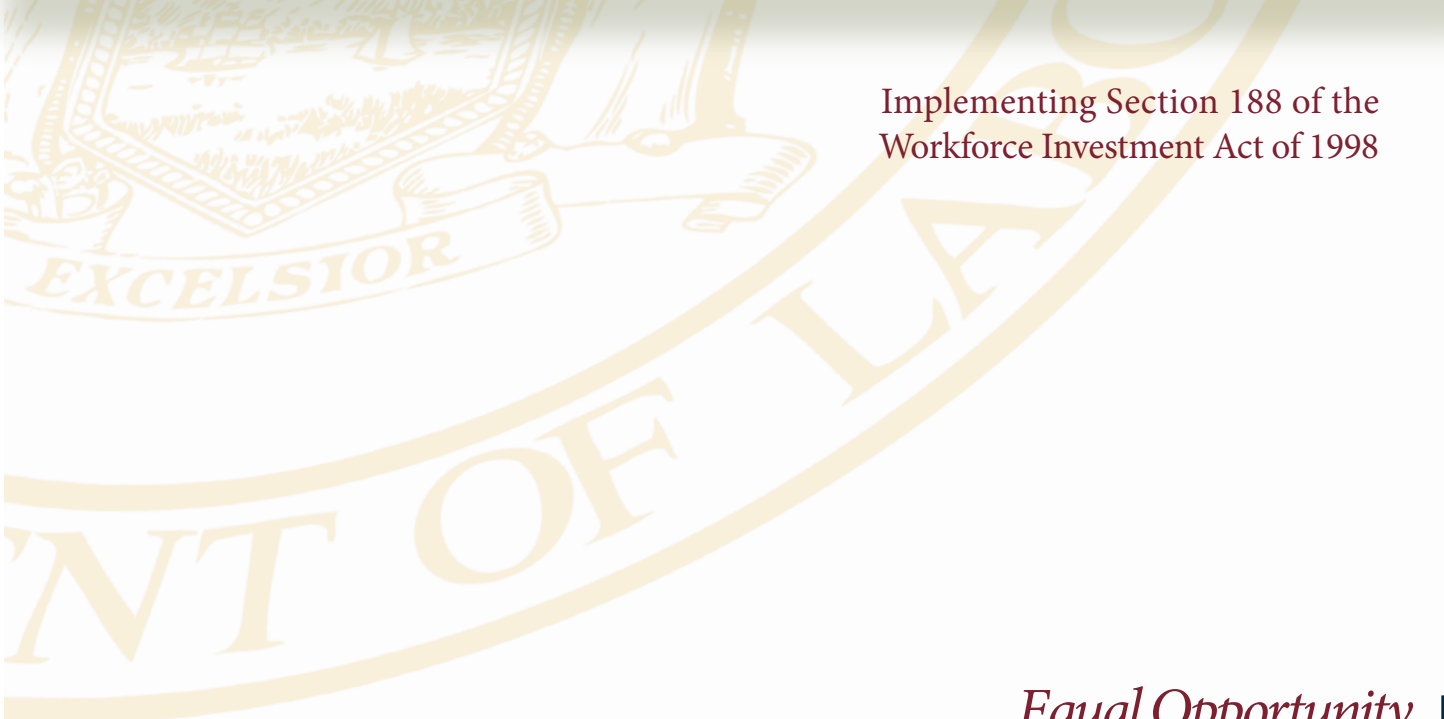




New York State's **Methods of Administration**
Monitor Recipients for Compliance

Element 7



Implementing Section 188 of the
Workforce Investment Act of 1998

Equal Opportunity
IS THE LAW |

Element 7: Monitor Recipients for Compliance (29 CFR 37.54 (d) (2) (iii))

a. Describe the system for evaluating the extent to which recipients are complying with the administrative obligations of 29 CFR Part 37, including, but not limited to:

1. Assurances. (29 CFR 37.20 through 37.22)

- The State Workforce Plan, Section VI – Assurances, includes the assurance that the State will comply with the nondiscrimination provisions of Section 188 of WIA, and the assurance that the State is developing and implementing a Methods of Administration (See Element 1 Appendix -5 Year Strategic Plan). The State Plan also has an assurance that the State will collect and maintain data necessary to show compliance with the nondiscrimination provisions of WIA Section 188.
- LWIAs' Five-Year WIA Plans are being amended to incorporate the assurance stipulated under 29 CFR 37.20, see Technical Advisory # 02-7. ¹
- Each grant applicant and training provider seeking eligibility includes the assurance in their application, and the assurance is incorporated into every grant, cooperative agreement, contract or other agreement (See Element 3).
- LWIAs will amend their Memoranda of Understanding (MOUs) with local partners to include the required equal opportunity and nondiscrimination clauses, see Technical Advisory #02-7.
- LWIAs have been advised that they must incorporate this assurance in each request for proposals and into every grant, cooperative agreement, contract or other agreement, see Technical Advisory #01-12. ²

