

Administrative Policies No. AP- 208

Subject: Non-discrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014 – Policy for AE/FA/Operator/Providers

Effective: PY18 – August 20, 2018

PURPOSE:

The purpose of Administrative Policy No. AP-208 is to update this former WCCNM's Nondiscrimination Policy to reflect changes and revisions of Nondiscrimination and Equal Opportunity Provisions from the former Workforce Innovation Act (WIA) and adopt such changes as set forth in the Workforce Innovation and Opportunity Act (WIOA).

BACKGROUND:

WIOA contains the identical provisions of Section 188 as appeared in WIA, and these WIOA provisions took effect on July 1, 2015. To ensure no regulatory gap while this rule was prepared, the Department's Civil Rights Center (CRC) issued a final rule in July 2015 ("2015 rule"), codified at [29 CFR part 38](#), which applies until this rule takes effect. The 2015 rule retained the provisions in [29 CFR part 37](#) ("1999 rule") but simply substituted all references to WIA with WIOA to reflect the proper statutory authority. This final rule revises the 2015 rule and generally carries over the policies and procedures found in the 1999 and 2015 rules, which implemented the equal opportunity and nondiscrimination provisions of WIA and WIOA, respectively. Like the 1999 and 2015 rules, this final rule is organized into subparts A through E.

This final rule retains the organization of [29 CFR part 38](#) as well as the majority of the provisions in part 37.

Subpart A—General Provisions. This subpart outlines the purpose and application of part 38, provides definitions, outlines prohibited bases and forms of discrimination, and establishes CRC's enforcement authority and recipients' nondiscrimination obligations.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients. This subpart sets forth the affirmative obligations of recipients and grant applicants, including the role of EO Officers, notice and communication requirements, and the data and information collection and maintenance obligations of recipients.

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of the Workforce Innovation and Opportunity Act (WIOA). This subpart describes a Governor's responsibilities to implement the nondiscrimination and equal opportunity provisions of WIOA and this part, including oversight and monitoring of WIOA Title I-financially assisted State Programs and development of a Nondiscrimination Plan.

Subpart D—Compliance Procedures. This subpart describes procedures for conducting compliance reviews, processing complaints, issuing determinations, and handling breaches of conciliation agreements.

Subpart E—Federal Procedures for Effecting Compliance. This subpart describes the procedures for effecting compliance, including actions CRC is authorized to take upon finding noncompliance when voluntary compliance cannot be achieved, the rights of parties upon such a finding, and hearing procedures, sanctions, and post-termination procedures.

OBJECTIVE:

On December 2, 2016, the U.S. Department of Labor (Department) published its final rule revising its regulations implementing the nondiscrimination and equal opportunity provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA). Signed by President Obama on July 22, 2014, WIOA superseded the Workforce Investment Act of 1998 (WIA) as the Department's primary mechanism for providing financial assistance for a comprehensive system of job training and placement services for adults and eligible youth. Section 188 of WIOA prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA. This final rule updates Department regulations consistent with current law and addresses its application to current workforce development and workplace practices and issues.

POLICY:

As a result of the Subpart C— Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of the Workforce Innovation and Opportunity Act (WIOA), which also describes the Governor's responsibilities to implement the nondiscrimination and equal opportunity provisions of WIOA, including oversight and monitoring of WIOA Title I-financially assisted State Programs and development of a Nondiscrimination Plan (which also complies with 29 CFR part 38), the Central Regions Local Workforce Board (LWB) proposes to adopt and comply with Elements 1 – 10 as described in the New Mexico Department of Workforce Solutions' (NMDWS) "Nondiscrimination Plan for Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014" as approved and signed by the Governor's WIOA Designees on January 19, 2018.

ATTACHMENT: "Nondiscrimination Plan for Implementation for the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014", State of New Mexico Department of Workforce solutions, January 19, 2018.

APPLICABILITY: Central Region Local Workforce Board, CEO's, WIOA Elected Officials, WIOA Operator, WIOA Providers and WIOA affiliated Partners.

INQUIRIES: WIOA Manager 505-724-3629

NONDISCRIMINATION PLAN

FOR

**IMPLEMENTATION OF THE
NONDISCRIMINATION AND EQUAL
OPPORTUNITY PROVISIONS OF THE
WORKFORCE INNOVATION AND
OPPORTUNITY ACT OF 2014**

**STATE OF NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS**

JANUARY 19, 2018

INTRODUCTION

The New Mexico Department of Workforce Solutions (“NMDWS” or “the Department”) provides services to jobseeker and business customers through the implementation of the Workforce Innovation and Opportunity Act (WIOA). NMDWS's goal is to improve the employability of jobseekers and enhance business productivity in the state of New Mexico. These goals are achieved through administrative direction and policy, strategic planning, technical assistance and training, oversight and compliance, data collection and reporting, performance measures and system capacity building.

NMDWS provides services to customers within four (4) regional Local Workforce Development Areas (LWDAs) in New Mexico: Northern, Central, Eastern, and Southwestern. Each LWDA has a Local Workforce Development Board (LWDB) that administers employment and training programs through Workforce Connection Centers (“WCCs”), a statewide network of local field offices that provide comprehensive services to jobseekers and business customers.

The State Administrative Entity (SAE), which oversees a monitoring and compliance unit, workforce system specialists, and the Workforce Connection Online System, is located in Albuquerque, New Mexico in the offices of NMDWS. Jobseeker and business customers may visit any of the local WCCs throughout the state to apply for or request services. The available services include:

- Job search and placement assistance
- Assessments
- Job training opportunities
- Veteran's services
- Youth services
- Computer access
- Telephonic access
- Referral services

Additionally, jobseeker and business customers can access NMDWS's website to apply for unemployment insurance benefits, submit wage reports, and receive job search assistance. This access may be accomplished using the computers at the local WCCs or with any computer that has Internet access. Also, the telephones available at WCCs are provided solely for communicating with NMDWS's UI Operations Center.

This Nondiscrimination Plan (NDP)¹ has been developed in order to provide reasonable assurance to NMDWS's customers and the U.S. Department of Labor’s Civil Rights Center ("CRC") that

¹ Pursuant to 29 CFR § 38.54, the Governor of each state must establish and implement a Nondiscrimination Plan for State Programs. WIOA regulations define “Governor” as “the chief executive of a State or an outlying area, or the Governor’s designee.” 29 CFR § 38.4(aa). In the case of New Mexico, the Governor’s designee would be the Cabinet Secretary for NMDWS, the WIOA SAE in New Mexico.

New Mexico is compliant with the nondiscrimination and equal opportunity requirements imposed by Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations.² Every December in odd years, this NDP must be revised, if necessary, and submitted to the CRC Director. Additionally, as the information in this NDP is revised, NMDWS will submit updates to the CRC.

ELEMENT 1

EQUAL OPPORTUNITY OFFICERS

29 CFR §§ 38.28 through 38.33

The Governor of New Mexico has designated NMDWS to administer the implementation of the nondiscrimination and equal opportunity provisions of Section 188 of WIOA and its implementing regulations at 29 CFR Part 38. These provisions require that all recipients, except those which are small entities or service providers,² designate equal opportunity (EO) Officers. The regulations specify who can serve as EO Officers and what their responsibilities are.

STATE-LEVEL EO OFFICER

The Governor has designated Richard L. Branch as State-level EO Officer, who reports directly to the Governor and/or the Governor's designee, NMDWS Cabinet Secretary Celina Bussey. As a staff attorney with NMDWS's Office of General Counsel, Mr. Branch meets the requirement of being a senior level employee of the agency administering WIOA. Governor Martinez signed and issued her official letter of designation for Mr. Branch on October 6, 2017. This letter has been forwarded to the Director for the CRC, in accordance with the requirements of 29 CFR Part 38.

