

# South Carolina Department of Employment and Workforce

## Non-discrimination Plan – 2019

### **Element #1: Assurances [29 CFR § 38.25 through § 38.27]**

#### A. *Grant Applicants*

As a condition to the award of financial assistance under Title I of the Workforce Innovation and Opportunity Act (WIOA), a recipient must assure the South Carolina Department of Employment and Workforce (DEW) that it has the ability to comply with the nondiscrimination and equal opportunity provisions provided and will remain in compliance for the duration of the award.<sup>1</sup> A grant applicant must make written assurance to DEW when the application for financial assistance is submitted with the Standard Assurances and Certifications.<sup>2</sup> The assurance is considered incorporated, whether or not it is physically incorporated, in the resulting contract or other agreement.

#### B. *WIOA Funding-Awards*

The assurance language is also included under Section 3.7 of the Grant Terms and Conditions,<sup>3</sup> provided with the award of WIOA Title-I funds:

##### 3.7 ASSURANCES

3.7.1 EQUAL OPPORTUNITY ASSURANCES: As a condition to the award of financial assistance from the US Department of Labor under Title I of WIOA, the Grantee assures that it is aware of and has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance. These laws include, but are not limited to:

- A. *Section 188 of the Workforce Innovation and Opportunity Act (WIOA)*, which prohibits discrimination against all individuals in the United States on the basis 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, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;
- B. *Title VI of the Civil Rights Act of 1964, as amended*, which prohibits discrimination on the bases of race, color, and national origin;
- C. *Title IX of the Education Amendments Act of 1972*, which prohibits discrimination on the basis of sex in educational programs;
- D. *Section 504 of the Rehabilitation Act*, which prohibits discrimination against qualified individuals with disabilities;
- E. *The Age Discrimination Act of 1975, as amended*, which prohibits discrimination on the basis of age; and

<sup>1</sup> State Instruction Number 16-13

<sup>2</sup> Standard Assurances and Certifications

<sup>3</sup> Terms and Conditions (May 2019), Section 3.7.1

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- F. *The South Carolina Pregnancy Accommodations Act*, which protects employees and applicants who have medical needs arising from pregnancy, childbirth, or related medical conditions.
- G. The Grantee also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the Grantee's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The Grantee understands that the United States has the right to seek judicial enforcement of this assurance.

All recipients of WIOA funds sign a Notice of Funds Allocation (NFA)<sup>4</sup> form that includes a statement acknowledging the requirement to comply with all implementing WIOA regulations. State Instruction Letter 16-19<sup>5</sup> requires the assurance be incorporated into each Memorandum of Understanding (MOU).

### C. *Duration and scope of the assurance*

Where the WIOA Title I financial assistance is intended to provide, or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient or (in the case of a subsequent transfer) the transferee, for the longer of:

- (1) the period during which the property is used either:
  - i. for a purpose for which WIOA Title I financial assistance is extended; or
  - ii. for another purpose involving the provision of similar services or benefits; or
- (2) the period during which either:
  - i. the recipient retains ownership or possession of the property; or
  - ii. the transferee retains ownership or possession of the property without compensating grant making agency for the fair market value of that ownership or possession.

In all other cases, the assurance will obligate the recipient for the period during which WIOA Title I financial assistance is extended.

### D. *Covenants*

All recipients and subrecipients are required to comply with 29 CFR §38.27 relating to the transfer of real property, structures, or improvement on real property or structures, as directed by State Instruction 16-13.

<sup>4</sup> Notice of Funds Allocation

<sup>5</sup> State Instruction Letter 16-19, Change 2

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### **Element #2: EO Officers [29 CFR § 38.28 through § 38.33]**

#### **Designation of Equal Opportunity Officers**

##### *A. Designation of State-Level Equal Opportunity Officer*

Governor Henry McMaster of South Carolina has designated the South Carolina Department of Employment and Workforce (DEW) as the entity to implement the Workforce Innovation and Opportunity Act (WIOA).

DEW's Executive Director, Mr. G. Daniel Ellzey, serves as the Governor's designee, and the Manager of the Office of Equal Opportunity (OEO) serves as the State-level EO Officer. Within DEW, the Executive Director has designated the State-level EO Officer and OEO to develop, implement, and maintain a Nondiscrimination Plan for State Programs; collect and maintain records; conduct oversight of recipients' recordkeeping; and monitor the equal opportunity and nondiscrimination requirements under WIOA and its implementing regulations. The State-level EO Officer position reports on equal opportunity matters directly to the Executive Director/Governor's Designee.

The position of Manager of the Office of Equal Opportunity/State-Level EO Officer is currently vacant. Mr. Paul Famolari, Deputy General Counsel, and Ms. Tudy Newsom, EO Coordinator, OEO, temporarily ensure the responsibilities of equal opportunity and nondiscrimination are continued until the position is filled.

##### *The Office of Equal Opportunity (OEO)*

OEO provides policy guidance, training, and oversight in the areas of equal opportunity, diversity, and nondiscrimination to our internal workforce and within programs and activities administered by DEW.

OEO is housed within the Office of General Counsel. For administrative purposes and access to additional legal and staffing resources when needed, the State-level EO Officer reports to the Deputy General Counsel, as shown in the organizational chart.<sup>6</sup>

Within OEO, the State EO Coordinator for DEW reports to the State-level EO Officer. Ms. Tudy Newsom<sup>7</sup> has served as State EO Coordinator at DEW since June, 2010. Ms. Newsom served as Equal Opportunity Officer for the Workforce Investment Act (WIA) and the South Carolina Department of Commerce from 2006 until 2010. Before that she served as a member of the EO Team at DEW, then known as the South Carolina Employment Security Commission, from 1999 to 2005. Ms. Newsom received EEO Professional Certification from the South Carolina Human Affairs Commission in 2006.