As part of its on-site monitoring of LWIAs, the New York State Department of Labor's Division of Equal Opportunity Development (DEOD) will request samples of job training plans, contracts and other agreements and reviews them to see that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.

2. Equal Opportunity Officers. (29 CFR 37.23 through 37.28)

DEOD monitors LWIAs for adherence to the requirements under 29 CFR 37.23 to 37.28 for the LWIAs to designate an EO Officer who is a senior-level employee of the recipient who does not have other responsibilities or activities that create a conflict, or the appearance of a conflict with the responsibilities of an EO Officer by:

- Comparing the responsibilities of the EO Officer as cited in Section 37.25 to the actual responsibilities and job duties observed;
- Verifying that the LWIA EO Officer's name, position title, address and telephone number (voice and TDD/TTY) are made known to the public;
- Reviewing internal and external communications pertaining to the LWIA's nondiscrimination and equal opportunity programs to determine that the EO Officer's identity and contact information are provided;

- Reviewing the levels of tangible and intangible support provided by the recipient to support the EO Officer;
- Reviewing the training provided to the EO Officer and his/her staff to determine whether necessary and appropriate training has been provided to maintain competency; and
- Verifying that the EO Officer monitors the recipient and its service providers to ensure their compliance with the nondiscrimination and equal opportunity provisions of WIA.

When necessary, monitoring reviews will assess the responsibilities of small recipients to determine compliance with 29 CFR 37.27 to designate an individual who will be responsible for developing and publishing complaint procedures and processing the complaints (see Sections 37.76 through 37.79).

3. Notice and Communication. (29 CFR 37.29 through 37.36)

DEOD will monitor LWIAs to determine that their equal opportunity policy is disseminated in accordance with 29 CFR 37.29 – 37.36. The review examines whether:

- Initial and continuing notice that the LWIA recipient does not discriminate is provided to registrants, applicants, and eligible applicants/registrants, participants, applicants for employment and employees, and unions or professional organizations that hold collective bargaining or professional agreements with the recipient, sub-recipients that receive WIA Title I funds from the recipient (LWIA), and members of the public, including those with impaired vision or hearing.
- The recipient has taken appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.
- The *Equal Opportunity is the Law* notice^{3 4} is:
 - 1) Posted prominently, in reasonable numbers and places such as waiting/reception areas, common areas, staff lounges.
 - 2) Disseminated in internal memoranda and other written or electronic communications such as policy statements on nondiscrimination, web pages or sites.
 - 3) Included in employee and participant handbooks or manuals.
 - 4) Made available to each participant through orientations or by mail and made a part of a participant's file provided in appropriate formats to individuals with visual impairments, and noted appropriately in the participants' file.
 - 5) Provided to service providers with instructions for posting.
- The LWIA recipient provides the tag lines "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially

assisted under Title I of WIA, or the requirements for participation by recipients and participants.

- The recipient includes the telephone number of a TDD/TTY or relay system on any materials including a telephone number.
- The recipient indicates that its WIA Title I-financially assisted programs or activities are equal opportunity employer/programs (or has otherwise indicated that discrimination in the WIA Title I-financially assisted program or activity is prohibited by Federal law), and that auxiliary aids and services are available upon request to individuals with disabilities in any published or broadcast program information in the news media.
- The recipient does not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground specified in Section 37.5, except as such treatment is otherwise permitted under Federal law or this part.
- When a significant number or proportion of the population served needs services or information in a language other than English in order to be effectively informed about, or able to participate in, a WIA-funded program or activity, the recipient takes the following actions:
 1. Considers a) the scope of the program or activity, and b) the size and concentration of the population that needs services or information in a language other than English; and based on those considerations, takes reasonable steps to provide services and information in appropriate languages: or
 2. In circumstances other than those described in paragraph (1) of this section, makes reasonable efforts to meet the particularized language needs of limited-English-speaking individuals who seek services or information.
- The recipient includes a discussion of rights under the nondiscrimination and equal opportunity provisions of WIA, including the right to file a complaint of discrimination with the LWIA EO Officer or CRC, during its orientations for new participants.

