South Dakota's WIOA Title I

Non-Discrimination Plan

123 W. Missouri Ave., Pierre, SD 57501
dlr.sd.gov

Identification Number: DLR-2017-04
Effective Date:
Scope: State Wide
Sources: 29 CFR 38; WIOA Section 188; Section 504 of the Rehabilitation Act; 29 CFR 32; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; The Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; Pregnancy Discrimination Act of 1978; and all other regulations implementing these laws listed

Approved: Date:

Dennis Daugaard
Governor of South Dakota

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Element 1: State and Local Level Equal Opportunity Officers

29 CFR 38.23 through 38.28

I. Element 1 Criteria

A. Designation of State Level Equal Opportunity Officer

The intent of this section is to ensure any individual the South Dakota Department of Labor and Regulation (DLR) appoints as Equal Opportunity (EO) Officer has the education, training, experience, and is provided the necessary ongoing training to perform his or her duties assigned under 29 CFR parts 38.23-28. Additionally, the EO Officer should not be in a position that would constitute, or appear to constitute, a conflict of interest (see 29 CFR 38.24). Further, the State should ensure he or she reports, on equal opportunity matters, directly to the appropriate official in the organization (see 29 CFR 38.25 (e)).

DLR is the state-level agency designated to administer Workforce Investment Act (WIOA), employment services, and unemployment insurance programs. The Governor appointed the Cabinet Secretary to serve as the South Dakota signatory authority for all discriminatory and equal opportunity matters (see Element 1, Exhibit C). The EO Officer is senior-level state employees who is designated by and report directly to the Cabinet Secretary of DLR all matters concerning nondiscrimination and equal opportunity (see Element 1, Exhibit A). The EO Officer is charged with the responsibility for coordinating the Department's nondiscrimination and equal opportunity policies.

The EO Officer's position is filled at all times. If the position is vacated, the Secretary of DLR will designate a new EO Officer and the Civil Rights Center (CRC) will be notified of this change.

The identity of the EO Officer is made known to applicants, registrants, eligible applicants/registrants, participants, employees, and applicants for employment, as well as interested members of the public. His or her identity is made known through materials such the Equal Opportunity Poster (see Element 1, Exhibit B), and the DLR website (see Element 1, Exhibit D).

The designated State-level Equal Opportunity Officer is:

Derek Gustafson
State Equal Opportunity Officer
Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

605.773.5395 or 605.773.3101
Derek.Gustafson@state.sd.us

*Deaf, Hard-of-Hearing, or speech-disabled: **Dial 711** (South Dakota Relay)

The EO Officer refers to the Governor's designated State EO Officer.

B. Duties and Responsibilities

1. The responsibilities and duties of an EO Officer for DLR include, but are not limited to the following:

    a. Coordinating responsibilities under 29 CFR Parts 38;
    b. Serving as the liaison with the CRC, U.S. Department of Labor (U.S. DOL);
    c. Equal opportunity monitoring and investigations including conducting reviews of DLR programs, services and activities receiving WIOA Title I financial assistance, to ensure DLR and its sub-recipients are not violating

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their nondiscrimination and equal opportunity obligations under WIOA Title I. This includes monitoring the collection of data required to ensure compliance with the nondiscrimination and equal opportunity requirements of WIOA;

d. Reviewing written policies to ensure those policies are nondiscriminatory;
e. Developing, publishing, and implementing procedures for processing discrimination complaints including tracking the discrimination complaints filed against DLR, developing procedures for investigating and resolving discrimination complaints filed against DLR, ensuring those procedures are followed, and making available to the public, in appropriate languages and formats, the procedures for filing a complaint;
f. Reporting equal opportunity matters directly to the South Dakota Secretary of Labor and Regulation;
g. Participating in training to maintain competency as an EO Officer;
h. Overseeing the development and implementation of the Non-Discrimination Plan;
i. Ensuring compliance with the nondiscrimination and equal opportunity provisions; and
j. Providing technical assistance and training in the nondiscrimination and equal opportunity provisions.

2. The EO Officer is an effective member of the collaborative team who develops the State's vision, goals, strategies, policies, and measures for the workforce investment system. As the State Plan for implementation of WIOA was developed and is implemented, the EO Officer continues to review plans, policies, and processes to incorporate equal opportunity in every aspect of a DLR program and activity. The EO Officer ensures compliance with the nondiscrimination and equal opportunity provisions.

