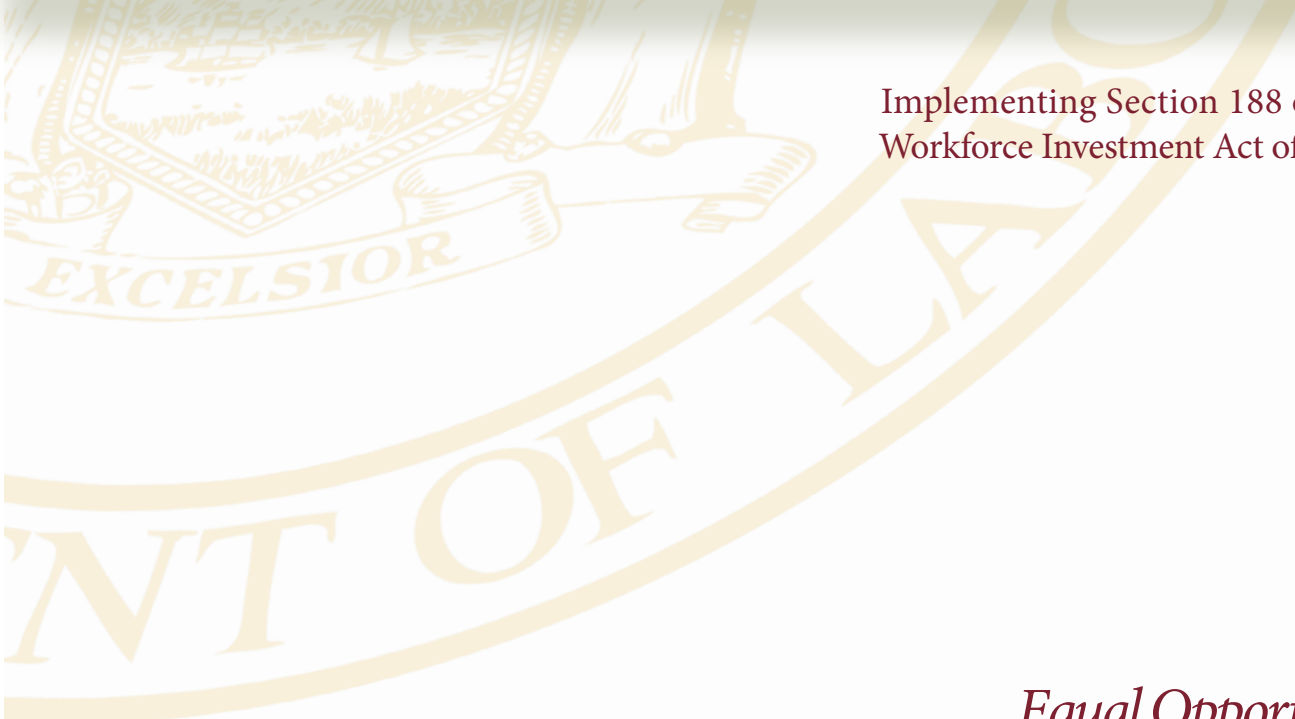




New York State's **Methods of Administration**
Complaint Processing Procedures
Element 8



Implementing Section 188 of the
Workforce Investment Act of 1998

Equal Opportunity
IS THE LAW |

Element 8: Complaint Processing Procedures (29 CFR 37.54 (d) (1) (v))

- a. How the State ensures that recipients that are required to do so (see 29 CFR 37.77) have developed and published complaint procedures (See 29 CFR 37.76).**
- b. Describe how the State ensures that recipients follow the established procedures.**

The New York State Department of Labor, the State Administrative entity designated for WIA Title I funds and the State Employment Security Agency, has developed and published a single comprehensive Equal Opportunity and Non-Discrimination Policy and Complaint Processing Procedures (Complaint Processing Procedures) for the State's Employment Security and Workforce Investment Act programs.¹ The Complaint Processing Procedures are adopted and published jointly with each of New York State's 33 Local Workforce Investment Areas (LWIAs) ensuring one uniform procedure for the State of New York applicable to all recipients in the One-Stop system. The New York State Department of Labor provided copies of the Complaint Processing Procedures to Local Workforce Investment Area Equal Opportunity (LWIA EO) Officers at a training session conducted in conjunction with the Civil Rights Center of the United States Department of Labor.² DEOD Affirmative Action Administrators remain in contact via email/telephone or on-site visits with the LWIA EO Officers to provide updates. Additional training will be provided to EO Officers in investigation techniques and other responsibilities of handling complaints by offering webinar courses and encouraging LWIA EO Officers to attend EO conferences provided by state, federal or private entities.

The Complaint Processing Procedures provide for complaints to be filed directly at the local level with each of the LWIA EO Officers. Complaints involving programs administered by the New York State Department of Labor are to be forwarded to the State-level Workforce Investment Act Equal Opportunity Officer (State-level EO Officer). Complaints made with recipients that receive funding from other federal agencies having joint jurisdiction will be forwarded to those agencies or corresponding State-level EO Officers, as agreed upon with the federal agencies. A Complaint Procedure Overview that includes a step-by-step process was also developed and is published to assist all recipients in understanding the Complaint Processing Procedures.³ The WIA Complaint procedures are available in Technical Advisory #02.6.1 to the LWIAs and public on the WD&T website and available to DOL employees on the DOL DEOD's intranet webpage. The New York State Department of Labor will also provide complaint forms⁴ and other form letters for use by EO Officers in processing complaints.