4. Data and Information Collection and Maintenance. (29CFR 37.37 through 37.41)

The State EO Officer, DEOD Affirmative Action Administrators and LWIA EO Officers are responsible for conducting EO Compliance Reviews (see Element 1 for identity of DEOD staff and EO Officers).

LWIAs' systems for the collection and maintenance of data and other information are monitored for compliance with 29 CFR 37. The following information is reviewed:

- a) The LWIA must collect such data and maintain such records, in accordance

with procedures prescribed by the Director of CRC, as the Director finds necessary to determine whether the LWIA (recipient) has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA. The system and format in which the records and data are kept must be designed to allow the State-level WIA EO Officer and CRC to conduct statistical or other quantifiable data analyses to verify the LWIA's compliance with Section 188 of WIA.

- b) Such records must include, but are not limited to records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. 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.

Where designation of individuals by race or ethnicity is required, OMB guidelines will be used.

Storage and maintenance of records. The review encompasses the manner in which the information is stored to ensure confidentiality, and that information is only used for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law. The review also checks that records are maintained for a at least three years, and that records regarding complaints and actions taken on the complaints are maintained for at least three years from the date of resolution of the complaint.

Complaint Log. The LWIA's complaint log is reviewed for the inclusion of the following:

- Name and address of complainant
- The grounds for the complaint
- A description of the complaint
- The date complaint was filed
- The disposition and date of disposition of the complaint and other pertinent information.

The LWIA's process for maintaining complaint information is reviewed to ensure that any information that could lead to identification of a particular individual as having filed a complaint is kept confidential.

Monitoring reviews include the review of the LWIA's requirement to notify the Director of CRC of any administrative enforcement action or lawsuits filed against it alleging discrimination under the grounds stated under Section 37.38. The notification must also include:

- a) The names of the parties to the action or lawsuit;
- b) The forum in which each case was filed; and

- c) The relevant case numbers.

Each grant applicant and recipient reviewed as part of a compliance review or monitoring activity under Sections 37.63 and 37.65 must provide additional information as required under Section 37.38 (b) (1) (2).

Where significant differences are found, follow up monitoring is conducted, through records review, interviews and other appropriate techniques to determine the cause of any such differences. Monitoring reviews that show non compliance or repeated problems require a corrective action plan.

5. Universal Access (29 CFR 37.42).

The LWIAs will be monitored to determine if they have taken appropriate steps to ensure that they are providing universal access to their WIA Title I-financially assisted programs and activities. The review assesses whether reasonable efforts were made to include members of sexes, various racial and ethnic groups, individuals with disabilities, and individuals with differing ages. The review assesses outreach efforts such as:

- Advertising recipient's programs and activities in the media (newspapers/radio/television broadcasts) that specifically target various populations;
- Sending notice about openings in the recipients' programs and/or activities to schools or community service groups that serve various populations; and
- Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

6. Complaint Processing Procedures (29 CFR 37.70 – 37.80)

The State has developed a uniform complaint processing procedure to be used by both the State and the LWIAs (see Element 8). DEOD Affirmative Action Administrators specifically check to see that the statewide complaint processing procedures are being followed during their routine compliance reviews. In addition, the LWIA EO Officers' Complaint Logs are carefully reviewed to ensure that complaints are being properly recorded and tracked.⁵

Additionally, a copy of 29 CFR Part 37, Implementation of Nondiscrimination & Equal Opportunity Provisions of the Workforce Investment Act of 1998: Final Rule will be issued to all WIB staff contacts to be disseminated to their designated EO Officers.

b. Describe the system for evaluating the extent to which recipients are performing the responsibilities assigned such recipients by the State through the MOA, such as:

1. Conducting equal opportunity monitoring/evaluation reviews of applicants for and recipients of WIA Title I financial assistance (including monitoring assurances and programmatic and architectural accessibility).