<sup>6</sup> SC DEW Organizational Chart

<sup>7</sup> State EO Coordinator position description

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Her contact information is:

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SC Department of Employment and Workforce  
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Resources and support are made available to the OEO as required. Resources for training are available for the staff to attend, as necessary, national and regional training, as well as conferences where relevant topics are on the agenda. Ms. Newsom has attended past training sessions offered by the USDOL Civil Rights Center and the National Association of State Workforce Agencies' EO Committee. Ms. Newsom keeps abreast of changing laws, regulations, and procedures relative to equal opportunity and nondiscrimination matters through her participation in local and regional webinars, legal workshops, and other training opportunities. Funding for the Office of Equal Opportunity is available through administrative overhead.

### *The State EO Officer's Scope of Responsibilities*

The State EO Officer is responsible for implementing a system that ensures equal opportunity in WIOA Title I-funded programs throughout the state in accordance with 29 CFR Part §38.31. The State EO Officer duties include, but are not limited to:

- (1) Serving as a recipient's liaison with CRC;
- (2) Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I-financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I and this part, which includes monitoring the collection of data required in this part to ensure compliance with the nondiscrimination and equal opportunity requirements of WIOA and this part;
- (3) Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
- (4) Developing and publishing the recipient's procedures for processing discrimination complaints under 29 CFR §38.72 through §38.73, including tracking the discrimination complaints filed against the recipient, developing procedures for investigating and resolving discrimination complaints filed against the recipient, making sure that those procedures are followed, and making available to the public, in appropriate languages and formats, the procedures for filing a complaint;
- (5) Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with 29 CFR §38.40 and how an individual may file a complaint consistent with 29 CFR §38.69;
- (6) Undergoing training (at the recipient's expense) to maintain competency of the EO Officer and staff, as required by the Director; and
- (7) If applicable, overseeing the development and implementation of the recipient's Nondiscrimination Plan under 29 CFR §38.54.

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The State EO Officer's name, position title and phone number are made public through:

- (1) Equal Opportunity is the Law notices (posters);
- (2) DEW website;
- (3) SC Works Online Services website;
- (4) Audio files of the Equal Opportunity is the Law notice;
- (5) Handouts provided to individuals applying for WIOA, WIOA staff, and participants;  
and
- (6) State WIOA Instructions and Guidance Letters.

The State EO Officer and OEO are responsible for developing and publishing procedures for processing discrimination complaints under 29 CFR §38.72 through §38.74, and ensuring those procedures are followed. State Instruction No. 16-10<sup>8</sup> transmitted the 'Equal Opportunity is the Law' notice. Alternate formats are also available. Posters are printed and distributed periodically, and the local area staff have been instructed to prominently display them. The State of South Carolina provides Text Telephone (TTY) service, as well as other types of relay calls, through Relay South Carolina (<https://www.relaysouthcarolina.com/>).

### *Professional and Administrative Support Staff Available to the State Equal Opportunity Officer*

While the DEW OEO consists of the State-level Equal Opportunity Officer and the State EO Coordinator, additional legal staff and resources are made available as needed. The State EO Officer has access to two paralegals within the Office of General Counsel to assist with administrative work and to the Deputy General Counsel to provide legal interpretation/guidance and assist with compliance enforcement. For example, two members of the Office of General Counsel created Supervisor Training<sup>9</sup> on the agency's zero tolerance policy on discrimination and harassment on prohibited bases.

Also, DEW's Audit Services staff are responsible for investigating and reporting alleged or suspected acts of fraud, program abuse, or criminal misconduct relative to WIOA programs and activities. Audit Services staff also monitor and review WIOA program management and grants management.

The OEO communicates/coordinates EO issues with the twelve (12) Local Workforce Development Area (LWDA) EO Coordinators/Officers. The OEO is responsible for EO compliance monitoring. The State-level EO Officer is responsible for investigating complaints of discrimination, and the State EO Coordinator is responsible for investigating programmatic grievances and appeals of grievances from the LWDA's. Annual EO compliance monitoring is conducted in conjunction with other program management monitoring in a customer friendly and efficient manner. Appropriate technical assistance is ongoing to minimize significant findings. Reports are issued as necessary and follow up provided as indicated.

### B. Designation of an Equal Opportunity Officer by Workforce Innovation and Opportunity Act Recipients

State Instruction No. 16-13 requires recipients and subrecipients to designate an EO Officer who reports directly to the individual in the highest-level position of authority for the recipient entity.

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<sup>8</sup> State Instruction 16-10

<sup>9</sup> Supervisor Training Zero Tolerance

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The local-level EO Officer must have staff and resources to coordinate LWDA compliance with the equal opportunity and nondiscrimination requirements of WIOA. The instruction also requires Boards to disseminate the policy in accordance with the notice requirement in 29 CFR §38.34, including the notice in publications, brochures, and presentations to orient new employees and applicants/registrants, and requires local-level EO Coordinators/ Officers to ensure that applicants/registrants and employees are notified of their rights. DEW provides updated posters, audio files, and Rights Handouts to the local-level EO Coordinators/Officers as they are developed or amended.

Local-level EO Officers'/Coordinators' names, position titles and telephone numbers are made available to the public through:

- a) LWDB Instructions to all sub-recipients;
- b) Orientation sessions; and
- c) Applicants/registrants rights handout made available to all applicants and registrants.

Registrants, applicants, applicants for employment, employees and interested members of the public are made aware of the recipient's obligation to operate in a nondiscriminatory manner, and further, the extent of the right of members of these groups to file complaints of discrimination by the use of several methods. State Instruction No. 16-14<sup>10</sup> transmits the Rights to File a Grievance or Complaint Under WIOA. This Instruction informed Boards of their responsibility to provide initial and continuing notice to registrants, applicants, and participants that they do not discriminate on any prohibited ground and to advise them of their right to file a grievance/complaint.