Mr. Branch has served as NMDWS's State-level EO Officer since 2013. A licensed attorney in New Mexico for the past 26 years, Mr. Branch has the skills, knowledge, and abilities required for the State-level EO Officer position. Prior to assuming the role as State-level EO Officer, Mr. Branch served as the Chief of the NMDWS Appeal Tribunal from 2007 to 2013. Prior to that, he served as an Administrative Law Judge with the Appeal Tribunal from 2000 to 2007. Prior to that, Mr. Branch worked in private practice and also served as a criminal prosecutor in New Mexico. Mr. Branch is familiar with the programs and administrative structure of NMDWS and its partners in the administration of the WIOA program. Mr. Branch has attended Equal Opportunity training courses in Washington, D.C., including courses provided by the CRC, most recently in December 2017. Mr. Branch's contact information is:

Richard L. Branch, State-level EO Officer

² 29 U.S.C. § 3101 through § 3361 and 29 CFR Part 38.

² A "small" recipient means a recipient who: (1) serves a total of fewer than 15 beneficiaries during an entire grant year and (2) employs fewer than 15 employees on any given day during the grant year. 29 CFR § 38.4 (hhh) and § 38.28(b).

P.O. Box 1928
Albuquerque, NM 87103-1928
(505) 841-8323 / fax (505) 841-9041
E-mail: richard.branch@state.nm.us

Individuals with speech and/or hearing impairments may call State Relay
at one of the following telephone numbers:

General Access: 711
Spanish Translation: 1-800-327-1857
1-800-659-8331 (TTY) 1-888-
659-3952 (STS)

In his role as State-level EO Officer, Mr. Branch reports directly to the NMDWS Cabinet Secretary (i.e., the Governor's designee) with respect to EO matters and to the NMDWS General Counsel for non-EO matters. Pursuant to 29 CFR § 38.31, it is Mr. Branch's responsibility to coordinate the recipient's obligations under WIOA's implementing regulations, including but not limited to:

- Serving as the NMDWS's liaison with CRC.
- 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 recipients and subrecipients are not violating their nondiscrimination and equal opportunity obligations, including monitoring the collection of required equal opportunity data by recipients.
- Reviewing the recipient's written policies to make sure they are nondiscriminatory.
- Developing and publishing the recipient's procedures for processing discrimination complaints pursuant to 29 CFR §§ 38.72 through 38.74, including tracking complaints, developing procedures for investigating and resolving complaints, making sure the procedures are followed, and making available to the public, in appropriate languages and formats, the complaint filing and processing procedures.
- Coordinating recipients' affirmative outreach and education about equal opportunity and nondiscrimination requirements and how individuals may file complaints, consistent with 29 CFR §§ 38.40 and 38.69.
- Undergoing training (at the recipient's expense) to maintain competency of the EO Officer and staff, as required by the CRC Director.
- Overseeing the development and implementation of the recipient's Nondiscrimination Plan under 29 CFR § 38.54.
- Logging and overseeing all WIOA Section 188 discrimination complaints at the state level.
- Investigating discrimination complaints by Department employees.
- Notifying WIOA complainants of receipt of the complaint, determining jurisdiction, explaining rights to complainant, and assigning for mediation, if requested.
- Providing training to Local-level EO Officers on their WIOA Section 188 obligations.
- Providing consultation to the Department and local partners, as required, regarding reasonable accommodations.
- Serving as the Department's Americans with Disabilities Act (ADA) Coordinator.

- Providing statewide monitoring and oversight on EO compliance under WIOA Section 188 and 29 CFR Part 38.
- Updating the state NDP and submitting it to USDOL every odd year in December.

These duties do not present a conflict of interest, as Mr. Branch's duties do not include defending NMDWS against charges of discrimination. Although a member of the Department's legal staff, Mr. Branch's office is located in a separate area of NMDWS's building. In the event of a complaint of unlawful discrimination is filed against NMDWS with the CRC, Mr. Branch's role is limited to serving as a liaison between the CRC and NMDWS in order to facilitate the investigation and resolution of the complaint. The following are Mr. Branch's additional duties within the Office of General Counsel:

- Representing the Department in appeals of Unemployment Insurance (UI) cases at the appellate court levels.
- Serving as Chairman of the Board of Review Higher Authority (HA) appeal level within the Department.
- Analyzing agency legislation for the Governor's office and state Legislature.
- Analyzing legal issues and presenting legal advice for the Department.
- Drafting and reviewing contracts for services to the Department for compliance and legal sufficiency.
- Obtaining monetary restitution on behalf of the Department for overpayments to claimants and non-payment by employers of UI taxes through the civil legal process.

With respect to the State-level EO Officer, NMDWS will fulfill its obligation to:

- Ensure that the EO Officer is a senior-level employee reporting directly to the individual with the highest level position of authority at NMDWS, i.e., the Cabinet Secretary.
- Designate an individual who can fulfill the responsibilities of State-level EO Officer as described above.
- Ensure that the State-level EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) are made public.
- Ensure that the EO Officer's identity and contact information appear on all internal and external communications about NMDWS's nondiscrimination and equal opportunity programs.
- Assign sufficient authority, staff and resources to the State-level EO Officer, and support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38.
- Ensure that the State-level EO Officer and the State-level EO Officer's staff are afforded the opportunity to receive (at the recipient's expense) the training necessary and appropriate to maintain competency.

Within the Office of General Counsel, the administrative staff are available to assist the State-level EO Officer in fulfilling his duties. Although no specific budget is set aside for training, resources needed to carry out EO Officer responsibilities are available, including use of equipment, training facilities, information technology, clerical support, EO training, travel costs, registration costs, etc.

Mr. Branch is identified as the State-level EO Officer on the Department's poster, "Equal Opportunity is the Law." His contact information appears on these notices. English and Spanish versions of these notices are distributed to all LWDAs and WCCs throughout the state. These notices/posters are displayed in prominent locations for public viewing by applicants, registrants, participants, employees, and applicants for employment, as well as interested members of the public. The Equal Opportunity is the Law notice also appears on the Department's website in English and Spanish. LWDBs that have websites also have the Equal Opportunity is the Law notice posted on their websites. Additionally, all Department employees are provided with the name and contact information of the State-level EO Officer during the sexual harassment training they receive at the beginning of their employment and every other year during their employment.

LOCAL-LEVEL EO OFFICERS

New Mexico Workforce Connection is New Mexico's WIOA One-stop service delivery system. New Mexico Workforce Connection provides a comprehensive and integrated interface that allows both jobseeker and business customers easier access to workforce services and information through the WCCs. New Mexico Workforce Connection consists of the four (4) geographic LWDAs. Each LWDA is headed by a Workforce Development Board or LWDB. The four LWDBs are as follows: Northern Area LWDB, Southwestern Area LWDB, Eastern Area LWDB and the Central Area LWDB. The four LWDBs have designated the following individuals to serve as Local-level EO Officers:

Northern Area

Sara Jones, EO Officer
5 Bisbee Court, Suite 104
Santa Fe, NM 87508 (505)
986-0363
ortiz@nalwdb.nm.org

Southwestern Area

Carol Craft, EO Officer
PO Box 1072
Elephant Butte, NM 87935
(575) 744-4857
ccraft@sccog-nm.cog

Eastern Area

Vicki Davis, EO Officer
PO Box 70503
Albuquerque, NM 87197 (575)
693-3378
vdavis@nmwcc.com

Central Area

Jerilynn Sans, EO Officer
809 Copper NW
Albuquerque, NM 87102 (505)
724-3636
jsans@mrcog-nm.gov

The Local-level EO Officers are responsible for:

- Monitoring and investigating the LWDA's EO activities, including those of their recipients and service providers who receive WIOA Title I funds to ensure compliance with the nondiscrimination and EO obligations under Section 188 of WIOA and 29 CFR Part 38.
- Reviewing LWDA written policies to ensure compliance with the nondiscrimination and EO obligations under Section 188 of WIOA and 29 CFR Part 38.
- Reviewing all complaints alleging discrimination received by WCCs, service providers and recipients and forwarding them to the State-level EO Officer within seven (7) calendar days of receipt.
- Ensuring that all complaints alleging discrimination received by WCCs, service providers and recipients are timely, properly and completely logged using approved logs provided by the State-level EO Officer.
- Forwarding copies of any and all logs of complaints alleging discrimination to the Statelevel EO Officer no later than ten days after the end of each month.
- Coordinating Local-level EO responsibilities to include EO training of staff at WCCs, service providers and recipients and ensuring compliance with the nondiscrimination and EO provisions of WIOA by WCCs, service providers and recipients.