The system used for evaluating the extent to which recipients are ensuring that their programs and activities are operating in a nondiscriminatory manner and ensuring equal opportunity encompasses the following strategies:

- 1) Desk Audits
- 2) Observation of Program Activities
- 3) Interviewing
- 4) Review of Significant Differences
- 5) Review of Recipient Services
- 6) Review of Recipient Employment Practices
- 7) Review of Documentation
- 8) Record Analysis
- 9) Off-site Analysis
- 10) Corrective Action and Sanctions

DEOD's Affirmative Action Administration staff, under the direction of the State-level EO Officer, conduct regularly scheduled compliance reviews of LWIA recipient programs and activities including One-Stop Centers and all SESA (NYSDOL) program and activities. The compliance review⁶ assesses the adequacy of the following:

- Designation of the Local-level (LWIA) EO Officer
- Notice and Communication
- Data and Information Collection and Maintenance
- Universal Access
- Complaint Processing Procedures

Contained within the actual review are the following:

- Inspection of premises for physical accessibility
- Review of availability of auxiliary aids/services available to the disabled
- Availability of foreign language information and staff able to communicate with persons with Limited-English-Proficiency (LEP)
- Level of staff and participant understanding of nondiscrimination and equal opportunity policy and procedures under 29 CFR Part 37
- Level of staff communication to participants of their rights under 29 CFR Part 37
- Level of training LWIA staff receive
- How often training is conducted
- Process which the LWIA uses to disseminate policy and procedure to staff relative to 29 CFR Part 37

DEOD's compliance review procedure permits the State-level EO Officer to:

- Evaluate recipient efforts to administer programs and activities equitably.
- Identify and correct inequities affecting participants including applicants for employment and employees.
- Determine if the recipient is complying with the technical aspects of compliance.
- Determine if the recipient's program and facilities are accessible and whether the recipient has a system in place to assess, evaluate and provide reasonable accommodation/modification.
- Determine if the recipient is engaging in illegal discrimination of any type.
- Where conciliation agreements exist, determine if they have been fulfilled.
- Determine whether technical assistance or training is needed.
- Highlight policies, procedures and guidelines that should be revised or replaced.

The DEOD Affirmative Action Administrator (reviewer) will establish a date for an on-site review and opening and closing conference meetings requiring that all appropriate parties be present (30-day notice of review). While on site, the records and documentation reviewed may include, but would not be limited to the following:

- Discrimination Complaint Log;
- On-line OSOS applicant files, applicant/registrant files and applicants for employment files to determine that applicants were provided with a copy of the notice and that a notation that such notice was provided was included in participant files as required under 29 CFR 37.31, or, in the situation where individuals self-registered on-line, that the notice was provided electronically;
- Records of services to the disabled and those of limited English proficiency to determine if appropriate mechanisms exist for serving them;
- Documentation of LWIA-level monitoring;
- Documentation of the frequency and adequacy of training provided to LWIA staff and service providers;
- Outreach materials to determine level of effort the LWIA is making to broaden its composition of eligible participants and to reach the widest segment of the population;
- Nondiscrimination policy and procedures; and
- Recruitment brochures and marketing materials.

While on-site, the reviewer will make personal observations of service activities such as intake and assessment processes, evaluate the level of accessibility of the building and its facilities, including computer accessibility to the disabled (see Element 5), and note whether the "Equal Opportunity is the Law" notice is posted.

At the closing conference the reviewer does the following:

- Reviews the results of the compliance review with the agency/center director and provides technical assistance as needed. Where violations of the regulation have been found, the reviewer will discuss the need for possible corrective actions which could include training of LWIA staff.
- Requests any additional information that could not be obtained through the onsite review.
- Clarifies any outstanding issues.

2. Imposing sanctions and corrective actions for violations noted by a recipient during its monitoring reviews.

When the outcome of a compliance review shows that the LWIA has deficiencies in the area of technical violations such as failing to post notice or to designate an EO Officer, the NYSDOL EO Officer will offer technical assistance to the recipient specifically tailored to the violation or deficiency. A time frame is established in which the LWIA (recipient) has time to correct the violation. Corrective action may include, but may not be limited to, training for the LWIA.

Discrimination complaint violations may include, but would not be limited to, findings of disparate treatment, disparate impact, and failure to provide reasonable accommodation. Corrective actions may include, but are not limited to, preventative and corrective requirements designed to prevent recurrence of the discrimination, nondiscriminatory referral, cessation provisions and provisions to make whole relief to the complaining party. The outcome of a review may also result in written assurances and/or conciliation agreements with designated time frames for resolution and describing the actions to be taken at the State-level if the agreement were to be breached. Sanctions would only be taken after a LWIA failed to agree to take voluntary action or breached a conciliation agreement. The State-level EO Officer will issue a Final Determination and refer the matter to the NYSDOL Commissioner of Labor who will determine the appropriate action to be taken as may be provided by law (see Element 9).

