

The background of the page features a large, faint, golden seal of the State of New York Department of Labor. The seal is circular and contains an eagle with wings spread, perched on a globe. The words "STATE OF NEW YORK" are arched across the top, and "DEPARTMENT OF LABOR" is arched across the bottom. A banner at the bottom of the seal reads "EXCELSIOR".

New York State's **Methods of Administration**

Data and Information Collection Maintenance

Element 6

Implementing Section 188 of the
Workforce Investment Act of 1998

Equal Opportunity
IS THE LAW |

Element 6: Data and Information Collection and Maintenance
(29 CFR 37.54 (d) (1) (iv) and (vi))

a. Describe how the State ensures that recipients collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment.

New York State communicated data collection and record maintenance requirements to recipients in Workforce Development System Technical Advisory #02-6, *Workforce Investment Act Equal Opportunity and Non-Discrimination Policy and Complaint Processing Procedures*. Section VII in the advisory states:

- (A) Each recipient will collect such data and maintain such records, in accordance with procedures prescribed by the Director of the CRC, as the Director of the CRC finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA or the regulations.
- (B) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment.
- (C) Each recipient must record the race/ethnicity, sex, age and where known, disability status of every applicant, registrant, eligible applicant/registrator, participant, terminee, applicant for employment and employee.
- (D) Such information will be stored in such a manner that ensures confidentiality and must be used only for purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA-financially assisted programs or activities, determining the extent to which the recipient is operating its WIA-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

b. Describe how the State ensures that recipients record the race/ethnicity, sex, age and disability status of each applicant, registrant, eligible applicant/registrator, participant, terminee, employee, and applicant for employment (See 29 CFR 37.37 (b) (2)).

New York State uses America's One-Stop Operating System (OSOS) for its Labor Exchange and Workforce Investment Act programs. OSOS has been designed to comply with federal data collection and reporting requirements, including the reporting of EEO information. All Employment Service and all WIA Title I-B programs but one are directly using the system; that LWIA is using a compatible interface to the system.

When individuals apply in person at a functionally aligned One Stop for WIA or Employment Services¹, they are asked to complete a form, generally the ES 100 - OSOS Customer Registration Form. In accordance with the instructions contained in USDOL's *Workforce Investment Streamlined Performance Reporting (WISPR) System Data Collection and Reporting Handbook*, the ES 100 form asks applicants to voluntarily provide their race/ethnicity, gender and disability status. Applicants are advised that disclosing their disability status and or race/ethnicity is voluntary, that the information will be kept confidential and used solely in connection with record keeping and affirmative action requirements, and that they will not be penalized for refusal to answer. The baseline, or "customer core" data collected through the ES 100 is also the data collected by LWIA recipients in conformance with OSOS data collection requirements.^{2 3}

Claims for Unemployment Insurance benefits are filed using an automated Interactive Voice Response (IVR) application or online. The IVR advises customers that EO data is gathered for statistical purposes only and that their responses will not affect their claim for unemployment insurance benefits. Customers who do not wish to answer may press the * button. The online application provides a similar disclaimer.^{4 5}

NYSDOL maintains a centralized database for the State Unemployment Insurance program. Claimant information is collected via telephone or online and processed through Telephone Claims Centers. As such, NYSDOL is able to ensure the collection of data and information and maintenance of such records in accordance with the procedures prescribed by 29 CFR 37.37-37.41.

Data collected for federal reports (including EO data) are maintained by NYSDOL's Research and Statistics Division. Research and Statistics produces a series of reports for the State-level EO Officer, arraying participant EO characteristics for Employment Service, Unemployment Insurance and Workforce Investment Act programs. These reports are used by DEOD to monitor recipient equal opportunity performance.⁶

c. Describe how the State ensures that recipients treat records particularly those containing medical information, in a manner that ensures their confidentiality (See 29 CFR 32.15; 29 CFR 37.37 (b) (2); and 29 CFR 37.41)