WCCs and affiliate sites are located within the four LWDA's. All WCCs shall refer all EO-related matters to their Local-level EO Officer to ensure nondiscrimination compliance and accessibility to services provided to Workforce Connection customers. Each of the LWDBs have developed or adopted policies to administer this requirement. The Local-level EO Officers must report to the State-level EO officers with respect to EO matters. The State-level EO Officer is responsible for ensuring that training in sexual harassment, disability discrimination, NMDWS's discrimination complaint process and the Department's Language Access/LEP Plan is provided to all Local-level EO Officers every other year.

OVERSIGHT BY STATE-LEVEL EO OFFICER

The State-level EO Officer's oversight, guidance, technical assistance and monitoring of Locallevel EO Officers and members of recipients' staffs comprises a comprehensive system of policy communication and training to ensure that EO Officers and recipients who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38 are aware of and can effectively carry out these responsibilities.

ELEMENT 2 NOTICE AND COMMUNICATION

29 CFR §§ 38.34 through 38.39

NMDWS will provide initial and continuing notice that it does not discriminate on any prohibited basis. This notice will be in the form of the "Equal Opportunity is the Law" notice that is prescribed by 29 CFR § 38.35. This notice will be provided to all registrants, applicants, participants, employees, applicants for employment, unions/professional organizations that hold collective bargaining or professional agreements with NMDWS, sub-recipients that receive WIOA Title I financial assistance from NMDWS or any other recipient and members of the public, including those with impaired vision or hearing and individuals with limited English proficiency (LEP). NMDWS will take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for LEP individuals. The following constitutes the English and Spanish text of the "Equal Opportunity is the Law" notice prescribed by 29 CFR § 38.35:

EQUAL OPPORTUNITY IS THE LAW

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity;
- providing opportunities in, or treating any person with regard to, such a program or activity; or
- making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIOA Title I–financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

Richard L. Branch, State-level EO Officer
P.O. Box 1928

Albuquerque, NM 87103-1928
(505) 841-8323 / fax (505) 841-9041
E-mail: richard.branch@state.nm.us

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General Access: 711

Spanish Translation: 1-800-327-1857

1-800-659-8331 (TTY)

1-888-659-3952 (STS)

Or:

The Director, Civil Rights Center (CRC)

U.S. Department of Labor

200 Constitution Avenue NW., Room N-4123

Washington, DC 20210

Or Electronically as directed on the CRC Web site at www.dol.gov/crc

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90–day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

The Spanish version of this notice appears below:

LA IGUALDAD DE OPORTUNIDAD ES LA LEY

La ley prohíbe que este beneficiario de asistencia financiera federal discrimine por los siguientes motivos: contra cualquier individuo en los Estados Unidos por su raza, color, religión, sexo (incluyendo el embarazo, el parto y las condiciones médicas relacionadas, y los estereotipos sexuales, el estatus transgénero y la identidad de género), origen nacional (incluyendo el dominio limitado del inglés), edad, discapacidad, afiliación o creencia política, o contra cualquier beneficiario, solicitante de trabajo o participante en programas de capacitación que reciben apoyo financiero bajo el Título I de la ley de Innovación y Oportunidad en la Fuerza Laboral (WIOA, por sus siglas en inglés), debido a su ciudadanía, o por su participación en un programa o actividad que recibe asistencia financiera bajo el Título I de WIOA.

El beneficiario no deberá discriminar en los siguientes áreas: decidiendo quién será permitido de participar, o tendrá acceso a cualquier programa o actividad que recibe apoyo financiero bajo el Título I de WIOA; proporcionando oportunidades en, o tratar a cualquier persona con respecto a un programa o actividad semejante; o tomar decisiones de empleo en la administración de, o en conexión a un programa o actividad semejante.

Los beneficiarios de asistencia financiera federal deben tomar medidas razonables para garantizar que las comunicaciones con las personas con discapacidades sean tan efectivas como las comunicaciones con los demás. Esto significa que, a petición y sin costo alguno para el individuo, los recipientes están obligados a proporcionar ayuda auxiliar y servicios para individuos con discapacidades calificados.

QUE DEBE HACER SI CREE QUE HA SIDO DISCRIMINADO

Si usted piensa que ha sido discriminado en un programa o actividad que recibe apoyo financiero bajo el Título I de WIOA, usted puede presentar una queja no más de 180 días después de la fecha en que ocurrió la presunta violación, ya sea con: El oficial de igualdad de oportunidad del recipiente (o la persona que el recipiente haya designado para este propósito);

Richard L. Branch, State-level EO Officer

P.O. Box 1928

Albuquerque, NM 87103-1928

(505) 841-8323 / fax (505) 841-9041

E-mail: richard.branch@state.nm.us

Individuals with speech and/or hearing impairments may call State Relay at one of the following telephone numbers:

General Access: 711

Spanish Translation: 1-800-327-1857

1-800-659-8331 (TTY)

1-888-659-3952 (STS)

O:

Director, Civil Rights Center (CRC)

U.S. Department of Labor

200 Constitution Avenue NW, Room N-4123

Washington, DC 20210 o electrónicamente como indica el sitio web del CRC www.dol.gov/crc.

Si usted presenta una queja con el recipiente, usted debe esperar hasta que el recipiente emita una decisión final escrita o que pasen por lo menos 90 días (lo que ocurra primero), antes de presentar una queja con el Centro de Derechos Civiles (CRC, por sus siglas en inglés) a la dirección mencionada previamente. Si el beneficiario no le entrega una decisión final escrita dentro de 90 días después de la fecha en que presento su queja, usted puede presentar su queja con el CRC antes que reciba la decisión final. Sin embargo, es necesario presentar su queja con el CRC dentro de 30 días después de la fecha límite de 90 días (en otras palabras, dentro de 120 días después de la fecha en que presento la queja con el recipiente). Si el recipiente emite una decisión final escrita, pero usted no está satisfecho con el resultado o resolución, usted puede presentar una queja con el CRC. Usted debe presentar su queja con el CRC dentro de 30 días después que reciba la decisión final escrita.

Within 90 days of submission of the NDP to the CRC, NMDWS will ensure that this notice is posted prominently at the WCCs in conspicuous locations and published on the NMDWS website, disseminated to NMDWS and LWDB staff, included in employee handbooks, and provided to each participant and employee. NMDWS will ensure that the State's service providers also fulfill this notice requirement. This notice will be provided in appropriate formats to registrants, applicants, employees, employment applicants and participants with visual impairments upon request. Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments, a record that such notice has been given will be made a part of the employee's or participant's file. The notice will also be provided to participants in appropriate languages other than English. It is a requirement under the NDP that service providers provide this notice, with NMDWS overseeing and ensuring compliance.

NMDWS will indicate that each of its WIOA Title I-financially assisted programs or activities are an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities" in any recruitment brochures and other materials that are ordinarily distributed and communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIOA or the requirements for participation by recipients or participants. Where these materials indicate that the recipient may be reached by voice telephone, the materials will prominently provide the telephone number of the text telephone (TTY) or equally effective telecommunications system, such as a relay service, used by NMDWS or recipients.

Where NMDWS broadcasts program information in the news media, it will ensure that such broadcasts state that any such WIOA Title I-financially assisted program or activity is an equal opportunity employer/program and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

During each presentation to orient new participants, new employees, and/or the general public to NMDWS's WIOA Title I-financially assisted programs or activities, whether it be in-person or over the Internet, NMDWS will include a discussion of rights and responsibilities under the

nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38, including the right to file a complaint of discrimination with the recipient or the CRC Director. This information will be communicated in appropriate languages and in formats accessible for individuals with disabilities.

ELEMENT 3 ASSURANCES

29 CFR §§ 38.25 through 38.27

Each application for financial assistance, under Title I of WIOA, does and will continue to include the following written assurance:

(i) As a condition to the award of financial assistance from the U.S. Department of Labor under Title I of WIOA, the grant applicant assures that it 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:

(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) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

(D) The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

(E) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

(ii) The grant applicant 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 grant applicant'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 grant

applicant understands that the United States has the right to seek judicial enforcement of this assurance.

This assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby federal financial assistance under Title I of WIOA is made available, whether it is explicitly incorporated in such document and whether there is a written agreement between the USDOL and the recipient, between the USDOL and the Governor, between the Governor and the recipient, or between recipients.