### *The LWDA EO Officers'/Coordinators*

The twelve LWDA EO Coordinators/Officers' Scope of Responsibilities:

- (1) serve as the Local WD Area's liaison to the State-level EO Officer;
- (2) assume responsibility for implementing the State Nondiscrimination Plan at the Local WD Area level;
- (3) ensure that the State procedures for processing Grievances and Complaints are followed:
  - a. forward all Complaints of discrimination to the State EO Officer; and,
  - b. after an applicant or participant files a grievance with the LWDA:
    1. serve as the primary contact in communicating with the applicant/ participant; and,
    2. within 60 days of filing a grievance, ensure a formal hearing is held, if the issue is not resolved informally before the date of the hearing.
- (4) act as the primary contact for all WIOA equal opportunity-related activities;
- (5) work with the staff of the SC Works Centers to:
  - a. disseminate EO policy to all recipients of WIOA federal financial assistance, to ensure uniformity in EO policy and to make it available to the general public upon request;
  - b. monitor recipient compliance with nondiscrimination mandates of WIOA and other applicable laws;

<sup>10</sup> State Instruction 16-14

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- c. develop and implement a system for corrective action where there is a finding of noncompliance;
  - d. review and approve job training plans submitted by potential recipients for equal opportunity program-related impact; and,
  - e. coordinate voluntary compliance by recipients through negotiation and conciliation when noncompliance is found in nondiscrimination programs;
- (6) regularly collect and review data maintained in a data-collection, record-keeping, and reporting system for EO data analysis;
- (7) monitor the activities of the entities that receive WIOA Title I funds from the Local Area to ensure that the LWDA and its subrecipients are not violating the nondiscrimination and equal opportunity obligations under Section 188 of WIOA;
- (8) report directly to the State Office of Equal Opportunity about EO matters:
- a. identify potential problems that may be inherent in apparently neutral agency actions;
  - b. provide recommendations for correcting practices which could lead to discrimination and/or complaints of discrimination; provide assistance in developing solutions to EO problems faced by minority groups (prohibited bases); and
  - c. gather data, prepare and submit required reports and responses to the State Office of Equal Opportunity;
- (9) provide training and technical assistance to recipient staff concerning their equal-opportunity responsibilities.

### South Carolina Local-Level Equal Opportunity Officers/Coordinators<sup>11</sup> 04/17/19

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<sup>11</sup> Sample Local-level EO Officers'/Coordinators' Position Descriptions and Organizational Charts

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### *LWDA EO Officers'/Coordinators' Training*

Approximately half of the current Local EO Coordinators/Officers received SCHAC EEO Professional Certification. This training is periodically repeated for all; plans are underway to begin the next round of certification training in late 2019.

The type and level of training provided to Local-Level EO Officers/Coordinators includes:

- (1) State Level: The State provides initial and ongoing EO training to local-level EO Officers/Coordinators emphasizing the role of the local-level EO Officers/Coordinators under WIOA:
  - a) fundamentals of laws and regulations on which Section 188 of the WIOA is based;
  - b) how to recognize and analyze potential EO problems;
  - c) how to determine under which procedure a complaint should be handled;
  - d) how to recognize and determine whether or not a particular pattern or practice can adversely impact a protected class or classes of individuals; and
  - e) techniques of monitoring EO (including the use of static and dynamic formulas to test for adverse impact).
- (2) The State also provides:
  - a) training in the use of managerial and organizational practices to support EO objectives;
  - b) recommendations for correcting practices that could lead to discrimination and/or complaints of discrimination;
  - c) assistance in developing solutions to EO problems faced by minority groups, women, and individuals with disabilities; and
  - d) training to help LWDA EO Coordinators identify potential problems that may be inherent in apparently neutral agency actions.
- (3) Local-level EO Officers/Coordinators are informed of any EO training at state, regional, and national levels with an emphasis on that which targets local level EO Coordinators.
- (4) The Local-level EO Officers/Coordinators have the support of their respective WIOA administrative entity staff as needed. Resources for training are set aside and made available whenever appropriate and necessary training is offered.

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### **Element #3: Notice and Communication [29 CFR § 38.34 through § 38.39]**

South Carolina Department of Employment and Workforce (DEW) has established notice and communication systems to ensure that all registrants, applicants, eligible applicants/registrants, participants, applicants for employment and employees, unions or collective bargaining organizations, subrecipients, and members of the public are aware of the recipients' obligation to operate programs and activities in a nondiscriminatory manner and the extent of the rights of members of these groups to file complaints of discrimination.

DEW provides notice through posters prominently displayed, and in multiple languages, on its website (<https://dew.sc.gov/legal>). These notices are also available as audio files on DEW's website. Additionally, DEW provides notice through rights handouts and orientations, and on-going staff training.

#### *A. Recipient must provide initial and continuing notice*

Registrants, applicants, applicants for employment, employees and interested members of the public are made aware of the recipient's obligation to operate in a nondiscriminatory manner, and further, the extent of the right of members of these groups to file complaints of discrimination by the use of several methods. Notification methods include the continuing distribution of posters and brochures, issuances, training sessions, and orientations. Through monitoring, the State ensures that EO notices are prominently posted in SC Works Centers. If an individual is hearing impaired, the notice is presented in printed form; if an individual has impaired vision, the notice is presented via audio file or website screen reader technology. These options are also available for individuals with learning disabilities.

Notices are posted in SC Works Centers, service providers' offices, training/work sites, and administrative buildings in both English and Spanish. Notices are posted in other languages as appropriate based on the local area's population. Notices are available on DEW and SC Works websites in English, Spanish, Arabic, Chinese, French, French Creole, Korean, Portuguese, Russian, Tagalog, and Vietnamese. Audio files of the Equal Opportunity notice are continually being developed to provide alternative formats in the different languages.

#### *B. 'Equal Opportunity Is The Law' notice/poster*

State Instruction Number 16-10 transmitted the 'Equal Opportunity Is The Law' notice/poster. Through monitoring, the State ensures that the EO notices/posters are prominently posted throughout the workforce system. The posters include the exact language specified by the regulations found at 29 CFR §38.35 and are updated to reflect changes in the Office of Equal Opportunity staff or contact information.