C. State Coverage

Approximately 10% of the EO Officer's time is spent in performing equal opportunity duties. There is justification in not designating a full-time EO Officer position in South Dakota. With 814,000 people spread over 77,000 square miles, South Dakotas is one of the most rural states in the nation. Thirteen American cities have more people than the entire state of South Dakota. Only one South Dakota City has a population over 100,000 people. Many of the functions performed at the local level in more populated states are carried out by state government in South Dakota.

South Dakota's single statewide local service area is designed to streamline oversight and planning functions, reduce redundancy and waste, and use funds to develop, articulate, and advance comprehensive workforce development policies and priorities including nondiscrimination and equal opportunity provisions. State staff serves in both the administrative and program delivery capacity.

DLR has developed a network of One-Stop Career Centers, also known as job service offices, to better serve the greatest number of customers. The managers of these 16 job service offices act as Equal Opportunity (EO) Coordinators. Equal opportunity oversight is maintained by the State EO Officer (See Element 1, Exhibit E), and EO Coordinators assist the state EO Officer with local support to ensure DLR programs and activities operate in a nondiscriminatory way. The EO Officer is allocated sufficient clerical staff and resources to ensure compliance with the nondiscrimination and equal opportunity provisions. The budget for the Department provides for state employee salaries (in accordance with the State's salary structure), mileage, and other travel, materials, supplies, equipment, and operating expenses to carry out the responsibilities of the EO Officer.

D. Training

The EO Officer and EO Coordinators receive and will continue to receive appropriate training to ensure he or she is capable of fulfilling his or her responsibilities. The EO Officer will participate in training and technical assistance as designated by the CRC. The EO Officer is to attend continuing training from the CRC at least once annually.

Funds are available through the DLR budget for travel and participation in local, regional, and state conferences and workshops for DLR job service office staff and managers/EO Coordinators who are administrating and/or delivering DLR programs and activities. The state EO Officer provides training and technical assistance for DLR staff and sub-recipients to ensure all staff and sub-recipients are implementing their responsibilities relative to nondiscrimination

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and equal opportunity. Staff training on nondiscrimination and equal opportunity is an ongoing effort arranged and/or conducted by the EO Officer in coordination with service providers.

DLR develops, coordinates, schedules, and monitors Equal Opportunity training. Areas of training include, but are not limited to: equal opportunity laws and regulations; sexual harassment; Non-Discrimination Plan (NDP) requirements; Section 504 of the Rehabilitation Act of 1973, as amended; Americans With Disabilities Act of 1990; Title IX of the Educational Amendments of 1972; Title VI and Title VII of the Civil Rights Act of 1964; and the and complaint procedures (see NDP Element 1 documentation). This training includes initial orientation as well as update and refresher training. Staff is required to attend, minimally, one annual training, as well as periodic regional and local training to maintain competency.

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II. Element 1 Supporting Documentation

Exhibit A – DLR EO Officer Change Letter
Exhibit B – Equal Opportunity Poster
Exhibit C – EO Officer Signature Authority
Exhibit D – Equal Opportunity Services Webpage
Exhibit E – Job Service Offices (List of Job Service Office Managers designated as EO Coordinators)

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Element 2 – Notice and Communication of Nondiscrimination and Equal Opportunity Policies

29 CFR 38.29 through 38.36

I. Element 2 Criteria

A. Equal Opportunity Employer/Program Notice

WIOA Title I funded recipients must provide initial and continuous notice they do not discriminate on any prohibited ground. DLR employees go over the Notice and Acknowledgement form, (see Element 2, Exhibit A) with all registrants, applicants, and eligible applicants/registrants for WIOA Title I programs or services, explaining equal opportunity is the law and their right to file a discrimination complaint if they feel they have been subjected to discrimination through a DLR financially assisted program or activity. The Acknowledgement form must be signed by the registrants, applicants, or eligible applicants/registrants for WIOA Title I programs or services and kept in his or her file. All contracts with subrecipients receiving federal or state funding from DLR includes DLR policy statement on nondiscrimination and equal opportunity. All LWIOA locations have the "Equal Opportunity Is The Law" poster displayed prominently in a reasonable number of places (see Element 1, Exhibit B).