3. Ensuring policy development, communication, and training are carried out.

As indicated in the narrative for Elements 1 and 2, NYSDOL communicates its nondiscrimination policies and procedures to employees through the General Administration Manual, L-Memorandums and program (SESA) procedure manuals. Policy guidance to LWIAs is communicated through Workforce Development System Technical Advisories, direct mailings from the State-level EO Officer and also our available on the NYSDOL DEOD's Intranet webpage (for DOL employees) and the Workforce New York Internet website (for LWIAs and the Public). DEOD staff also conducts on-site compliance reviews that include physical reviews of local-level nondiscrimination policies, procedures and communications.

Tentative: A new NYSDOL DEOD EO monitoring guide for Compliance Reviews is being developed based upon the National Association of State Workforce Agencies (NASWA), "Guide to Conducting Equal Opportunity Monitoring Reviews". This new EO guide will include information on both the LWIAs and UI Telephone Claim Centers (TCCs) EO reviews. Upon completion of the NYSDOL EO guide, all LWIAs and UI TCCs will be sent a copy. Training will be provided to the LWIAs via webinars to update them on the New EO Guide and procedures.

c. Describe the system for evaluating the extent to which recipients are ensuring that their programs and activities are operating in a nondiscriminatory manner and ensuring equal opportunity, including but not limited to:

- 1. Conducting analysis, by race/ethnicity and sex, of program and employment activity including, but not limited to rates of application, placement, and termination, to determine if significant differences exist, and**
- 2. Conducting follow-up monitoring to determine the cause of any such differences, through the analysis of the records of individuals registrants, applicants, eligible applicants/registrants, employees and applicants for employment, interviews, and other appropriate techniques.**

The reviewer usually conducts a desk audit of the program using data prepared by the Department's Division of Research and Statistics that has been arrayed by race/ethnicity, sex, age and disability status. These data are used to analyze the under or over-representation of particular groups. Variances may represent problem areas on which to focus the onsite review. The LWIA is also required to provide data broken out for:

- Individual registrants;
- Applicants;
- Eligible applicants/registrants;
- Employees and applicants for employment;
- Terminations, total and type (entered employment, enhanced employability, completions and non-completion); and
- For those entering employment, wage rate and length of employment.

The DEOD Affirmative Action Administrator reviews the data to see if there has been any adverse effect on any group, that is, if there is a "disparity" between the way a group was represented in the delivery of services or participation in a program. Two mathematical methods used to analyze the data are the 80% Rule and tests of statistical significance (standard deviation). A selection rate for any racial ethnic or sex group that is less than four fifths (or 80%) of the rate of the group with the highest rate will generally be regarded as evidence of adverse impact. This tool includes the Four-Fifths rule of DOL Regulations 41 CFR 60.

The reviewer uses an on site review to further evaluate the significant differences, if any, discovered during the desk review. The Affirmative Action Administrator conducts interviews to become familiar with the recruitment, eligibility, assessment, placement,

referral and other decision processes. The reviewer interviews a number of people onsite such as:

- 1) Recipient program staff who may give insight into significant differences for areas of potential discrimination. Program staff will be interviewed to assess their knowledge of EO policy and procedures, level of training and communication of notice.
- 2) Program beneficiaries may be asked to describe their experiences in the program including how they were recruited and selected, as a way of assessing the equity of services and activities. The reviewer can determine the level of policy and notice dissemination by asking program beneficiaries of their awareness of EO policy and of the WIA procedures for filing complaints.

A final determination may not be issued at the close of a review because of the time usually required to examine the information given and to determine its acceptability. If the cause for the differences is not appropriately accounted for technical assistance is offered and corrective measures are determined.

d. Describe the procedure for reviewing recipients' policies and procedures, to ensure that the policies and procedures do not violate the prohibitions contained in 29 CFR 37.5 through 37.10.

As part of their routine compliance review, DEOD Affirmative Action Administrators specifically query the LWIA EO Officer regarding the recipient's nondiscrimination policies and physically review samples of policy documents and procedures. Should any questionable policy or procedures be identified, the Affirmative Action Administrator will work with the EO Officer to ensure action is taken to correct the policy or procedure.

Within NYSDOL, the State level EO Officer and DEOD Affirmative Action Administrators review Department policies and procedures that may have discriminatory ramifications. Per the DEOD's directive, any discriminatory language or procedures will be changed should violations of the prohibitions contained in 29 CFR 37.5 – 37.10 be discovered. Counsel's Office is consulted as necessary to ensure that satisfactory alternative language or procedural changes are effected.