For the convenience of the Local Workforce EO Coordinators/Officers, they may print the posters directly from SC Works website at <https://www.scworks.org/about-us/equal-opportunity>.

#### *C. Recipients' obligations to publish equal opportunity notice*

State Instruction Numbers 16-10 and 16-13 require Local Workforce Development Boards (LWDBs) to disseminate the equal opportunity notice by prominently displaying the posters

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and by including the notice in publications and brochures and presentations to orient new employees and registrants/applicants. Local Workforce Development Areas (LWDAs) are monitored to ensure compliance.

State Instruction Number 16-13 requires LWDBs to ensure that registrants/applicants and new employees are notified of their rights. Each registrant/applicant is required to sign the rights handout for registrants/applicants/participants at the time of application to prove that he/she was informed of his/her rights and was given a copy of the grievance procedure. The individual is also given a copy of the rights handout to keep. The rights handout provides notification of the right to file a complaint and the names of EO officers at the various levels whom one may contact for assistance. The notice must be provided in appropriate languages other than English. The notice must be provided in appropriate formats to individuals with visual impairments. Where notice has been provided in an alternate format, a record that such notice has been given is made a separately maintained and confidentially secured part of the employee's or participant's file along with any other medical or disability-related records. LWDAs are monitored to ensure compliance.

DEW employees are also required to acknowledge receipt of the Equal Opportunity is Law notice in the DEW Policy Center.

State Instruction 16-13 further directs LWDBs to ensure that each orientation for applicants, new participants, and/or new employees to WIOA-funded programs or activities include a discussion of participants' and/or employees' rights under the nondiscrimination and equal opportunity provisions of WIOA. Included is the right to file a complaint of discrimination either with the State-level EO Officer at the DEW Office of Equal Opportunity, or with the Director of the Civil Rights Center at U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 292110 (or electronically, as directed on the CRC website at [www.dol.gov/crc](http://www.dol.gov/crc)).

#### D. *Notice Requirement for service providers*

DEW, as well as the twelve LWDAs, are responsible for meeting the obligations to disseminate equal opportunity notice and to post notice with the required wording with respect to a State's service providers (29 CFR §38.37).

#### E. *Publications, broadcasts, and other communications*

State Instruction Number 16-13 requires that publications, recruitment brochures, and other materials that are distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients or the public contain the required language "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" as well as the telephone numbers for relay services where telephone numbers are provided.

Recipients that publish or broadcast program information in the news media must ensure to state that the program or activity discussed is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities." If voice phone numbers are provided, relay numbers must also be provided.

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All publications, recruitment brochures, and other materials are reviewed to ensure that neither text nor illustration suggests the recipient treats registrants, applicants, participants, employees, or applicants for employees differently on any prohibited basis.

State and LWDA staff monitor programs and activities to ensure compliance.

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### **Element #4: Data Collection and Maintenance [29 CFR § 38.41 through § 38.45]**

#### *A. Collection and maintenance of equal opportunity data*

DEW ensures that race/ethnicity, sex, age and disability status of each applicant, registrant, eligible applicant/registrant, participant, terminnee, employee, and applicant for employment are collected at time of application. Information on ES customers and UI claimants is collected and entered into the “South Carolina Works Online Services” (SCWOS), the data collection, reporting, case management, and program management system for the state workforce development system. Data on English language learners has been collected in accordance with WIOA data reporting requirements, i.e. the Participant Individual Record Layout (PIRL), since 2016. Currently case notes indicate other language spoken.

However, the system is being revised to collect languages in accordance with 29 CFR §38. DEW’s current data collection system is operated by Geographic Solutions. A request has been entered to Geographic Solutions to add two additional data sets to be collected from each applicant/registrant:

- (1) “Do you have difficulty in speaking, writing, reading, or understanding English?”  
If the response is ‘yes,’ the applicant/registrant will see a drop-down menu providing the opportunity to choose one or more of the options [as defined by 29 CFR §38.4(hh)]
- (2) “Which language do you prefer?” [29 CFR §38.41(a)(2)]

Each EO Coordinator/Officer generates ad hoc EO demographic reports which must be submitted to the State Office of Equal Opportunity (OEO) on a quarterly basis. The State-level EO Officer receives EO demographic data reports for all local areas and counties, which include the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, participant in training, and terminnee. The demographic information on employees of the LWDA’s and service providers is collected during annual monitoring. The information on applicants for employment and employees is available upon request.

Data on DEW employees is maintained in the human resource system database. Information is also maintained in the employee personnel file. Voluntary submission of EO data is requested in the employment application and is for statistical purposes only. The system does not allow for EO data to be made available to the hiring officials. An annual analysis of employee demographic data is conducted, with a summary provided to the SC Human Affairs Commission to document nondiscrimination.

Medical or disability-related information collected on an individual, whether hard copy or electronic, or both, must be maintained separately, apart from other information about the individual, in one or more secure files and is treated confidentially. The files are locked or secured by password protection.

- (1) Knowledge of medical condition or disability *and* access to information in related files. These persons may be informed about an individual’s medical condition or disability and have access to the information in related files under the following circumstances:

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- a. staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity;
- b. first aid and safety personnel who need access to documentation related to the individual's medical condition in an emergency; and/or
- c. government officials during monitoring.

(2) Knowledge of disability status or medical condition *only*. Supervisors, managers, and other necessary staff may be informed regarding restrictions on the activities of and about reasonable accommodations for individuals with disabilities.