B. Equal Opportunity Is the Law Poster

DLR offices, including contractors, subcontractors and administrative complexes, must post the "Equal Opportunity Is the Law" poster, which outlines the prohibitive factors and the recourse available.

1. Specific Wording Contained in Equal Opportunity is the Law Poster

The notice contains the following specific language:

Equal Opportunity is the Law

It is against the law for this recipient of Federal financial assistance to discriminate on the following basis:

- *Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief.*
- *Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1988 (WIOA) or any participant in any South Dakota Department of Labor and Regulation (DLR) program, on the basis of the beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States.*

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

- *Deciding who will be admitted, or have access, to DLR programs or activities;*
- *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.*

What To Do If You Believe You Have Experienced Discrimination?

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

Derek Gustafson

State Equal Opportunity Officer
South Dakota Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

605.773.5395 or 605.773.3101
Deaf, Hard-of-Hearing, or speech-disabled:* ***Dial 711*
(South Dakota Relay)
Derek.Gustafson@state.sd.us

OR

The Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue NW
Room N-4123
Washington, DC 2021

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If a complaint is filed with the recipient, the recipient has 90 days to issue a written Notice of Final Action, before a complaint can be filed with the CRC (see address above).

If the recipient does not give written Notice of Final Action within 90 days of the day on which the complaint was filed, a complaint can be filed with the CRC without receiving a Notice from the recipient. However, the CRC complaint must be filed within 30 days of the 90-day deadline (in other words, within 120 days after the day on which the complaint was filed with the recipient).

If the recipient files an unsatisfactory written Notice of Final Action on the complaint, a complaint with the CRC may be filed. The "appeal" complaint must be filed with the CRC within 30 days of the date on which the Notice of Final Action is received.

2. Required Locations for Notice

The notice will be posted prominently, in reasonable numbers and places, so all registrants, applicants, eligible applicants/registrants, applicants for employment, employees, and interested members of the public are made aware of DLR policy statement of nondiscrimination, and equal opportunity. The notice must be provided in appropriate formats to individuals with visual impairments.

3. Required Notice Dissemination

a. Upon employment with DLR, employees are provided with the "Equal Opportunity is the Law" Poster (see Element 1, Exhibit B), DLR Job Service policies and procedures (Element 2, Exhibit B), the DLR Discrimination Complaint Policy and Procedure (Element 8, Exhibit A), and the South Dakota Employee Handbook (Element 2, Exhibit E), which provides the information relative to DLR as an equal opportunity employer. The State EO Officer and/or EO Coordinators provide all DLR employees with initial orientation and ongoing training relative to DLR policy and procedures for nondiscrimination and equal opportunity. This information must be communicated in appropriate languages as required in 29 CFR 38.35 and in formats accessible for individuals with disabilities as required in 29 CFR 38.9.

b. Upon enrollment in WIOA programs, participants are provided with information relative to the non-discrimination including the "Equal Opportunity is the Law" Poster (see element 1, Exhibit B) and Equal Opportunity Notice and Acknowledgment Form (See Element 2, Exhibit A) describing how to file a complaint and/or grievance, and other rights as a WIOA participant. When the notice is given in an alternative format to a participant with a visual impairment, this must be documented in the participant's individual record. This information must be communicated in appropriate languages as required in 29 CFR 38.35 and in formats accessible for individuals with disabilities as required in 29 CFR 38.9.

4. Required Notice in Publications, Broadcasts, and Other Communications

The Department of Labor and Regulation and its grantees state WIOA Title I-funded programs or activities in question are an "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities." (Element 2, Exhibit B) in recruitment brochures and materials distributed to the public to describe programs funded under WIOA or the requirements for participation by recipients and participants.