NMDWS will include in each Strategic Four-Year Plan (“State Plan”) for carrying out continuing WIOA financially assisted programs or activities, this same text, starting with the 2020-2023 State Plan.⁴ The current State Plan in effect contains the following language:

[N]o individual will be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief or, for any beneficiary, because of the beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States or for participation in any Title I financially assisted program or activity.⁵

All contracts and agreements shall be provided to the State-level EO Officer or an attorney from NMDWS's Office of General Counsel for review prior to finalization and execution to ensure that this assurance language is included. The Department requires all applications for federal financial assistance under WIOA to include EO assurances, committing potential recipients and subrecipients to full compliance with the nondiscrimination and EO provisions of WIOA.

Review of Recipient policies, training plans and other agreements

NMDWS will also develop a system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under WIOA § 122, is likely to conduct its WIOA Title I-financially assisted programs or activities in a nondiscriminatory way, and to comply with the equal opportunity provisions of 29 CFR Part 38. This will include, prior to selection as eligible, a review of the recipient's policy issuances to ensure they are nondiscriminatory, both in their intent and potential impacts. Similarly, NMDWS will conduct a review of recipients' job training plans, contracts, assurances, and other similar agreements to ensure they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.

⁴ The State Plan in effect at the time of preparation and submission of this NDP does not include the exact language required by WIOA's new implementing regulations under 29 CFR Part 38, but future State Plan versions will contain the required language, starting with the 2020-2023 State Plan.

⁵ 2016-2019 State Plan State Plan at 23.

ELEMENT 4 AFFIRMATIVE OUTREACH

29 CFR § 38.40

NMDWS will take appropriate steps to ensure that all recipients are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps will include reasonable efforts to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups. In the first year that this NDP is in effect NMDWS will study and consider the efficacy of various methods of accomplishing the aforementioned goals, including, but not limited to:

- (a) Advertising recipients' programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- (b) Sending notices about openings in the recipients' programs and/or activities to schools or community service groups that serve various populations; and
- (c) Consulting with appropriate community service groups about ways in which recipients may improve their outreach and service to various populations.

Upon exploring various outreach methods and arriving at a determination of which ones would be feasible and effective, NMDWS will take affirmative steps to develop and implement such initiatives. This NDP will be seasonably updated so as to apprise the CRC and the public as to these affirmative outreach efforts.

ELEMENT 5

FEDERAL DISABILITY NONDISCRIMINATION LAW

NMDWS has developed written policies and procedures to ensure that recipients meet their obligations to provide delivery of services in the most integrated setting. The policies prohibit standards or procedures that result in unlawful discrimination or that interfere with WIOA Title I objectives. Through WIOA grant agreements, LWDBS assure and certify that in administering programs under the contract, they will fully comply with the following laws:

- 29 U.S.C. § 794 (§ 504 of the Rehabilitation Act of 1973);
- 42 U.S.C. §§ 12131 through 12134 (Title II of the Americans with Disabilities Act);
- 29 U.S.C. § 3248 (WIOA § 188); and
- 29 CFR Part 38.³

New Mexico's WIOA combined State Plan for program years 2016-2019 mandates a workforce development system with WCCs, programs, and services that are accessible for all customers and fully compliant with accessibility requirements for individuals with disabilities. WCCs must ensure that staff are sensitive to the needs of individuals with disabilities and prepared to provide necessary accommodations. Staff will be trained and equipped with the knowledge of accommodation policies, procedures and resources, skills in serving special populations, and motivation to provide superior service to customers with disabilities. WCCs must also reflect innovative and effective service design to ensure meaningful access to all customers. It is the responsibility of the LWDBs to ensure WCCs are physically and programmatically accessible to all customers, including individuals with disabilities. This includes making use of principles of universal design and human-centered design, such as:

- Considering flexibility in space usage;
- Ensuring physical building access;
- using pictorial, written, verbal and tactile modes to present information to customers with disabilities;
- Providing clear lines of sight to information for seated or standing users;
- Providing computer station accessibility;
- Providing adaptive technologies, such as accessible computer software;
- Supporting and sustaining availability of customer information and services accessed through the Internet; and
- Providing adequate space for use of assistive devices or personal assistants.

WCCs are required to assess themselves for physical and programmatic accessibility. LWDBs must evaluate accessibility of WCCs to ensure the aforementioned accessibility categories are in place, and that front-line staff members are trained to adequately assist individuals with disabilities, and trained in the use of assistive technologies, to ensure that the WCCs meet or surpass federal, state, and local accessibility standards. LWDBs should also explore ways through the sharing of best practices to promote and develop employment opportunities for job seekers with disabilities, including the provision of career guidance and placement services. WCCs must adhere to federal and state privacy laws in serving customers. In the sharing of information within WCCs and among partner programs, such as for referrals, LWDBs must ensure WCC center staff properly secure customer information in accordance with personally identifiable information guidelines, and facilitate as appropriate, with the necessary memoranda of understanding or other forms of confidentiality and data sharing agreements, consistent with federal and state privacy

³ See Workforce Innovation and Opportunity Act Combined State Plan, Program Years 2016-2019 (Revised September 1, 2016), at 55-57.

laws and regulations. Data should only be shared with other programs, for those programs' purposes, only after an informed written consent of the individual has been obtained, where required. WCCs must commit to continuous improvement in service delivery. LWDBs must ensure WCCs develop and maintain policies and procedures to evaluate effectiveness of accessibility and overall customer satisfaction, as well as for making improvements based on data and feedback, such as customer accommodation requests. WCCs must leverage relationships with other programs to more effectively serve customers with barriers. This means LWDBs must develop collaborative relationships with agencies and programs that have customers with economic challenges, culture differences, language difficulties, stigmas, and disabilities to support long-range planning and design of universally accessible services. This also includes working with local partner agencies and organizations who also serve individuals with disabilities in the community to coordinate outreach efforts, and to more effectively provide supportive services, such as transportation services and health and human resources. Finally, WCCs should explore opportunities to expand capacity for serving customers with barriers. NMDWS and LWDBs can work to support and expand the capacity of existing WCC services to better serve individuals with disabilities and other barriers through staff development, translation services, special equipment, and other accommodations.

Below are examples of how the LWDBs are making the WCCs more accessible to individuals with disabilities:

- Installation of automatic, push button doors;
- Assistive devices, such as TTY machines;
- Lift tables and other products for people with disabilities;
- Computers with enhanced keyboards for clients with visual impairments;
- Utilizing services from New Mexico's Community Outreach Program for the Deaf (COPD), which provides interpreter services and technical assistance;
- Developing and implementing local policies regarding reasonable accommodation, disability related nondiscrimination and EEOC complaints; and
- WCC staff are active in the School to Work Transition Alliance (SWTA) helping to develop better ways to reach out and accommodate individuals.

NMDWS, as the SAE, has provided the LWDBs with guidance with respect to the criteria that must be used to certify WCCs,⁴ including requirements related to the elimination of barriers faced by individuals with disabilities. Examples include criteria that mandate reasonable accommodations to provide for physical accessibility and reasonable modifications of policies, practices and procedures where necessary to avoid discrimination based on disabilities.⁵

State policy provides that communication with disabled individuals be as effective as communication with nondisabled persons. The State has an approved statewide price agreement with multiple vendors providing professional sign-language interpretation services for customers

⁴ See Workforce Guidance Letter DWS 16-002, January 10, 2017.

⁵ See *id.* at 3.

who are deaf and/or hard of hearing when needed. The State also uses auxiliary aids, and TDD/TTY relay services are available at many locations. The Department ensures that individuals with disabilities, who are interested in programs and services, are provided information on those programs and services. All LWDBs have signed agreements committing to programmatic and technological compliance.

New Mexico provides reasonable accommodations at all of its WCCs and monitors all programs to ensure accessibility of WIOA services and programs. The State-level EO Officer is tasked with coordinating and monitoring ongoing ADA, ADAAA, and other disability compliance training to all managers and supervisors of the Department and WCCs. Information collected and maintained concerning disabilities is voluntary and confidential. Instructions that this information is confidential and must remain confidential is provided to all WCC employees, LWDB members, and managers and supervisors as part of the training. All pre- and post-employment medical inquiries are limited to those permitted by and in accordance with WIOA § 188, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, and 29 CFR Part 38.