In order to prevent the misuse of OSOS data, confidentiality agreements must be signed between NYSDOL and local entities whose staff will have access to the information in OSOS. In addition, individual users must certify that they will share the information contained in OSOS only with authorized persons or organizations and only for the purpose of helping the customer. These required confidentiality agreements were transmitted to LWIAs via Workforce Development System Technical Advisory #00-41.2.⁷

Additionally, there are five levels of security clearance permissions for users. The permissions for case management functions are only granted to staff directly involved in providing or overseeing that function. If abuses are detected by the local Information Security Officers, then access is immediately revoked. Workforce Development System Technical Advisory #02-04 explains the security permissions process and provides forms for users to use to request security permissions.⁸

For unemployment insurance applicants, Article 18, Section 537 of the New York State Unemployment Insurance Law, prescribes the parameters for the disclosure of information acquired from applicants, employees or employers. With issuance of 20 CFR Part 603, *Federal-State Unemployment Compensation Program (UC): Confidentiality and Disclosure of State UC Information, Final Rule*, NYSDOL has convened internal workgroups to review and update all its UI confidentiality procedures and agreements to ensure compliance with the rule. The parameters for the disclosure of information and the need for confidentiality are discussed with all employees when they are hired. Additional confidentiality procedural training and updates are periodically completed with all Departmental employees. All Department of Labor employees

are assigned an access code. Each access code will allow the employee to update or view applicable records. Employees are assigned an entry code (RACF) and password. Access to the computer system and records are by authorized personnel only. Information security procedures, privacy and confidentiality are enforced at all levels.⁹

Technical assistance OSOS Desk Guides are available to One Stop staff as training resources. Regarding disability-related information, if a customer has an obvious disability that impacts his/her ability to do certain jobs (e.g. the use of a wheel chair for mobility), that can be noted by staff in the case management system. However, medical information provided by the customer is not entered into the case management system, but rather is noted in hard copy documentation. Such documentation is confidentially maintained and accessed only by authorized administrative staff.¹⁰

Recipients have been advised that they are to treat records containing medical information in a manner that insures their confidentiality. In particular, they are to maintain medical information on separate forms, store medical information separately from main program files and keep medical information confidential, releasing it only to specifically authorized personnel or entities.

DEOD monitors local areas to ensure recipients maintain the confidentiality of medical information provided by applicants and registrants. They check whether:

- the recipient has developed a written confidentiality policy that specifically addresses medical information and that staff have been trained/apprised of the policy;
- medical information is maintained on a separate form;
- medical information is kept confidential, except to:
 - the employing or training approval official, after conditional offer has been made to applicant;
 - supervisors and managers where there are work restrictions or reasonable accommodations have been made;
 - first aid and safety personnel if the condition might require emergency treatment; and
 - government officials investigating compliance with Section 504.

d. Describe how the State ensures that recipients maintain a log of complaints filed that allege discrimination on one or more of the bases prohibited by WIA section 188 (See 29 CFR 37.37 (c))

Section VIII of the State's *Workforce Investment Act Equal Opportunity and Non-Discrimination Policy and Complaint Processing Procedures* requires LWIAs to commit to the following:

- (B) Each LWIA EO Officer will maintain a log of complaints filed with him or her that allege discrimination on the ground(s) of race, color, religion, sex, national origin, age, disability, political affiliation or belief, or for any beneficiary, because of that beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States or for participation in WIA Title I-financially assisted program or activity. The log will include: the name and address of the complainant; the ground of the complaint; a

description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

An EO Discrimination Complaint System Log form was developed and distributed by NYSDOL as a technical assistance tool to the LWIAs. The State WIA EO Officer assures the maintenance of the complaint logs through monitoring as described in Element 7.

e. How the State ensures that recipients maintain such records for a period of three years (See 29 CFR 37.39 (b)).