5. Auxiliary Aids and Services

DLR, through the U.S. DOL delivery system, is committed to ensuring DLR programs and services are accessible to all people including individuals with disabilities and limited English proficiency (LEP). DLR Program staff will work with all partners and other entities, as appropriate, in providing services for eligible individuals. Special efforts will be made to coordinate services with other partner agencies to assist DLR in ensuring communications with individuals with disabilities and LEP are as effective as communications with others.

a. DLR uses Relay South Dakota for those individuals who are deaf, have hearing impairments, or speech disabilities needing interpreter services (see Element 2, Exhibit G). Relay South Dakota Telecommunication Relay Service is a free service providing telephone access to people who are deaf, hard-of-hearing, deaf-

blind, and speech disabled. This service allows text-telephone (TTY) users to communicate with standard telephone users through specially training relay operators. DLR provides SD Relay service contact information on all WIOA Title I brochures and other materials containing a telephone number (See Element 2, Exhibit B).

b. LEP individuals must be able to access and participate in job training activities in a manner equally consistent and effective to that offered to non-LEP persons. DLR has a cooperative agreement between South Dakota state government and Western States Contracting Alliance (WSCA) which allows every state government department in South Dakota to enter into an agreement with an interpretive services company called CTS Language Link (see Element 2, Exhibit K). Each division within DLR will have its own CTS account number. Each job service office will be provided with a "Point to Your Language" poster (Element 2, Exhibit J). DLR and its grantees must take reasonable steps to ensure such persons receive the language assistance necessary to afford them meaningful access to the programs, services, and information, free of charge.

c. Subrecipients who receive funds from or through DLR must take reasonable steps to provide services and information to LEP beneficiaries of WIOA Title I programs and services. To accomplish this, recipients are asked to follow a model Language Assistance Plan (LAP), particularly useful for recipients serving a significant and diverse LEP population. The DLR LAP (see Element 2, Exhibit H) incorporates a variety of options and methods for providing meaningful access to LEP beneficiaries including:

- A written LAP reviewed annually (see Element 2, Exhibit H).
- Identification and biennial assessment of the languages likely to be encountered and estimating the number of LEP persons eligible for services and likely to be affected by its program or activity through a review of census, customer utilization data and statistics from school systems, community agencies and organizations;
- Outreach to immigrant communities by advertising WIOA programs and partners and providing access to free language assistance to assist in enrolling in those programs;
- Posting of signs in lobbies and in other waiting areas, in languages other than English, informing applicants/customers of their right to no-charge interpreter services and inviting them to identify themselves as persons needing language assistance;
- Use of "I speak cards" by intake staff and other client contact personnel so applicant/customers can identify their primary language;
- Requiring the intake staff to note the language of the LEP in his/her record so all subsequent interaction will be conducted in the appropriate language;
- Employment of sufficient number of staff, bilingual in appropriate languages, in applicant and client contact positions;
- Contracts with interpreting services can provide qualified interpreters in a wide variety of languages, in a timely manner;
- Formal arrangements with community groups for qualified and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line;

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- Translation of application forms, instructional, informational and other key documents into appropriate languages other than English. Oral interpretation of document for persons who speak languages not regularly encountered.

- Procedures for effective telephone communication between staff and LEP including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP;

- Notice to and training of all staff, particularly applicant and client staff, with respect to WIOA Title VI, Section 188 and 29 CFR Part 38 obligation to provide language assistance to LEP, and on the language assistance policies and procedures to be followed in securing such assistance in a timely manner;

- Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to no-charge interpreter services and other language assistance in brochures, pamphlets, manuals, and other material disseminated to the public and to staff;

- Notice to the public regarding the language assistance policies and procedures, plus notice to and consultation with community organizations that serve LEP regarding problems and solutions, including standards and procedures for using their members as volunteer interpreters;]

- Adoption of a procedure for the resolution of complaints regarding the provision of language assistance, and for notifying and education customers of the right to file a complaint of discrimination under Title VI, Section 188 and 29 CFR Part 38;

- Appointment of a senior level employee to coordinate the language assistance program and ensure there is regular monitoring of the program, and;

- Consideration of LEP peoples' needs when implementing new programs or activities, publishing new forms or notices, etc.

6. DLR Responsibility to Serve Individuals with LEP

Through assessment and review of available South Dakota data (See Element 2, Exhibit N and Element 4, Exhibit G), Spanish is the primary language for which assistance is needed. When available, front line employees who are proficient in Spanish are accessible to provide services when the need arises. Endeavors are made to identify whether a concentrated population of LEP customers exists in a specific area and if equal services are being provided to the LEP population. Service providers use existing staff whose bilingual ability is known and documented to interpret for LEP customers. DLR utilizes the services of CTS Language Link (see Element 2, Exhibit K) when bilingual staff are not available to deliver equal services to LEP customers.