The Department's policy prohibits discrimination based on actual or perceived disabilities, and all Department job postings and descriptions will include the tagline, "The State of New Mexico is an equal opportunity employer. Hiring is done without regard to race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability or any other characteristic protected by federal, state or local law. Reasonable accommodations provided to known disabilities of individuals in compliance with the Americans with Disabilities Act. For accommodation information, please contact Andrea Rivera-Smith, Career Services Division @505-695-5606."

ELEMENT 6 DATA AND INFORMATION COLLECTION AND MAINTENANCE

29 CFR §§ 38.41 through 38.45

New Mexico will continue utilizing and developing procedures for collecting such data and maintaining such records, in accordance with procedures prescribed by the Director of the CRC, to determine whether New Mexico's WIOA programs, services and activities are administered in compliance with the nondiscrimination and equal opportunity provisions of WIOA and its implementing regulations. The system and format in which the data and records are kept will allow the Governor's representative and the CRC to conduct statistical or other quantifiable analyses to verify compliance. The records will include, with respect to applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment, data related to the following:

- Race/ethnicity;
- Sex;

- Age;
- Disability status, where known; and
- LEP status, beginning January 3, 2019.

NMDWS will store this information in a manner that ensures confidentiality and use it only for purposes of recordkeeping and reporting; determining eligibility, where appropriate pursuant to law; determining whether recipients are operating their WIOA Title I-financially assisted programs or activities in a nondiscriminatory manner; and for other uses authorized by law. Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, will be collected on separate forms and maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. NMDWS has policies, procedures, and security plans in place to safeguard collected information pertaining to specific job seekers, program participants, enrollees, benefit claimants, employers, and agency/partners and employees. These policies, procedures, and plans are reviewed and modified, if necessary, on an annual basis. Data is accessible only to program managers, program monitors, case managers, and a limited number of other authorized personnel needing access to these systems to provide direct services. Information on individuals' disability status and/or medical condition may be accessible to persons in the following categories under the following listed circumstances:

- Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity;
- First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency; and
- Government officials engaged in enforcing this part, any other laws administered by the USDOL, or any other federal laws.

Additionally, NMDWS and other WIOA Title I-financially assisted recipients will keep and maintain logs of complaints of discrimination based on the following:

- Race/ethnicity;
- Religion, sex (including pregnancy and childbirth);
- Transgender status and gender identity;
- National origin;
- Age;
- Disability;
- Political affiliation or belief; and
- Participation in any WIOA Title I-financially assisted program or activity.

The complaint logs shall include the following information: (1) the name and address of the complainant; (2) the basis of the complaint; (3) a description of the complaint; (4) the date the complaint was filed; (5) the disposition and date of disposition of the complaint; and (6) any other pertinent information. Any information that could lead to identification of a particular individual as having filed a complaint must be kept confidential. Each recipient will be required to keep and

maintain these logs and forward them on a monthly basis to each Local-area EO Officer, which shall then forward them to the State-level EO Officer on a monthly basis.

ELEMENT 7 GOVERNOR’S OVERSIGHT RESPONSIBILITY REGARDING RECORDKEEPING

29 CFR § 38.53

The Governor or her designee, NMDWS Cabinet Secretary Celina Bussey, is responsible for ensuring that recipients collect and maintain records in a manner consistent with the provisions of 29 CFR § 38.41, and to ensure that recipients are able to provide data and reports in the manner prescribed by the CRC.

ELEMENT 8 GOVERNOR’S OVERSIGHT AND MONITORING RESPONSIBILITIES FOR STATE PROGRAMS

29 CFR §§ 38.51 and 38.52

The Governor or her designee will conduct oversight and monitoring of all WIOA Title-I financially assisted state programs by ensuring compliance of all equal opportunity provisions of WIOA and 29 CFR Part 38 and annually monitoring recipient compliance with these equal opportunity and nondiscrimination provisions. The State-level EO Officer will coordinate the yearly review of equal opportunity data, including statistical or other quantifiable analyses of records and data kept by recipients by race/ethnicity, sex, LEP status, preferred language, age and disability status. The State-level EO Officer will also coordinate the investigation of any significant differences suggested by such data analysis. Finally, the State-level EO Officer will assess whether recipients have fulfilled their administrative obligations under 29 CFR Part 38. The State-level EO Officer will also have the authority to conduct random or referral-based compliance reviews of recipients.

In accordance with 29 CFR § 38.52(a), the State-level EO Officer will also oversee and coordinate, for compliance purposes, (1) the establishment and implementation of a Nondiscrimination plan; (2) ensuring that contracts with recipients clearly establish the recipient’s obligations requiring nondiscrimination and equal opportunity; (3) demonstrating due diligence with regard to monitoring recipients’ compliance with nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38; and (4) taking prompt and appropriate corrective action and/or the issuance of sanctions to effect compliance.

These aforementioned measures, along with the assurances that will be mandated under Element 3 of this NDP, will form the cornerstone of NMDWS’s procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of 29 CFR § 38.5 with regard to:

- Race;
- Color;
- Religion;
- Sex;
- National origin;
- Age;
- Political affiliation or belief;
- Citizenship; and
- Participation in any WIOA Title I-financially assisted program or activity.

ELEMENT 9 COMPLAINT PROCESSING PROCEDURES

29 CFR §§ 38.72 and 38.73

NMDWS has promulgated regulations prescribing how complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIOA are to be processed.⁶ New Mexico's complaint processing regulations are designed to ensure the prompt and equitable resolution of complaints. The complaint process incorporates the following elements:

- An initial, written notice to the complainant that contains the following information:
 - an acknowledgement of receipt of complaint by the recipient;
 - notice that the complainant has the right to representation;
- A written statement of the issue(s) provided to the complainant, including the following information:
 - a list of the issues raised in the complaint and
 - for each issue raised in the complaint, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for the rejection.
- A period of fact-finding or investigation of the circumstances underlying the complaint;
- A period during which the recipient will attempt to resolve the complaint, including using alternative dispute resolution (ADR);
- A written Notice of Final Action provided to the complainant within 90 days of the filing of the complaint;
- For each issue raised in the complaint, a statement of the recipient's decision on the issue and explanation of the reasons underlying the decision or a description of the way the parties resolved the issue; and

⁶ Currently, New Mexico's complaint processing regulations, found at 11.2.21.10 NMAC, incorporate the majority of § 38.72's requirements but still make reference to the Workforce Investment Act (WIA), WIOA's predecessor legislation and lack five new provisions mandated by 29 CFR § 38.72. As part of this NDP, New Mexico will pursue the necessary rulemaking to incorporate these new WIOA complaint-processing requirements. The specific WIOA provisions for which New Mexico will pursue rulemaking include: § 38.72(b)(1)(iii)(complainants must be provided notice contained in § 38.35), § 38.72(b)(1)(iv)(notice to complainant of 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), § 38.72(c)(1)(complainant may attempt complaint resolution through ADR at any time after the complaint is filed with recipient but before Notice of Final Action has issued), § 38.72(c)(2)(choice to use ADR rests with complainant) and § 38.72(c)(3)(ii)(reinstatement of complaint if CRC Director determines that an ADR agreement has been breached).

- Notice that the complainant has the right to file a complaint with the CRC within 30 days of the date that the Notice of Final Action is received if the complainant is dissatisfied with the Final Action; and
- A means of resolution of the complaint through ADR, with procedures that provide that:
 - in the event of a breach of any agreement reached under ADR that non-breaching party may notify the CRC Director of the breach within 30 days of the date on which the non-breaching party learns of the alleged breach; and
 - if the parties are not able to reach an agreement through ADR, the complainant may file a complaint with the CRC Director.

Responsibilities

The State-level EO Officer and NMDWS as the SAE have overall responsibility for developing and implementing amendments to New Mexico's existing complaint processing regulations so that they fully comport with the requirements of 29 CFR Part 38.72, and ensuring agency and partner staff are provided the training required in these complaint procedures. Additionally, NMDWS will establish procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found, which will include, but not be limited to, termination of grant agreements.