DEW's Office of General Counsel has developed and provided specific training on the confidentiality of EO and medical records<sup>12</sup> for DEW employees. Similar to the training received by the LWDA EO Coordinators/Officers and front-line staff, this training was first conducted in 2018. In May 2019, DEW's Deputy General Counsel conducted four one-hour training sessions for all DEW supervisors on the privacy and confidentiality requirements governing data collected and maintained by DEW. Included in each training was a discussion of the requirements of 29 CFR § 38.<sup>13</sup>

The State EO Officer maintains a log of complaints in a locked file cabinet with other confidential EO records. Logs and other EO records are to be maintained for at least three years from the conclusion of the program year of the date of resolution. Complaint files contain the name, address of the complainant, the basis, a description of the complaint, date filed, disposition, date of disposition, and any other pertinent information.

If the complaint of discrimination is initially filed with the LWDA EO Coordinator/Officer, the local EO Coordinator/Officer records the complaint on the LWDA Complaint Log. The LWDA Complaint Logs are forwarded to the State OEO quarterly.

### *B. Information to be provided to the Civil Rights Center*

DEW will notify the Director of the CRC of any administrative enforcement actions or lawsuits filed against a grant applicant or recipient alleging discrimination on a prohibited ground. The notification will include:

- (1) the names of the parties to the action or lawsuit;
- (2) the forum in which each case was filed; and
- (3) the relevant case numbers.

DEW will provide the Director a brief description of the findings in any civil rights compliance review or complaint investigation conducted by another Federal agency where a grant applicant or recipient was found in noncompliance during the two years before the grant application was filed and the name of that Federal agency.

DEW will notify the Director about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against a grant applicant or

<sup>12</sup> "Confidentiality Of Equal Opportunity Records At Workforce Agencies"

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<sup>13</sup> Relevant slides from supervisory training recipient during the two years before the application, compliance review, or monitoring activity. This information will include:

- (1) the names of the parties to the action or lawsuit;
- (2) the forum in which each case was filed; and
- (3) the relevant case numbers.

### C. *Required maintenance of records*

DEW, the LWDA's, and all recipients of WIOA Title I funds must maintain all records of applicants, registrants, eligible applicants/registrants, participants, terminees, applicants for employment, and employees for a period of not less than three years from the close of the applicable program year.

Where a discrimination complaint has been filed or a compliance review initiated, all recipients must maintain and preserve relevant records, both hard-copy or electronic, for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review. These records may include those that have any relevance to the underlying allegations to a complaint, as well as records regarding actions taken on the complaint, or to the subject of the compliance review.

### D. *CRC access to information and information sources*

The Director of CRC or the Director's designee has access to each grant applicant and recipient during its hours of operation and to its employees and participants for the purpose of conducting complaint investigations, compliance reviews, or monitoring activities associated with DEW's development and implementation of the Nondiscrimination Plan. During such an investigation, review, or monitoring, the Director or designee may inspect and copy such books, records, accounts, and other materials as may be pertinent to determine compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA and its implementing regulations at 29 CFR §38.

If the information that the Director asks the grant applicant or recipient to provide is in the exclusive possession of another agency, institution, or person, that fails or refuses to furnish it upon request, the applicant or recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed to provide it.

At the discretion of the Director, grant applicants and recipients may be required to provide the following:

- (1) information and data the Director considers necessary to investigate complaints and conduct compliance reviews on prohibited bases;
- (2) particularized information and/or periodic reports the Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR §38; and/or
- (3) particularized information the Director considers necessary to determine whether or not the grant applicant would be able to comply with the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR §38.

Such information the Director requests must be provided in a timely manner.

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### E. *Confidentiality responsibilities*

All Local EO Coordinators/Officers have received extensive and will receive ongoing training in the EO Complaint process. Each time they are reminded that the identity of any individual who furnishes information relating to, or assists in, an investigation or a compliance review, including the identity of any individual who files a complaint, must be kept confidential to the extent possible. An individual whose identity is disclosed must be protected from retaliation. When a complaint of discrimination is filed, all parties are notified that intimidation and relation are against the law.

State Instruction 16-15<sup>14</sup> outlines the State's Discrimination Complaint Procedures. Within those procedures is a section titled, 'Intimidation and Retaliation are Prohibited,' which states:

WIOA prohibits intimidation and retaliation against individuals for filing a complaint; opposing a prohibited practice; furnishing information; assisting or participating in any manner in an investigation, review, hearing, or any other activity related to the administration of, exercise or authority under, or privilege secured by, its nondiscrimination and equal opportunity provisions (29 CFR 38.19). The sanctions contained in Section 188(b) of WIOA and in 29 CFR 38 may be imposed against any recipient program or activity that engages in any such retaliation or intimidation or fails to take appropriate steps to prevent such activity.

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<sup>14</sup> State Instruction 16-15

### **Element #5: Affirmative Outreach [29 CFR § 38.40]**

DEW serves all South Carolinians through our SC Works Centers, members of the American Job Center network. While the focus of its programs and activities continues to be helping priority populations, such as Veterans and spouses; youth with barriers to employment; individuals and youth with disabilities; ex-offenders; homeless, long-term unemployed, and long low-income individuals, outreach efforts to other target populations are being expanded. DEW employs a Priority Population Coordinator within the Workforce and Economic Development – Innovations division to improve communication and cooperation between WIOA staff, the Office of Equal Opportunity, outside community groups, and the SC Works system.

One such cooperative interaction is DEW's active partnership with the SC Disability Employment Coalition, a statewide systems' improvement effort that comprises a broad stakeholder group working to improve employment recruitment, retention, and advancement for South Carolinians with disabilities. Primary activities of the coalition include raising awareness among South Carolina's businesses regarding hiring people with disabilities, supporting systems to ensure employment is the preferred service option and outcome for people with disabilities, disseminating information relating to employing people with disabilities, and collecting quantitative and qualitative data about the experiences of employers and employees with disabilities, among other activities.