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II. Element 2 Supporting Documentation

Exhibit A – Notice and Acknowledgement Form
Exhibit B – DLR Job Service Policies and Procedures
Exhibit C – Removed
Exhibit D – Removed
Exhibit E – South Dakota Employee Handbook
Exhibit F – Facts about Unemployment Insurance Benefits
Exhibit G – Relay South Dakota
Exhibit H – DLR Language Assistance Plan (LAP)
Exhibit I – DLR Complaint Information and Consent Form
Exhibit J – Point 2 Your Language Poster
Exhibit K – Memo: CTS Language Link
Exhibit L – CTS Language Tips
Exhibit M – LMIC SD LEP Census

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Element 3 Assurances – DLR Obligation to Provide Written Assurance

29 CFR 38.20 through 38.22

I. Element 3 Criteria

The State of South Dakota assures it will comply with 29 CFR 38 and all other regulations implementing the laws listed below. This assurance applies to DLR operation of the WIOA Title I-financially assisted program or activity, and to all agreements DLR makes to carry out the WIOA Title I-financially assisted program or activity. DLR utilizes and incorporates the nondiscrimination assurance statement in all documents providing WIOA Title I-financial assistance including contracts, agreements, grants, cooperative agreements or other arrangements under which DLR or WIOA Title I funds are available. In order to maintain compliance, DLR communicates these requirements to all sub-recipients, suppliers, and service providers. DLR and its sub-recipients are obligated to maintain assurances for the period during which DLR and WIOA Title I-financial assistance is extended as stated in 29 CFR Part 38. (Element 3, Exhibit A and B)

A. Required Assurance

Each request for proposal and application for financial assistance under WIOA Title I shall contain the following assurance as required by 29 CFR Part 38 (See Element 3, Exhibit A, B, and C):

As a condition to the award of financial assistance from the Department of Labor and Regulation under Title I of WIOA, the grant applicant assures it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Innovations and Opportunities Act of 2014 (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, pregnancy, childbirth, and related medical conditions in accordance with the Pregnancy Discrimination Act of 1978 and related case law, and against beneficiaries on the basis of either citizenship status as a lawfully admitted immigrant authorized to work in the United States or participation in any of DLR programs or activities;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;

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

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

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

Pregnancy Discrimination Act of 1978 and related case law as it pertains to non-discrimination to pregnancy, childbirth, and related medical conditions.

The grant applicant also assures 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 the United States has the right to seek judicial enforcement of this assurance.

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B. Notice of the Assurance Requirement

Every grant applicant and training provider seeking eligibility under Title I of the WIOA must include in its application for financial assistance the above written assurance of nondiscrimination. Every grant, cooperative agreement, contract, or other arrangement whereby federal financial assistance is made available under Title I of the WIOA must include the assurance statement. DLR will inform, in writing, all recipients of federal financial assistance under Title I of WIOA of the necessity of including this language in all contracts, grants, cooperative agreements, applications, or other arrangement. DLR will also inform all recipients the nondiscrimination 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 the WIOA is made available, whether or not it is physically incorporated in such document and whether or not there is a written agreement between the department and the recipient or between recipients. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.

C. Assurance Reviews

All agreements and contracts between DLR and its grantees are reviewed by the EO Officer prior to issuance to ensure the required assurances and certifications have been signed by the applicant/recipient. During scheduled compliance reviews of recipients, the EO Officer monitors job training plans, contracts, and other similar agreements to ensure they are nondiscriminatory and contain the required nondiscrimination assurance statement (See Element 7, Exhibit A). The EO Officer also reviews recipient's policies to ensure timeliness and compliance with nondiscrimination and equal opportunity provisions of Section 188 of the WIOA. DLR ensures all training providers seeking eligibility comply with program and architectural accessibility.

D. Assurance with Covenants

DLR includes and requires all recipients to include the covenant required by 29 CFR 38.22 in any instrument effecting or recording a transfer of property acquired or improved under any WIOA Title-financially assisted programs and/or activities for the period during which WIOA Title I-financial assistance is extended.