Communication

Information regarding the complaint process is made available to Department staff, service providers, recipients, sub-recipients and clients. Posters informing and instructing applicants about the complaint procedures shall be posted in multiple prominent locations throughout the New Mexico WCCs and recipient, sub-recipient, affiliate, and co-location sites. Equal Opportunity complaint forms in English and Spanish shall made available and placed in prominent locations in New Mexico WCCs and recipient, sub-recipient, affiliate, and co-location sites. During the initial applicant intake interview, an explanation of the full range of services available is provided, and applicants also receive written information explaining the complaint procedure. This information is translated into Spanish and is accessible to clients needing other formats or additional assistance upon request. Additionally, the complaint procedure will also be published on NMDWS's website.

ELEMENT 10 LIMITED ENGLISH PROFICIENCY (LEP) PLAN/LANGUAGE ACCESS PLAN

29 CFR § 38.9 and Appendix to 29 CFR § 38.9

INTRODUCTION

This Language Access Plan/LEP Plan (“LEP Plan”) has been developed in order to facilitate the New Mexico Department of Workforce Solutions’ (NMDWS)⁷ compliance with the nondiscrimination requirements of Section 188 of the Workforce Innovation and Opportunity Act or WIOA. 29 U.S.C. § 3101 through § 3361. WIOA’s implementing regulations provide that recipients of WIOA Title I financial assistance must “take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in a recipient’s program or activity.” 29 C.F.R. § 38.9(b). Pursuant to WIOA regulations, “[r]ecipients...should develop a written language access plan to ensure that LEP individuals have meaningful access.” 29 C.F.R. § 38.9(i).

POLICY

It is the policy of NMDWS that the “Department must provide services to the public without regard to race, gender, sexual orientation, veteran status, political affiliation, gender identity, color, religion, age, national origin, mental or physical disability, or medical condition.” NMDWS Policy Issuance No. 11, § IV(G). Additionally, NMDWS employees “shall not discriminate against other employees or members of the public on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental impairment or serious medical condition, spousal affiliation, sexual orientation, genetic information, or gender identity.” NMDWS Policy Issuance No. 11, § IV(I). Discrimination against LEP individuals is a form of national origin discrimination. Accordingly, this LEP Plan is developed to make sure LEP individuals are afforded meaningful access to all of NMDWS’s programs, services and activities.

DEFINITIONS

1. *Babel notice* - A short notice included in a document or electronic medium in multiple languages informing the reader that the communication contains vital information, and explaining how to access language assistance services to have the contents of the communication provided in other languages.
2. *Direct “In-Language” Communication* – Monolingual communication in a language other than English between a multilingual staff and an LEP person (e.g., Spanish to Spanish).

⁷ NMDWS is the State Administrative Entity (SAE) for WIOA programs in New Mexico.

3. *Effective Communication* – Communication sufficient to provide the LEP individual with substantially the same level of access to services received by individuals who are not LEP. For example, staff must take reasonable steps to ensure communication with an LEP individual is as effective as communications with others when providing similar programs and services.
4. *Interpretation* – The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.
5. *Language Assistance Services* – Oral and written language services needed to assist LEP individuals to communicate effectively with staff, and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in, the services, activities, or other programs administered by the Department.
6. *Limited English Proficient (LEP) Individuals* – Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).
7. *Meaningful Access* – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior as compared to programs or activities provided to English proficient individuals.
8. *Multilingual staff or employee* – A staff person or employee who has demonstrated proficiency in English and reading, writing, speaking, or understanding at least one other language.
9. *Primary Language* – An individual’s primary language is the language in which an individual most effectively communicates.
10. *Program or Activity* – The term “program or activity” and the term “program” mean all of the operations of the Department.
11. *Sight Translation* – Oral rendering of written text into spoken language by an interpreter without change in meaning based on a visual review of the original text or document.
12. *Translation* – The replacement of written text from one language (source language) into an equivalent written text in another language (target language).
13. *Vital Information* – Information, whether written, oral or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service, and/or training; necessary for an individual to obtain any aid, benefit, service, and/or training; or required by law.⁸

⁸ Definitions 2 through 12, *see* United States Department of Justice Language Access Plan (March 2012); for definitions 1 and 13, *see* 29 CFR § 38.1(i) and (ttt).

LEP NEEDS ASSESSMENT

The starting point for developing an effective LEP plan is assessing the language-assistance needs of the individuals served or encountered by NMDWS in the administration of its programs and activities. First, we must determine the “number or proportion of LEP individuals eligible to be served or encountered.”⁹ Next, we must determine “the frequency of encounters” with those individuals. *Id.* Additionally, the geographical locations where the programs and activities take place must be taken into consideration. *Id.*

New Mexico has 21 WCCs, also known as American Job Centers, located statewide across four regional Workforce Development Areas (WDAs): (1) Central Area, (2) Eastern Area, (3) Northern Area and (4) Southwestern Area. Examining the distribution of New Mexico’s LEP population across these four WDAs provides a useful way of assessing the number, proportion and distribution of NMDW’s target LEP population. Additionally, statistical data on calls by customers to NMDWS’s Unemployment Insurance (UI) Operations Center (call center) provides an understanding of NMDWS’s frequency of encounters with various LEP populations.

Number, Proportion and Distribution

The tables that follow depict United States Census Bureau data¹⁰ with respect to the number of LEP individuals (over the age of five years old) by county within each of New Mexico’s four WDAs and the proportion that the largest LEP groups represent of the total populations for those areas.

Note: LEP number estimates by language are displayed only if 500 person or more. LEP percentage estimates by language are displayed only if LEP number estimates by language are 500 persons or more and LEP percentage estimates are 5 percent or more.

CENTRAL NEW MEXICO WORKFORCE DEVELOPMENT AREA

COUNTY	TOTAL POPULATION	SPANISH LEP POPULATION	SPANISH LEP % OF TOTAL
Bernalillo	622,700.00	45,600	7.32%
Sandoval	124,800.00	4,100	3.29%

⁹ United States Department of Labor: *Language Assistance and Planning Self-Assessment Tool for Recipients of Federal Financial Assistance* at 5.

¹⁰ Source: “Migration Policy Institute Tabulations from U.S. Census Bureau’s pooled 2009-2013 American Community Survey, Table B16001, “Language Spoken by Ability to Speak English for the Population 5 Years and Over,” available through the U.S. Census Bureau’s American Factfinder.

Torrance	15,300.00	1,000	6.54%
Valencia	71,300.00	6,500	9.12%
TOTAL	834,100.00	57,200	6.86%

SOUTHWEST NEW MEXICO WORKFORCE DEVELOPMENT AREA

COUNTY	TOTAL POPULATION	SPANISH LEP POPULATION	% SPANISH LEP
Catron	3,700		
Doña Ana	197,500	29,200	14.94 %
Grant	27,800	1,600	5.76 %
Hidalgo	4,500		
Luna	23,200	4,100	17.67 %
Sierra	11,500		
Socorro	16,700	1,500	8.98 %
TOTAL	282,900	36,400	12.87 %

EASTERN NEW MEXICO WORKFORCE DEVELOPMENT AREA

COUNTY	TOTAL POPULATION	SPANISH LEP POPULATION	SPANISH LEP % OF TOTAL
Chavez	60,500	7,200	11.90 %
Curry	45,000	3,700	8.22 %
Eddy	50,500	3,200	6.34 %
Lea	59,000	7,800	13.02 %
Lincoln	19,400	1,200	6.19 %
Otero	59,900	5,600	9.35 %
TOTAL	282,900	36,400	12.87 %

NORTHERN NEW MEXICO WORKFORCE DEVELOPMENT AREA

COUNTY	TOTAL POPULATION	SPANISH LEP POPULATION	% SPANISH LEP
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Cibola	25,300	1,600	6.32 %
McKinley	66,500	1,600	2.41 %
Mora	4,500	700	15.56 %
Rio Arriba	37,500	2,300	6.13 %
San Juan	118,200	3,300	2.79 %
San Miguel	27,500	3,000	10.91 %
Santa Fe	137,500	14,900	10.84 %
Taos	31,200	1,700	5.45 %
TOTAL	448,200	29,100	6.49 %