Local-level EO Officers were advised of their obligation to retain records for three years during the Methods of Administration training session sponsored by CRC and NYSDOL on December 4-6, 2001. In addition, Section IX of the State's *Workforce Investment Act Equal Opportunity and Non-Discrimination Policy and Complaint Processing Procedures* requires LWIAs to commit to the following:

- (A) Each recipient will maintain, for a period of not less than three years from the close of the applicable program year, applicant, registrant, eligible applicant/registant, participant, terminatee, employee and applicant for employment records; and such other records as are required by the regulations or the WIA EO Officer.
- (B) Each recipient will maintain records regarding complaints and actions taken there under for a period of not less than three years from the date of resolution of the complaint.

As discussed earlier, customer records are usually maintained electronically in New York State. Data entered into the OSOS is maintained in the OSOS production database and available on-line for a minimum of one year. Once records are no longer needed in the production database they are transferred to a separate data warehouse where a history of all new records and changes to existing records is maintained. Data in the data warehouse is not purged.

Backup procedures are followed in the event, however unlikely, of data being lost due to a system failure. Data in the production database is backed up on a nightly basis, except for Friday nights. Data in the data warehouse is backed up on a weekly basis.

All electronic data/records collected by the Unemployment Insurance Initial Claims process over the telephone system are stored and maintained in a confidential manner for four years.

The State ensures one stop recipients/partners maintain information for three years by conducting monitoring reviews as described in detail under Element 7.

f. Describe how the State ensures that grant applicants and recipients notify the CRC Director of administrative enforcement actions and lawsuits brought against them that allege discrimination on one or more of the bases prohibited by WIA section 188 (See 29 CFR 37.38 (a)).

Local-level EO Officers were advised of their obligation to notify the CRC Director of administrative enforcement actions and lawsuits brought against their LWIAs that allege discrimination on one or more of the bases prohibited by WIA section 188 during the Methods of Administration training session sponsored by CRC and NYSDOL on December 4-6, 2001. In addition, Section VIII of the State's *Workforce Investment Act Equal Opportunity and Non-Discrimination Policy and Complaint Processing Procedures* requires LWIAs to commit to the following:

- (A) Each grant applicant and recipient will promptly notify the WIA EO Officer and the Director of the CRC of any administrative enforcement actions or lawsuits filed against it alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIA Title I-financially assisted program or activity. The requirements for the notice are set forth in 29 CFR 37.38.

NYSDOL also requires grant applicants, training providers seeking eligibility, and LWIAs as part of a compliance review, to provide the following information to the WIA EO Officer and CRC:

- (1) The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
- (2) Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include the:
 - names of the parties;
 - forum in which each case was filed; and
 - relevant case numbers.
- (3) Any additional information that the Director of CRC determines to be relevant to investigate complaints or conduct compliance reviews on grounds prohibited under the nondiscrimination and equal opportunity provisions of WIA reviews.

During on-site monitoring visits, DEOD queries LWIA recipients to determine whether they have had any administrative enforcement actions or lawsuits brought against them that allege discrimination on any of the bases prohibited by WIA, or whether any other Federal agency has conducted a civil rights compliance review or complaint investigation that found the LWIA to be in noncompliance within the past two years (see Element 7).

¹ The individual is considered an applicant at the point at which he/she submits personal information in response to a request by the recipient for such information.

² *Workforce Investment Streamlined Performance Reporting (WISPR) System Data Collection and Reporting Handbook*, pp. 61 – 63.

³ ES 100, OSOS Customer Registration Form

⁴ UI IVR Flowchart

⁵ UI Online Application Screen Shot

⁶ EEO Reports

⁷ WDS TA #00-41.2, *Revised One-Stop Operating System (OSOS) Confidentiality Agreements*, <http://workforcenewyork.org/ta/ta00-41.2.doc>

⁸ WDS TA #02-04, *New OSOS Security Permissions and Security Request Procedures*, <http://workforcenewyork.org/ta/ta02-4.htm>

⁹ NY Labor Law, Section 537, <http://www.labor.state.ny.us/ui/dande/title3.shtm#537>

¹⁰ *Common Measures Desk Guide for Adult, Dislocated Workers and Trade Act Customer Data Entry*, p. 51, <http://workforcenewyork.org/osos/deskguideadult.pdf>