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II. Element 3 Supporting Documentation

Exhibit A – DLR Conditions and Assurances – Form 10A
Exhibit B – DLR Conditions and Assurances – Form 10B
Exhibit C – Sample WIOA Assurance Agreement

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Element 4 – Universal Access

29 CFR 38.42

I. Element 4 Criteria

WIOA affirmative outreach and equal access provision (29 CFR 38.42) requires recipients to take appropriate steps to ensure they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should contain efforts to ensure an equivalent level of information in regard to aid, benefits, services, and training is provided to all demographic groups, including: both sexes, various racial and ethnic groups, individuals with disabilities, and different age groups.

DLR is committed to ensuring all citizens of South Dakota benefit from opportunities available in any and all programs administered by the department, financially assisted programs and/or activities through universal access principles in accordance with 29 CFR Part 38.

A. Community Outreach, One-Stop System

The One-Stop system was organized in 1997. Under WIOA, the Workforce Development Council (WDC) established a One-Stop certification that Comprehensive and Affiliate DLR job service offices must meet. All of the current Comprehensive and Affiliate offices have submitted an application and have achieved certification by the Council. South Dakota One-Stop Career Centers are certified by the WDC no less than every three years.

A Memorandum of Understanding (MOU) between the Workforce Development Council and the One-Stop partners (See Element 4, Exhibit C) establishes organizational relationships, responsibilities, and activities of the One-Stop system. The MOU will:

1. Provide comprehensive services designed to assist the unemployed citizens of the State of South Dakota in obtaining gainful employment;
2. Support the underemployed citizens of the state in preparing for a new and more rewarding career;
3. Provide universal access to all customers, including those with special needs or barriers to employment;
4. Provide customer choice in the way services are accessed, and in the services themselves, based on individual need;
5. Allow integrated services through a planning process at the state and local levels, coordinate activities and services for customers, be fully aware of the role each Partner has within the system and to understand the services each Partner provides.

B. Partnered Entities

DLR is able to access the expertise of partner entities such as education, vocational rehabilitation, economic development, social services, and all other required WIOA partners. This allows for a seamless method to make referrals to DLR programs and services. Through collaborative efforts with these partner entities, DLR will continue to broaden the composition of the pool of individuals considered for participation and employment. DLR looks for such efforts to be directed at including members of both sexes, of the various racial and ethnic groups and of various age groups, as well as individuals with disabilities and limited English proficient (LEP) persons (see Element 4, Exhibit C).

The DLR communications staff, job service office managers, Career Learning Center directors, and other WIOA service providers work together to ensure all segments of the population are aware and informed about the programs and activities available within WIOA. This includes providing information to various agencies and organizations for the promotion of DLR programs and activities; providing press releases to appropriate news media throughout the state on the availability of DLR programs and activities; and conducting outreach efforts throughout the state to inform and recruit participation of job seekers and businesses (See Element 4, Exhibit C).

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C. Jobs Database

DLR maintains SDWORKS (see Element 4, Exhibit D) to provide the public with easy access to create and search for employment over the internet. South Dakota employers use the online system to post job listings, search resumes for qualified candidates, and review labor market information and market trends (See Element 4, Exhibit A). Job seekers can self-register, search for jobs listed in the database, and review labor market information.

D. Online Information

A broad range of information is currently available to employers and job seekers and employers through the DLR website (See Element 4, Exhibit E). Job seekers and employers have access to labor market information, employment opportunities, unemployment insurance information, training information, employment law, as well as a single point of contact for all divisions (See Element 4, Exhibit A and E).

E. Labor Market Information

The Labor Market Information Center (LMIC) collects, analyzes, and provides to the public information on the labor market of the state. This includes information such as employment levels, unemployment rates, wage and earnings data, estimates of available labor, employment projections, business staffing patterns, career planning information, etc. Among those who use our information are employers, career decision makers, and education, economic development, job placement and training program planners.

LMIC is South Dakota's representative for federal-state cooperative programs with the U.S. Bureau of Labor Statistics, and therefore has access to and expertise on labor market information for the nation and other states.