The Complaint Procedures allow for any person who believes he/she or other protected class of individuals is being subjected to discrimination on the bases of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and/or for beneficiaries, citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his/her participation in any WIA title 1 financially assisted programs may file a complaint (see WIA Complaint Procedures, p.4 and Complaint Procedure Overview, p.1). Complaints may be filed alleging intimidation and retaliation in accordance with 29 CFR 37.11 (see WIA

Complaint Procedures p. 9). The Procedures allow for the complainant(s) to complete a Complaint Information Form or may submit a written and signed complaint letter containing information required by 29 CFR 37.73 (see Complaint Procedure Overview p.2). Complaints should be submitted to the Local Workforce Investment Officer, the Director of the Division of Equal Opportunity Development or with the Director of the U.S. Department of Labor's Civil Rights Center (see WIA Complaint Procedure, p. 4 and Complaint Procedure Overview, p.1).

The Complaint Processing Procedures provide specific time frames for handling complaints that will ensure the prompt and equitable resolution of discrimination complaints. The procedures require the EO Officers to provide a written acknowledgement of the complaint within five (5) days of receiving the complaint with notice that the complainant has the right to be represented in the complaint process. The procedures provide for the EO Officer to mail a written Statement of Issues within fifteen (15) days of receipt of the complaint to the complainant that contains a list of the issues and for each issue a statement whether the issue will be investigated or rejected and the reasons for each rejection. The Complaint Processing Procedures expressly provide for the issuance of a written Notice of Final Action within ninety (90) days of the date on which the complaint is filed. The Notice of Final Action must contain either a decision on each of the issues with an explanation underlying each issue or a description of the resolution of the issues.

The Complaint Processing Procedures provide for an initial period of fifteen (15) days to conduct a preliminary investigation in order to gather sufficient information to accurately define the issues raised in the complaint. During this period, the EO Officer may, where appropriate, offer an informal resolution of the complaint, provided that a Notice of Final Action is sent indicating the resolution and the right to file a complaint with the Director of the CRC. The Statement of Issues must also offer the complainant an option to choose either a full fact-finding investigation or mediation as the Alternative Dispute Resolution. The Procedure provides a maximum of sixty (60) days for either option to be completed.^{5 6 7} This provides that the parties to the complaint are entitled to representation of their own choosing during the complaint process. DEOD Affirmative Action Administrators/investigators will perform fair and impartial investigations allowing due process for both parties involved (see Complaint Procedure Overview, p. 4). Both parties are able to provide evidence and have an opportunity to refute evidence provided. A final decision will be made on recorded evidence.

The Complaint Processing Procedures require EO Officers to notify the complainant of his or her right to file a complaint with the Director of the CRC within thirty (30) days of the date on which the Notice of Final Action is issued and that the complaint must be made within 180 days from the date of the alleged violation. The USDOL Civil Rights Center may allow an extension of the 180 day filing when the complainant shows good cause. The procedure permits the complainant to file the complaint with the CRC if the complainant is either dissatisfied with the decision of the EO Officer or has not received the Notice of Final Action within ninety (90) days from the date of filing the complaint.

The State of New York has selected mediation as the Alternative Dispute Resolution process appropriate for discrimination complaints.^{8 9} Mediation empowers individuals to meet in a

safe and secure environment in an informal setting to discuss issues with the aid of a trained and impartial third party.¹⁰ The New York State Department of Labor has contracted with the New York State Dispute Resolution Association (NYSDRA) to provide the services of trained mediators through referrals from the various non-profit organizations that have been designated as Community Dispute Resolution Centers (CDRC) pursuant to Article 21-A of the New York State Judiciary Law. Similar successful contracts with NYSDRA have been established by the New York State Health Department, the New York State Education Department, the New York State Attorney General's Office and the New York State Division of Housing and Community Renewal to obtain mediation services through the Community Dispute Resolution Centers. Training in handling discrimination complaints has been conducted throughout the State jointly by DOL staff and staff of the U.S. Department of Labor to the pool of mediators that are referred cases for mediation. NYSDRA provides follow-up information to its CDRCs about the program as part of its administrative responsibilities. CDRC staff has also made efforts to outreach with local EO Officers about the availability and benefit of mediation.

The State ensures that recipients follow this Complaint Procedure by requiring the Workforce Investment Board Chair and chief-elected officials to formally certify their adoption of the statewide complaint process, including it as part of their local WIA five-year plans.¹¹ Memoranda of Understanding ensure that all One-Stop partners will abide by WIA equal opportunity and nondiscrimination requirements and local procedures. In addition, DEOD Affirmative Action Administrators will specifically check to see that the complaint processing procedures are being followed during their routine compliance reviews.¹²

¹ **Workforce Development System Technical Advisory #02.6.1: Implementation of the Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures of the Workforce Investment Act of 1998** which may be found at <http://www.workforcenewyork.org/tas.htm>

² **WIA Methods of Administration (MOA) Training Conference December 4-6, 2001**

³ **Complaint Procedure Overview**

⁴ **Complaint Information Form, DEOD 834**

⁵ **NYS WIA Complaint Timeline**

⁶ **LWIA Discrimination Complaint Procedure**

⁷ **WIA Discrimination Complaint Log**

⁸ **Workforce Investment Act Mediation Forms**

⁹ **Procedures for Handling Complaints Referred for Mediation**

¹⁰ **NYSDOL Mediation Brochure: Fair, Efficient & Everyone Wins**

¹¹ **Workforce Development System Technical Advisory #02.6.1 Implementation of the Equal Opportunity and Nondiscrimination Policy and Complaint Processing Procedures of the Workforce Investment Act of 1998** which may be found at <http://www.workforcenewyork.org/tas.htm>

¹² **LWIA Monitoring and Compliance Review Checklist**