With respect to non-Spanish language-assistance needs, Census data reveal that the New Mexico counties shown below have concentrations of non-Spanish-speaking LEP populations as indicated:

COUNTY	TOTAL POPULATION	NON-SPANISH LEP LANGUAGE	NON-SPANISH LEP POPULATION	% OF TOTAL COUNTY POPULATION
McKinley	66,500	Navajo	5,300	7.96 %
San Juan	118,200	Navajo	3,100	2.62 %
Socorro	16,700	Navajo	900	5.38 %
Sandoval	124,800.00	Other Native American Languages	1,900	1.52 %
Otero	59,900	German	700	1.16 %
Bernalillo	622,700.00	Vietnamese	2,300	.369 %

Frequency of Encounters with LEP Populations

By tracking specific language-assistance-service needs of individuals who contact NMDWS's UI Operations Center, it is possible to gain a better understanding of the frequency of contact that NMDWS has with the various LEP target populations that we serve. While these data may not track in-person interactions with LEP individuals at the WCCs or those seeking non-UI services (such as wage-and-hour claimants), the sheer volume of UI calls to the Operations Center affords a measure of reliability that can be useful for targeting our language-assistance efforts even as we continue developing additional tracking methodologies. The table below shows the number and percentage of languages preferred by customers utilizing the UI Operations Center from January 1, 2017 to October 2017.

2017 UI Claims Calls		
Language	Count	Percent
Armenian	1	0.00%
Arabic	1	0.00%
English	30,243	94.01%
Spanish	1,915	5.95%
Vietnamese	3	0.01%
American Sign Language	2	0.01%
Thai	1	0.00%
Twi	1	0.00%
Afrikaans	1	0.00%
Chinese	1	0.00%
TOTAL	32,169	100%

As the data shows, the most frequent non-English language by far for which language-assistance services was requested throughout 2017 has been Spanish. Even though the above table does not reflect a full years' worth of data, the percentage of callers requesting Spanish-language services in the January through October 2017 period is 5.96%, very close to the percentage of callers who requested Spanish-language services for all of 2016 (7.65%), as the following tables make clear.

2016 UI Claims Calls		
Language	Count	Percent
Spanish	3,649	7.65%
English	44,036	92.35%
Total	47,685	

2017 UI Claims Calls		
Language	Count	Percent
Spanish	1,915	5.96%
English	30,241	94.04%
Total	32,156	

CONCLUSIONS BASED ON NEEDS ASSESSMENT

Although several different groups of LEP customers have sought and received services through NMDWS's UI Operations Center, the type of LEP individuals who have contacted the Department with the most frequency are Spanish-speaking LEP customers. This is consistent with the Census

data showing that the vast majority of LEP individuals in New Mexico are Spanish-speaking, particularly in the Southwest and Eastern Workforce Development Areas. It is thus reasonable to conclude that this group represents the group most in need of language-assistance services. Our Language Access/LEP Plan should then target this population while simultaneously providing for the language-assistance needs of other the LEP groups, with the ultimate goal of affording meaningful access for all LEP individuals.

IDENTIFYING LEP INDIVIDUALS IN NEED OF LANGUAGE ASSISTANCE SERVICES

Having determined the number, proportion and distribution of New Mexico's LEP populations, as well as the frequency of contact with them, the next step is to develop effective procedures to accurately, promptly, and appropriately identify customers who require language assistance services.

Workforce Connection Centers

Individuals seeking or obtaining WIOA-related services do so by visiting and interacting with staff at New Mexico's 21 WCCs. In many instances, LEP customers self-identify their language needs for staff with whom they come into contact, allowing staff to refer the customer to bilingual staff or initiate contact with a paid telephonic interpretation service. Where the customer is not able to self-identify his or her language need, other options are available, such as making use of the "I Speak" cards available in each of the WCCs. The I Speak cards contain a written statement that is translated into multiple languages. Staff give the card to the customer, who reads the card and then points to his or her primary language, at which point, bilingual staff or a paid telephonic interpretation service can be utilized. Friends, relatives and/or minor children of LEP customers should NOT be used to serve as interpreters for such customers, the only exception being to allow friends or relatives to aid in identifying the specific language service needs of the customer.

Unemployment Insurance Program

NMDWS administers New Mexico's Unemployment Insurance (UI) program. There are two methods of interacting with the UI program, by telephone and the Internet. Spanish-language content appearing at the beginning of calls to the UI Operations Center allows Spanish-speaking LEP customers to immediately identify their language service needs so that they can be promptly routed to NMDWS's Spanish-speaking customer service agents (CSAs). In the case of nonSpanish-speaking LEP individuals, a friend or relative may be used for the limited purpose of assisting NMDWS staff in identifying the specific language assistance service needs of the customer, after which the paid telephonic interpretation service should be contacted to facilitate further communication with the customer.

Wage and Hour Bureau

NMDWS's Labor Relations Division (LRD), through its Wage and Hour Bureau, collects unpaid wages for employees and enforces other state wage and hour laws. Individuals seeking to avail themselves of these service may do so either by telephone or by visiting one of the LRD's three offices in the state to file a wage claim. In similar fashion to LEP customers seeking WIOA services at the WCCs, LEP persons wishing to file wage claims may self-identify their particular language assistance service needs, or these individuals can be provided with I Speak cards for this purpose. Spanish-speaking LEP persons who elect to interact with the Wage and Hour Bureau via telephone may also self-identify their language assistance service need if they are able to do so. If they are not able to so or if the customer is a non-Spanish-speaking LEP individual, a friend or relative may be used for the limited purpose of aiding NMDWS staff in identifying the specific language assistance service that the customer requires. After that, an appropriate bilingual staff member or paid telephonic interpretation service should be brought in to facilitate further communication with the customer.

Human Rights Bureau

The Human Rights Bureau (HRB) is a neutral agency created to enforce the New Mexico Human Rights Act. The Bureau, which is a component of NMDWS's Labor Relations Division, accepts and investigates claims of discrimination based on race, color, national origin, religion, ancestry, sex, age, physical and mental handicap, serious medical condition, spousal affiliation, sexual orientation, and gender identity in the areas of employment, housing, credit or public accommodation. LEP individuals who wish to file complaints with the HRB are able to identify their language assistance service needs in the same manner as LEP customers at the One Stop/American Job Centers and the Wage and Hour Bureau offices.

AVAILABLE LANGUAGE ASSISTANCE SERVICES AND MEASURES

The Department provides—completely free of charge—a variety of language assistance services. NMDWS's ever-expanding list of language assistance services and measures, includes the following:

- Spanish-speaking bilingual Customer Service Agents (CSAs) staffing in the UI Operations Center who are able to provide oral interpretation and sight translation of correspondence and other documents for LEP individuals.
- A paid telephonic interpretation service through Linguistica International staffed by qualified interpreters who can provide oral interpretation and sight translation of correspondence and other documents in multiple languages for LEP individuals.
- Qualified interpreters at all UI appeal hearings.
- Babel notices in Spanish on all correspondence and other documents that are critical for accessing NMDWS's programs, services and activities.
- Decision holdings (win/loss) statements translated into Spanish on all lower and higher authority UI appeal decisions.
- Non-monetary determinations contain a Babel notice and appeal rights in Spanish.
- Monetary determinations contain a Babel notice and appeal rights in Spanish.