In 2016, a consortium of partners working through the SC Disability Employment Coalition received a Partnership in Employment Systems Change grant known as the SC Employment First Initiative. The purpose of the grant is to increase competitive integrated employment outcomes for young adults with intellectual and developmental disabilities. The initiative had three broad goals:

- 1) Equip high school students and recent graduates with intellectual and development disabilities with the skills, awareness, and confidence needed to enter competitive employment.
- 2) Unify and empower South Carolina education professionals, employment service providers, families, and the community at large towards support of Employment First principles.
- 3) Develop and expand supports for South Carolina-based employers who hire persons with disabilities in competitive, community-based positions.

A major focus of the SC Employment First Initiative is to implement policy that competitive and integrated employment shall be considered the first option for any individual with disabilities applying for or receiving services from the state or any of its political subdivisions.

In May of 2018, the SC General Assembly passed a bill which established the SC Employment First Study Committee to study and evaluate the need for an Employment First Initiative Act, the results of which were recently submitted and could have a positive effect on employment for people with disabilities.

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South Carolina and DEW recognize the opportunity to enhance and better coordinate the services provided to at-risk populations, including Veterans, disconnected youth, individuals with disabilities, offenders, and recipients of public assistance. For the development of the initial Unified State Plan submitted in 2016, a collaborative work group was formed to examine ways to better serve individuals with barriers to employment through the workforce development system, such as:

- developing and implementing a universal intake process that reduces duplication and streamlines the service delivery process;
- creating an effective statewide referral and follow-up system to ensure that job seekers receive the appropriate services from partner programs;
- making the delivery system accessible to all job seekers, especially those with disabilities and language barriers; and
- reaching outside of the traditional delivery system to serve the hard to serve.

Additionally, the SWDB has formed a Priority Populations Committee to address the needs of all priority populations through increased outreach and policy development. The Committee is supported by an Advisory Council consisting of subject matter experts who serve one or more of the populations identified. Similarly, each LWDB has both youth and disability standing committees. The LWDB committees receive support and guidance from their staff and the statewide Priority Populations Coordinator.

The SWDB recently made grant funds available to the LWDA's for outreach activities targeting various populations within their areas. Those grant applications were due mid-May and funds have yet to be awarded.

The EO quarterly training (sample training material attached<sup>15</sup>) this year will address the continuing expansion of outreach to various ethnic/national origin groups, and various religions. Speakers from the South Carolina Human Affairs Commission, regional religious organizations, and the University of South Carolina will be invited to address the LWDA EO Coordinators/Officers, the LWDA SC Works Center Operators, and DEW staff. Part of each EO training session includes breakout workgroups to plan activities related to the quarterly discussion topic with the goal of both broadening and strengthening our outreach efforts. These sessions will help our LWDA's develop a plan and timeline for advertising, speaking opportunities, identifying a broader range of community service groups, and refining service strategies to various populations.

<sup>15</sup> Sample Quarterly Training Materials

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#### **Element #6: Governor’s Oversight Responsibility Regarding Recipients’ Recordkeeping [29 CFR § 38.53]**

The South Carolina Department of Employment and Workforce (DEW) ensures that recipients collect and maintain equal opportunity data and other information in a manner consistent with 29 CFR §38.41, as explained in more detail in Element #4, Data and Information Collection and Maintenance.

The State-level EO Officer receives quarterly equal opportunity data reports that permit statistical analyses to be performed based on age, race/ethnicity, LEP, gender, and disability status (where known) by applicant, registrant, eligible applicant/registant, terminee, at time of application or exit. The data can be broken down by county of participation, residence, or LWDA region served. Special reporting periods can be obtained upon request. Employment application and employee data is available upon request.

LWDA EO Coordinators/Officers can generate ad hoc EO demographic reports within their own regions on request.

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### **Element #7: Discrimination Complaint Processing Procedures [29 CFR § 38.72 through § 38.73]**

DEW has revised and published separate procedures for processing complaints of discrimination on a prohibited basis or bases under Section 188 of WIOA, State Instruction 16-15, and complaints regarding a program or violation of Section 181(c) of WIOA. State Instruction 16-15 is available on both DEW's website (<https://dew.sc.gov/legal>) and the SC Works website, a partner of the American Job Center, ([https://www.scworks.org/docs/librariesprovider6/policies/discrimination-and-complaint-procedures-under-wioa-16-15-accessible.pdf?sfvrsn=164ac716\\_8](https://www.scworks.org/docs/librariesprovider6/policies/discrimination-and-complaint-procedures-under-wioa-16-15-accessible.pdf?sfvrsn=164ac716_8)).

#### A. *Who may file?*

Any person or any specific class of individuals who believe(s) that they have been or are being discriminated against on one or more prohibited bases or believe they have been or are being retaliated against (as described in 29 CFR 38.72) has the right to file a written complaint. An individual may file by him/herself or through an authorized representative.

#### B. *When and how to file*

- (1) Complainants must file within 180 days of the alleged discrimination
- (2) Complainants must file in writing or may complete and sign the Equal Opportunity Complaint Information Form available through both DEW's (<https://dew.sc.gov/legal>) and SC Works' websites
- (3) ([https://dew.sc.gov/docs/default-source/default-document-library/equal-opportunity-complaint-form.pdf?sfvrsn=9cb72624\\_2](https://dew.sc.gov/docs/default-source/default-document-library/equal-opportunity-complaint-form.pdf?sfvrsn=9cb72624_2))
- (4) Discrimination complaints can be filed by contacting one of the following:
  - i. DEW Office of Equal Opportunity;
  - ii. the Local EO Coordinator/Officer;
  - iii. S.C. Human Affairs Commission, 1026 Sumter Street, Suite 101, Columbia, SC 29201 or [information@schac.sc.gov](mailto:information@schac.sc.gov); or
  - iv. the Director of the Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210

#### C. *Initial Review of Written Complaints*

Any DEW, LWDA, or sub-recipient employee may take a written discrimination complaint from a complainant or a complainant's designated representative. All discrimination complaints are forwarded to the State-level EO Officer within the DEW Office of Equal Opportunity within 24 hours from when the complaint was received. The LWDA EO Coordinator/Officer will log all complaints passing through the LWDA on the Local Discrimination Complaint Log (an adaptation of the complaint log issued with CRC Directive No.: 2009-1). The log information includes:

- the complainant's name and address;
- the basis of the complaint;
- a brief description of the complaint;
- the disposition of the complaint ("forwarded to the State-level EO Officer");
- and

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- the date of disposition (the date forwarded)

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Upon receipt of the complaint, the State-level EO Officer logs it on the State Discrimination Complaint Log and reviews the complaint to verify it includes the following information:

- the complainant's name, address, and other contact information;
- the identity of the individual or entity the complainant alleges is responsible for the discrimination;
- a description of the alleged discrimination in enough detail to permit an initial determination of jurisdiction, timeliness, and apparent merit of the claim;
- the signature of the complainant or authorized representative.