- e. Describe the written reports prepared for each review. These reports must provide, among other things, which the results of the monitoring review will be made available to the recipient(s) reviewed.**

The reviewer will issue a report⁷ that includes the following:

- findings of the review;
- where appropriate, the proposed corrective action and the time frame in which the corrective action is to be completed;
- whether the State-level EO Officer needs to enter into a conciliation agreement with the LWIA; and
- an invitation to engage in voluntary compliance discussions.

The reviewer will recommend to the State-level EO Officer that the report be made available to the appropriate parties. The individuals who may receive a copy of the review on the local-level are as follows:

- One-Stop Operator Director/Manager
- WIB Chairperson
- WIB Executive Director
- LWIA EO Officer
- NYSDOL Regional Director/Administrator/Team Leader

- f. Describe the involvement of the State and local-level EO Officer(s) in conducting reviews. Where EO monitoring is carried out by individuals other than the State or local-level EO Officer, the narrative should provide the names, titles, and organizations of those persons.**

NYSDOL's Division of Equal Opportunity (DEOD) maintains offices in Albany, New York City and Buffalo. Staff for the Division includes six professional level and three clerical level employees. An organizational chart is attached in the Element 1 Appendix Affirmative Action Administrators routinely visit the One-Stop Centers across the State to ensure that WIA title I financially assisted programs and activities operate in a non-discriminatory way. Using the monitoring tools and processes described in detail under Element 7 of this MOA, field staff work with recipients to identify problem areas and to develop a plan for corrective action where deficiencies are found. Follow-up visits are scheduled to ensure that the appropriate actions have been taken.

In required addenda to their local five-year WIA plans, all LWIA recipients assure they will devote the necessary level of resources to assure WIA Title I-financially assisted programs and activities will operate in a nondiscriminatory way.⁸

Training for LWIAs on the MOA will be conducted via webinars and technical assistance will be offered on an ongoing basis or as requested.

g. Describe the procedure for determining which recipients are to be reviewed, the frequency of reviews of recipients, and the number of recipients to be reviewed per year.

The selection of an LWIA or NYSDOL site for review is based on factors such as the date of the last compliance review, the nature and number of discriminatory complaints or articulated community concerns. The reviewer notifies the appropriate parties such as the WIB Director, One-Stop Center Operator, or Unemployment Insurance Telephone Claims Center Director of the on-site review approximately 30 days before the scheduled visit.

DEOD staff will conduct two types of compliance reviews: desk audit compliance reviews and on-site compliance reviews. One third of the One-Stops will receive a on-site review during a program year, while the remaining two thirds will receive a desk audit. This is repeated on a rotating basis to ensure that an on-site audit is conducted on a One-Stop once every three years. In New York State, the NYS Department of Labor is the lead of the Management Team in 32 of the 77 One-Stop/DOES offices. The Telephone Claim Centers statewide will receive an on-site monitoring visit once very three years or on a as needed basis.

LWIAs are to provide oversight and compliance monitoring for programs operating under their jurisdiction. They should conduct monitoring/compliance reviews of 25% of their sub recipients on an annual basis. Facility Accessibility Reviews are completed for all new buildings to determine compliance with the ADA Accessibility Guidelines (ADAAG) by the NYS Office of General Services. In addition, DEOD will conduct additional on-site monitoring and investigation as needed, and technical assistance will be provided on an on-going basis as needed or requested.

¹ Workforce Development System Technical Advisory # 02-7: Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act (WIA) of 1998 - Addendum to the Comprehensive Five-Year Local Plan which can be found at <http://www.workforcenewyork.org/ta/ta02-7.htm>

² Workforce Development System Technical Advisory #01-12: Local Workforce Investment Areas' Designated Equal Opportunity (EO) Officers which can be found at <http://www.workforcenewyork.org/ta/ta01-12.html>

³ NYSDOL "EO is the Law" Poster in English and Spanish

⁴ LWIA "EO is the Law" Poster in English and Spanish

⁵ WIA Discrimination Complaint Log

⁶ LWIA Monitoring & Compliance Review Checklist

⁷ DEOD Compliance Review Final Report, R. Taylor 9/23/05

⁸ Addendum to Five Year Plan which can be found at <http://www.workforcenewyork.org/ta/ta02-7addendum.html>