- Appeal Tribunal Appeal Acknowledgment correspondence contains a Babel notice in Spanish.
- Appeal Tribunal Notice of Appeal contains a Babel notice in Spanish.
- Appeal Tribunal Notice of Unemployment Appeal Hearing contains a Babel notice in Spanish.
- Appeal Tribunal decisions contain detailed appeal rights in English and Spanish.
- Higher Authority Appeal Notice of Review on Appeal contains a Babel notice in Spanish.
- Higher Authority Appeal decisions contains a Babel notice in Spanish.
- Alien authorization cover sheet is translated into Spanish in its entirety.
- RESEA eligibility interview notices are translated into Spanish in their entirety. □ Work-search logs are translated into Spanish in their entirety.
- Brochure entitled “Unemployment Insurance – How to File an Unemployment Insurance Claim” is translated into Spanish in its entirety.
- Unemployment Insurance Benefits Handbook is translated into Spanish in its entirety.
- “Quick Facts” brochure is translated into Spanish in its entirety.
- Brochure entitled “Unemployment Insurance Appeal Process” is translated into Spanish in its entirety.
- Brochure entitled “Filing an Unemployment Insurance Appeal to District Court” is translated into Spanish in its entirety.
- English and Spanish versions of informational videos are available on NMDWS’s website, including:
 - 10 Things You Should Know When Filing Your Unemployment Insurance Claim
 - UI Fraud
 - Common Mistakes
 - Search for Work
 - Login UI System
 - Appeals
 - How to Log In
- The form used to file a wage claim is in the process of being translated into Spanish and reformulated to enable LEP individuals to complete and file the wage claim form by telephone with the assistance of bilingual LRD staff or a paid telephonic interpretation service.
- Wage claim Closure Notice informing wage claimants of the closure of wage-claim cases for various reasons (paid in full, no response from claimant, etc.) contains a Spanish Babel notice, while a Spanish version of this notice is currently under development.
- Statement of Day Laborer Wage Claim form contains vital explanatory content that is translated into Spanish. □ Brochure entitled “Didn’t Get Paid?” is translated into Spanish in its entirety.
- Brochure entitled “Frequently Asked Questions” regarding the wage claim process is translated into Spanish in its entirety.
- Notice entitled “New Mexico Minimum Wage Act” is translated into Spanish in its entirety.

Note: NMDWS’s catalog of documents containing Spanish translations of vital information continues to expand.

NOTIFICATION OF AVAILABILITY OF LANGUAGE ASSISTANCE SERVICES

Notices in English and Spanish informing LEP persons of the availability of free language assistance services will be displayed prominently in all One Stop/American Job Centers and on the NMDWS website. Notices will also be posted advising LEP individuals who feel these services are inadequate that they have the right to file complaints with the State-level EO Officer or the CRC. Additionally, agency documents will contain Babel notices advising Spanish-speaking LEP customers that free language assistance services are available. During the first year that this LEP Plan is in effect, the State-level EO Officer will research the feasibility and effectiveness of disseminating information about available language assistance services via public service announcements (PSAs) on television and radio stations. Engaging in outreach activities with appropriate, to-be-identified community groups that provide services to LEP communities will also be explored. Informative brochures in multiple languages describing NMDWS's free language assistance services will be developed and disseminated to community groups, which can then distribute them to their LEP clients.

QUALITY ASSURANCE

NMDWS assures the quality of the language assistance services it provides in several ways. First, the paid telephonic interpretation service that NMDWS is contractually obligated to provide accurate language assistance services, with interpreters who are well-versed in program terminology. Additionally, bilingual staff in the UI Operations Center regularly have their calls monitored and reviewed by bilingual members of management to ensure accuracy and competency. NMDWS is considering using an available web-based skills testing service known as Prove It to assess competency of current and future bilingual staff. Currently, there are state personnel rules and collective bargaining agreement requirements that operate as hurdles to making full use of this service as a quality-assurance tool. However, during the first year that this LEP Plan is in effect, specific obstacles to using this tool will be identified, stakeholders will be consulted and a determination will be made as to how to make effective use of this service or whether alternative quality-assurance measures would be more effective. Finally, customers will be advised that they may file a complaint with either the State-level EO Officer or the CRC if they believe that they are receiving insufficient language assistance services. Complaints will be logged and maintained for annual compliance monitoring by the State-level EO Officer. In addition to providing a swift means of resolving language assistance service issues that arise, the nature and number of complaints should provide useful monitoring information to assess the quality of in-place language assistance services. This feedback will enable NMDWS to fine-tune its array of language assistance services to keep improving how we meet the needs of LEP individuals.

STAFF TRAINING

In order for this LEP Plan to be implemented effectively, it is essential that all staff whose job duties entail frequent or even occasional contact with LEP individuals be properly identified and trained in how to ensure the best possible service to LEP individuals. Primary responsibility for developing this training, identifying which employees should be trained and ensuring that training takes place will rest with the State-level EO Officer. The content of this training will, at a minimum, include the following:

- A general summary of the federal and state laws prohibiting discrimination on the basis of nation origin, including but not limited to Title VI of the Civil Rights Act, Section 188 of WIOA and New Mexico's Human Rights Act. ○ Nondiscrimination requirements for preventing national-origin discrimination in the context of LEP populations.
- Understanding "meaningful access" to Department programs, activities and services.
- Identifying LEP individuals' language assistance needs. ○ Understanding what language assistance services NMDWS provides and how to access them. ○ Guidance for bilingual staff regarding communicating program-specific terminology.
- Guidance in how to communicate with LEP individuals using interpreters both inperson and by telephone so as to maximize effective communications.

Currently, all new hires at NMDWS are required to undergo new employee orientation (NEO) training shortly after their employment begins. It would be feasible to incorporate a summary of the aforementioned subject matter into the NEO training. During the first year that this LEP Plan is in effect, the State-level EO Officer will research and develop methods of identifying which existing employees require LEP training and formulate a timetable for providing that training.

IMPLEMENTATION, OVERSIGHT AND REVISION OF LEP PLAN

The timeline for implementation of this LEP Plan is immediately upon submission of this plan as part of NMDWS's Nondiscrimination Plan to the CRC. Review of the plan for necessary revisions will occur yearly as set forth below. It will be the role of the State-level EO Officer to:

- Coordinate the development and/or modification of policies, documents, publications training materials, posters, web sites, outreach materials, contracts and electronic information technologies in order to carry out the objectives of this LEP Plan.
- Develop and coordinate the training for NMDWS employees so they can carry out the objectives of this LEP Plan.
- Conduct compliance reviews of NMDWS components at random or as needed.
- Conduct yearly review of overall plan effectiveness using data such as Operations Center statistics, interpretation service statistics, LEP customer tracking information, One Stop/AJC tracking information and complaints alleging inadequate language assistance services at any of NMDWS's components.
- Determine whether any substantive program changes have occurred and, if so, whether they suggest the need for revisions of the plan.

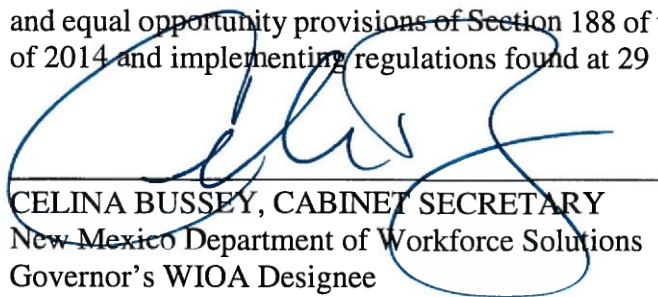
- Determine whether any changes to program documents or correspondence suggest the need for plan revisions.
- Review changes in demographics of service populations to determine if this plan's LEP needs assessment has changed or been significantly impacted.
- Coordinate development and implementation of any necessary plan changes with management and other to-be-identified stakeholders.

CONCLUSION

This Language Access Plan/LEP Plan is intended to meet the needs of NMDWS's LEP customers, assure meaningful access to this agency's programs, services and activities by everyone regardless of national origin and comply with the nondiscrimination provisions of Section 188 of WIOA. As this is NMDWS's first LEP Plan, it is understood that this plan is a work in progress and will undoubtedly improve over time based on data tracking and monitoring, feedback from LEP customers and staff and lessons learned over time.

APPROVAL OF NONDISCRIMINATION PLAN BY GOVERNOR'S DESIGNEE

I, Celina Bussey, Cabinet Secretary for the New Mexico Department of Workforce Solutions, as Governor's Designee,¹⁴ have reviewed and hereby approve the foregoing Nondiscrimination Plan for the State of New Mexico in order to implement the nondiscrimination and equal opportunity provisions of Section 188 of the Workforce Innovation and Opportunity Act of 2014 and implementing regulations found at 29 CFR Part 38.



CELINA BUSSEY, CABINET SECRETARY
New Mexico Department of Workforce Solutions
Governor's WIOA Designee



Date

¹⁴ See 29 CFR § 38.4(aa) (defining "Governor" as "the chief executive of a State or an outlying area, or the Governor's designee").