Complaints can be submitted on a signed Equal Opportunity Complaint Information Form.

### *D. Determination of Jurisdiction / Notice*

The State-level EO Officer reviews the complaint to determine jurisdiction.

Where the State-level EO Officer determines there is no jurisdiction over the complaint or the complaint has been filed after 180 days from the alleged act of discrimination, the State-level EO Officer must notify the complainant(s) in writing within five business days and include:

- (1) a statement of the reason(s) for that determination; and
- (2) notice that the complainant has a right to file a complaint with the USDOL CRC within 30 days of the date on which the complainant receives the Notice at Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW, Suite N-4123, Washington, DC 20210.

Where the State-level EO Officer determines there is jurisdiction over the complaint, the EO Officer must provide initial, written notice to the complainant contain the following information:

- (1) an acknowledgement that the recipient, DEW, has received the written complaint;
- (2) notice that the complainant has the right to be represented in the complaint process;
- (3) notice of rights (contained in 29 CFR § 38.35);
- (4) notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages (as required in 29 CFR §§ 38.4(h) and (i), 38.4, and 38.6;
- (5) a written statement of the issue(s) to the complainant that will include:
  - i. a list of the issues raised in the complaint; and
  - ii. for each such issue, a statement whether the recipient, DEW, will accept the issue for investigation or reject the issue, and the reasons for each rejection.

### *E. Investigation Process*

The State-level EO Officer has 90 days during which the recipient attempts to resolve the complaint, which includes time for fact-finding or investigation of the circumstances underlying the complaint. Options for resolving the complaint must include alternative dispute resolutions (ADR), at the complainant's choice.

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- (1) the complainant may attempt ADR at any time after the written complaint was filed with the State-level EO Officer but before a Notice of Final Action has been issued;
  - (2) a party to any agreement reached under ADR may notify the Director of the USDOL CRC (Director) in the event the agreement is breached:
    - i. The non-breaching party may notify with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach;
    - ii. If, following an evaluation of the circumstances, the Director determines the agreement has been breached, the complaint will be reinstated and processed in accordance with the South Carolina's Office of Equal Opportunity's procedures.
  - (3) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director (as describe in 29 CFR §§ 38.69 through 38.71).
  - (4) The State-level EO Officer must provide a written Notice of Final Action to the complainant within 90 days of the date on which the complaint was filed, that contains:
    - i. for each issue raised in the complaint, a statement of either:
      - a) the State's decision on the issue and an explanation of the reasons underlying the decision; or
      - b) a description of the way the parties resolved the issue; and
    - ii. notice that the complainant has a right to file a complaint with CRC within 30 days of the expiration of the 90-day period, if no decision is issued, or within 30 days of the date on which the Notice of Final Action is received, if the complainant is dissatisfied with the State's final action on the complaint.
- F. State Instruction Number 16-15 delineates each LWDB's responsibility to communicate the State's Discrimination Complaint Procedures to all program staff, operators, and service provider staff within its area and to ensure compliance with the procedures.

State Instruction Number 16-15 is published on the SC Works website, a partner of the American Job Center, at:

[https://www.scworks.org/docs/librariesprovider6/policies/discrimination-and-complaint-procedures-under-wioa-16-15-accessible.pdf?sfvrsn=164ac716\\_8](https://www.scworks.org/docs/librariesprovider6/policies/discrimination-and-complaint-procedures-under-wioa-16-15-accessible.pdf?sfvrsn=164ac716_8)

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### **Element #8: Governor's Oversight and Monitoring Responsibilities for State Programs [29 CFR § 38.51 and § 38.53]**

- A. The State-level EO Officer conducts an annual statistical or other quantifiable analysis (race/ethnicity; sex; limited English proficiency; preferred language; age; and disability status) to determine any practical or statistical significance. Any significant differences in rates of application, placement, and termination identified will result in an investigation to determine if these differences appear to be caused by discrimination. Such investigation will include an analysis of the records individual registrants, applicants, eligible applicants/registrants, employees and applicants for employment; interviews; and other appropriate techniques.

Each LWDA is responsible for conducting quarterly statistical or other quantifiable analysis to determine whether statistically significant variances appear to exist that would indicate an adverse impact on a protected population. The LWDA's submit quarterly reports to the State Office of Equal Opportunity (OEO) as attestation that the reviews have been completed.

- B. Discrimination complaints are logged and reviewed by the State EO Officer. If not related to WIOA or DEW, they are referred to the South Carolina Human Affairs Commission, the state agency authorized for this purpose. LWDA's do not investigate complaints of discrimination. The State's procedures for handling complaints of discrimination were transmitted via State Instruction Number WIOA 16-15. The Equal Opportunity Complaint Information Form is available at:  
[https://scworks.org/media/EEO/Equal\\_Opportunity\\_Complaint\\_Information\\_Form.pdf](https://scworks.org/media/EEO/Equal_Opportunity_Complaint_Information_Form.pdf).

Compliance is monitored through file and document review.