F. Access Accommodations

To ensure recruitment services are provided on an equitable basis to all individuals, including those with disabilities, appropriate accommodations to provide accessibility to self-help, facilitated self-help, and staff-assisted services are made as necessary to allow individuals full access to DLR services. Program staff will work with all appropriate DLR partners and other entities to provide services for eligible individuals. Special efforts will be made to coordinate services with other partner agencies to assist DLR in ensuring communications with individuals with disabilities are as effective as communications with others.

1. Deaf, Hard-of-hearing, Deaf-blind, and Speech-Disabled

For those individuals needing interpreter services, contracts with community-based service providers are established. Interpreters for the deaf are available to assist in the delivery of services to customers with hearing impairments (See Element 2, Exhibit G). For brochures and other materials containing a telephone number, DLR provides a Voice/TTY number of relay service used for communication with individuals with hearing impairment. DLR and all of its sub-recipients must ensure all recruitment brochures, publications, and broadcasts include a TDD/TTY number or provide and equally effective means of communication with individuals who are hearing impaired.

2. Limited English Proficient

Limited English proficient (LEP) individuals must be able to access and participate in job training activities in a manner equally consistent and effective to that offered to non-LEP persons (See Element 2, Exhibit K and L). DLR must ensure LEP persons have access to its programs and activities on an equal basis to those who are proficient in English. DLR and its grantees must take reasonable steps to ensure such persons receive the language assistance necessary to afford them meaningful access to the programs, services, and information, free of charge. Universal access efforts include coordination with LEP community programs to identify and refer individuals who face barriers to employment and training to DLR programs and services.

DLR contracts with CTS Language Link Services of Vancouver, WA, to provide over-the-phone interpretation services in the event a local service provider is in need of immediate help with a person that speaks little or no English (See Element 2, Exhibit K). Through assessment and review of available South Dakota data, Spanish is the

primary language for which assistance may be needed (See Element 2, Exhibit M and Element 4, Exhibit A and G). Front line employees who are proficient in Spanish are accessible to provide services when the need arises. Endeavors are made to identify whether a concentrated population of LEP customers exists in a specific area and if equal services are being provided to the LEP population. Service providers use existing staff whose bilingual ability is known and documented to interpret for LEP customers. DLR will use CTS Language Link if bilingual staff sufficient to deliver equal services to LEP customers is not available. Additionally, the DLR webpage can be translated into multiple languages, powered by Google Translate.

To broaden the composition of the pool of those considered for participation and employment and to ensure all LEP persons can also avail themselves of the services provided, DLR and its grantees must take reasonable steps to provide services and information to these groups. To accomplish this, recipients are asked to follow a model language assistance program that is potentially useful for all recipients, but is particularly appropriate for recipients serving a significant and diverse LEP population (See Element 2, Exhibit H).

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II. Element 4 Documentation:

Exhibit A – Labor Market Information Center
Exhibit B – WIOA Annual Report 2015
Exhibit C – WIOA State Plan – Section III. Operational Planning Elements (p. 53-86)
Exhibit D – SDWORKS Jobs Database
Exhibit E –DLR Homepage
Exhibit F – Info for WIOA Training Providers
Exhibit G – LEP Services Usage Report

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Element 5 – Section 504 Compliance

WIOA Section 188; Section 504 of the Rehabilitation Act, as amended; and their implementing regulations, including but not limited to 29 CFR 38.7-9 and Subparts B and C of 29 CFR 32

I. Element 5 Criteria

A. Prohibited Discriminatory Actions Based on Disability

DLR communicates the specific discriminatory actions based on disability that are prohibited by these parts. WIOA Section 188; Section 504 of the Rehabilitation Act; 29 CFR 32

1. In providing any aid, benefits, services, or training under a DLR or WIOA Title I- financially assisted program and/or activity, DLR must not, directly or through contractual, licensing, or other arrangements, on the ground of disability:

    a. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;

    b. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;

    c. Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same results, to gain the same benefits, or to reach the same level of achievement as provided to others;

    d. Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;

    e. Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

    f. Otherwise limit a qualified individual with a disability in employment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.

2. DLR and its sub-recipients must not, directly or through contractual licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services, or training to registrants, applicants, or participants.

3. DLR and its sub-recipients must not deny a qualified individual with a disability the opportunity to participate in a DLR or WIOA Title I-financially assisted programs and/or activities despite the existence of permissibly separate or different programs or activities.

