrimination complaints they receive to the State-Level EO Officer.

### **Communication**

Information about the discrimination complaint process is available to department and recipient staff, as well as customers. "Equal Opportunity is the Law" posters are displayed, informing and instructing individuals on discrimination complaint procedures throughout the WorkSource Washington system at LWDB and recipient sites. The EO Notice is provided to all registrants, applicants, eligible applicants/registrants, participants, subrecipients, and interested members of the public. They are advised of their rights to file a discrimination complaint during orientations and/or registration for WIOA services.

UI claimants are responsible for understanding the contents of the Handbook for Unemployed Workers, which includes information on how to file a discrimination complaint. (Attachment 2A-15)

All ESD employees are provided with copies of the Discrimination Complaint Processing policy and are required to review and sign that they have read the policy annually.

The [ESD website](#) contains an “Equal opportunity” link in the banner at the bottom of each page that links to the EO and nondiscrimination web page where the EO Notice of Rights, EO tagline, WIOA and ESD discrimination complaint policies, procedures and forms are located. (See Elements 2 and 7)

## **Attachments for Element Eight**

8A-1 [Executive Order 17-01 – Reaffirming Washington’s Commitment to Tolerance, Diversity, and Inclusiveness](#)

8A-2 [Executive Order 16-04 – Reaffirming the Interagency Committee of State Employed Women](#)

8A-3 [Executive Order 12-02 - Workforce Diversity and Inclusion](#)

8A-4 [Executive Order 96-04 - Implementing the Americans with Disabilities Act](#)

8A-5 [Executive Order 89-01 - Sexual Harassment](#)

8A-6 [WorkSource System Policy 1012 - Customer Concern and Complaint Resolution](#)

8A-7 [WorkSource System Policy 1012 - Complaint Handbook](#)

8B-1 [State-Level Sample Discrimination Complaint Log](#)

## **ELEMENT NINE CORRECTIVE ACTIONS/SANCTIONS (29 CFR 38.54(c)(2)(vii))**

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.54(c)(2)(vii).*

### **Background**

The Employment Security Department (ESD) will seek corrective action from a Workforce Innovative Opportunity Act (WIOA) recipient or state program (as defined at 29 CFR 38.4) when a violation is identified in the following circumstances:

- The State-Level Equal Opportunity (EO) Officer's EO and nondiscrimination monitoring review using desk audits, on-site reviews or observations identify 1) a technical deficiency, 2) a failure to follow through on written assurances, or 3) a barrier to equal access to, or disparate impact in, programs or services.
- The assessment of the circumstances surrounding a discrimination complaint and/or investigation, or other fact-finding reveals barriers to equal opportunity or equal access to WIOA, Employment Service, UI benefits or other state programs as defined at 29 CFR 38.4.
- A recipient refuses to implement voluntary corrective actions, submit requested data or documentation, or provide access to premises or records during a compliance review.

ESD has notified its recipients of their responsibility to adhere to the nondiscrimination requirements of 29 CFR Part 38 through issuance of WIOA Title I Policy 5402 – Equal Opportunity and Nondiscrimination and the Nondiscrimination Plan. Local Workforce Development Boards (LWDB) are required to establish policy and procedures for obtaining prompt corrective action or, as needed, applying sanctions when a recipient is not in compliance with the EO and nondiscrimination provisions of Section 188 of WIOA, Title VI of the Civil Rights Act of 1964, as amended, or related laws. (Attachment 2A-1)

### **Voluntary Compliance**

**Level One** - If the need for corrective action is identified by the State-Level EO Officer, the recipient is notified in writing of the violation(s) with recommendations

for voluntary corrective action. The recipient is given a due date to comply. When feasible, corrective action should be completed within 30 days from the date of initial notification of the violation. The State-Level EO Officer provides technical assistance and consultation on the specific action(s) to correct the violation(s).

**Level Two** - If Level One fails, the recipient and the State-Level EO Officer enter into a conciliation agreement drafted by the State-Level EO Officer based on 29 CFR Part 38, specifying the commitment the entity will undertake to correct the violation(s), behavior and/or practice and to ensure it will not recur. The conciliation agreement must:

- Be in writing;
- Address the legal and contractual obligations of the recipient;
- Address each cited violation;
- Specify the corrective action or remedial action to be taken within a stated period of time to come into compliance;
- Provide for periodic reporting on the status of the corrective and remedial action;
- State that violation(s) will not recur; and
- Provide for enforcement for a breach of agreement.

The State-Level EO Officer or designee conducts follow-up visits or monitoring if required.

### **Final Determination**

**Level Three** – After all efforts for voluntary compliance have been exhausted, the State-Level EO Officer notifies the ESD Commissioner in writing, specifying the following:

- Efforts made to achieve voluntary compliance, along with the areas of disagreement (if known);
- The apparent violation(s) and pertinent EO and nondiscrimination provision(s) of 29 CFR Part 38; and
- The corrective action the recipient must take to address the violation(s).

The ESD Commissioner may secure voluntary compliance with the recipient through a written assurance and/or conciliation agreement. However, if voluntary compliance cannot be obtained, the Commissioner may issue a final determination that contains the following information:

- A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- A statement of the areas of disagreement;
- A list of any modifications to the findings of fact or conclusions that were set forth in the initial notice of findings by the State-Level EO Officer;
- A statement of the recipient's liability and, if appropriate, the extent of that liability;
- A description of the corrective or remedial actions that the recipient must take to come into compliance;
- A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, the recipient first will be given the opportunity for a hearing. The Commissioner then considers the following sanctions:
  - Termination of future funding;
  - Disallowance of selected costs;
  - Restriction from bidding on competitive or discretionary funds; or
  - Reduction in funding.

LWDBs model these procedures for ensuring compliance with their recipients.

## **Attachments for Element Nine**

No Attachments