- C. State Instruction Number 16-13 transmits the nondiscrimination and equal opportunity requirements under WIOA to each LWDA. It delineates the LWDA's role in complying with the administrative obligations, including assurances; LWDA EO Officers/Coordinators; notice and communication; conducting monitoring reviews; and ensuring that programs and activities operate in a nondiscriminatory manner. DEW requires LWDA's to act with due diligence to monitor equal opportunity provisions. If discrimination is found during a monitoring visit, the LWDA must demonstrate that it takes prompt and appropriate corrective action to effect compliance.

Each LWDA is monitored annually to verify they have completed program and facility accessibility evaluations in accordance with State Instruction Number 16-12. The LWDA's are required to submit signed and dated documentation of the evaluations annually. Spot checks of the facilities are conducted during on-site monitoring.

State Instruction Number 16-11 provides directions regarding confidentiality, data and information collection, and maintenance. The State monitors data collection by reviewing documents that prove that the information reported is true, and that the data required by USDOL is gathered.

The OEO and/or Internal Audit staff conduct annual monitoring visits to ensure LWDA compliance with: the administrative obligations under Section 188 of WIOA and 29 CFR

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§38; the responsibilities addressed by the NDP; dissemination of the notice; and nondiscrimination

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within programs and activities. Desk-top reviews are conducted internally in preparation for the annual on-site review, on an as-needed basis during resolution of monitoring findings, and for follow-up. Internal documents, to include but not be limited to personnel policies, legal status documents, signatory authority, agreements, participant data, complaint logs, and instruction letters, are reviewed to ensure that the policies and procedures do not violate the prohibitions contained in 29 CFR §38.5 through §38.19.

- D. Monitoring schedules are developed in conjunction with other program and systems monitoring and are provided to local areas prior to each Program Year. The monitoring team is led by DEW's Audit Manager. The month prior to on-site monitoring, a Data Request List<sup>16</sup> is sent to the LWDA. The items requested in advance of monitoring include, but are not limited to:

### LWDA Policies for:

- (1) Subrecipient Monitoring
- (2) Record Retention
- (3) Nondiscrimination
- (4) Nondiscrimination (serving LEP and the Deaf/hard of hearing)
- (5) Medical/Disability Information Storage
- (6) Confidentiality of Demographic Data
- (7) Anti-harassment
- (8) Accommodation
- (9) Dress Codes (LWDA and operator)
- (10) Service Dogs (and signage)

### Other items, to include:

- (1) EO Coordinator/Officer Appointment Letter
- (2) EO Coordinator/Officer job description
- (3) Organizational Chart
- (4) Sample of LWDA publications, recruitment brochures, and other outreach materials
- (5) Minutes from LWDB and Committee meetings
- (6) Code of Conduct/Standards of Behavior Notice
- (7) Contracts for Local Interpreter Services
- (8) List(s) of Assistive Technology provided by LWDA
- (9) LWDA LEP Plan
- (10) Copies of interpretation and translation invoices for past year
- (11) EO Training provided to staff, operator, and providers (Agendas, handouts, etc.)
- (12) Copies of subrecipients' policies and procedures manuals
- (13) EO provisions and nondiscrimination assurance in agreements

LWDA EO Coordinators'/Officers' program and site accessibility monitoring reports are collected annually. LWDA EO Coordinators'/Officers' demographic data analyses and Complaint Discrimination Logs are collected quarterly.

The Office of Equal Opportunity and/or Internal Audit staff monitors the LWDA's RFPS, contracts, and publications to ensure that EO assurances are included in accordance with 29 CFR §§38.25, 38.26, 38.27, and 38.38.

<sup>16</sup> Data Request List

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OEO staff review the programs applicant/participant characteristics to determine if equitable services are being provided in accordance with Section 188, 29 CFR §38.40, and State Instruction Number 16-12<sup>17</sup>. The State EO Officer also evaluates programs to ensure efforts have been made toward eliminating sex stereotyping in training and employment placements.

The Office of Equal Opportunity monitors to determine whether any protected group or groups of individuals have been adversely affected by the selection process or by their treatment in WIOA.

Prior to the issuance of a written report, EO staff will conduct an exit conference to review all findings/observations and discuss all concerns. It is the common practice of the LWDA's to review the findings and observations of the monitoring visit with subrecipients.

On-site follow-up is conducted when necessary.

- E. The Office of Equal Opportunity issues an official report to the signatory official. The report references the time and scope of the review, the Initial Determination containing: specific findings underlying the finding of noncompliance; the corrective or remedial action that the State EO Officer is proposing; the time by which the respondent must complete the corrective or remedial action; and a statement offering the opportunity to engage in voluntary compliance negotiations.

A written assurance may be issued when the respondent has, within 30 calendar days after receipt of the Initial Determination identifying the noncompliance, taken all corrective actions to remedy the noncompliance. If a respondent disagrees with the findings or proposed corrective or remedial action in the Initial Determination, the respondent must respond to the Initial Determination in writing within 30 calendar days explaining in detail its disagreement and/or the items over which it desires to negotiate. The State EO Officer will carefully review the response and contact the respondent to begin negotiation regarding a Conciliation Agreement that resolves the matter on mutually agreeable terms. The total time allotted to secure voluntary compliance must not exceed 60 days.

In the event voluntary compliance cannot be secured through the steps above, or if respondent breaches the agreed-upon Conciliation Agreement, the State EO Officer will issue a Final Determination containing the following: a statement of the efforts made to achieve voluntary compliance and a statement that those efforts have been unsuccessful; a statement of those matters upon which the respondent and DEW continue to disagree; a list of any modifications to the Initial Determination; a description of the corrective or remedial actions that the respondent must take to come into compliance; and notice that if the respondent fails to come into compliance within 10 calendar days of the date on which it receives the Final Determination, DEW may take the Sanctions identified in State Instruction Number 16-17, Change 1<sup>18</sup>.

<sup>17</sup> State Instruction Number 16-12

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<sup>16</sup> State Instruction Number 16-17, Change 1