4. DLR and its sub-recipients must administer a DLR or a WIOA Title I-financially assisted program and activity in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

5. DLR and its sub-recipients must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

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a. Having the purpose of effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability;

b. Having the purpose or effect of defeating or substantially impairing accomplishment of the objectives of DLR or WIOA Title I-financially assisted programs and/or activities with respect to individuals with disabilities; or

c. Perpetuating the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

6. DLR, in the selection of contractors, will not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

7. DLR will not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered. DLR LWIOAs use the statewide eligibility policy (See Element 5, Exhibit C and D).

8. DLR must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I or this part.

9. DLR is not required to provide any of the following to individuals with disabilities:
   a. Personal devices, such as wheelchairs;
   b. Individually prescribed devices, such as prescription eyeglasses or hearing aids;
   c. Readers for personal use or study; or
   d. Services of a personal nature, including assistance in eating, toileting, or dressing.

10. Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provide under WIOA Title I or this part that such individual chooses not to accept.

11. Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

B. Reasonable Accommodation and Modification for Individuals with Disabilities

1. DLR will provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship.

   a. To ensure persons with disabilities have access to all benefits offered, DLR has designated an Americans with Disabilities Act (ADA) Coordinator. The ADA Coordinator is responsible for:
      i. Interpret ADA regulations regarding equal access for people with disabilities;
      ii. Monitor and improve the physical access to all of DLR locations;
         a) The ADA Coordinator will perform onsite monitors of each of DLR facility every three years. The onsite monitor will include going through the ADA Checklist (See Element 5, Exhibit A).
      iii. Provide guidance to staff regarding issues relating to disabilities and accommodation.

DLR One-Stop Career Center certification assessment policy requires an ADA Accessibility Study to be completed before being certified (see Element 5, Exhibit B).

b. In those circumstances where DLR believes the proposed accommodation would cause undue hardship, DLR has the burden of proving the accommodation would result in such hardship.
   i. DLR must make the decision the accommodation would cause such hardship only after considering all factors listed in the definition of "undue hardship" in 29 CFR 38.4.
   ii. The decision must be accompanied by a written statement of reason(s) for reaching the conclusion. DLR must provide a copy of the statement of reason(s) to the individual(s) who requested the accommodation.
   iii. If a requested accommodation would result in undue hardship, DLR must take any other action that would not result in such hardship, but would nevertheless ensure, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by DLR.
   iv. The EO Officer reviews decisions of accommodation and modification requests during desk audits, on-site monitoring reviews, and DLR job service office internal compliance audits.

2. DLR must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.

   a. To ensure persons with disabilities have access to all benefits offered, the State EO Officer conducts desk and on-site compliance audits of each job service office to ensure compliance with this part (See Element 7, Exhibit A).
   b. In those circumstances where DLR believes the proposed modification would fundamentally alter the program, activity, or service, DLR has the burden of proving the modification would result in such an alteration.
      i. DLR must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of "fundamental alteration" in 29 CFR 38.4. The decision must be accompanied by a written statement of reasons for reaching the conclusion. DLR must provide a copy of the statement of reasons to the individual or individuals who requested the modification.
      ii. If the modification would result in a fundamental alteration, DLR must take any other action that would not result in such an alteration, but would nevertheless ensure, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by DLR.
      iii. The EO Officer reviews decisions of accommodation and modification requests during desk audits, on-site monitoring reviews, and DLR job service internal compliance audits.

3. Regulations implementing Section 504 of the Rehabilitation Act of 1973 and regulations implementing requirements at Section 29 CFR Part 32 stipulate entities receiving financial assistance from the US Department of Labor (USDOL) must conduct a self-evaluation of their policies and practices to assess their programs' accessibility. Programs shall be accessible to persons with mobility impairments, hearing and vision impairments, and mental problems, and any other conditions, which substantially limit a major life activity. DLR developed an evaluation form based on the tool developed by the CRC to assist with this requirement (See Element 7, Exhibit A).

C. Responsibilities to Communicate with Individuals with Disabilities

DLR must take appropriate steps to ensure communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities are as effective as communications with others.

1. DLR must take responsibility in serving persons with disabilities. DLR must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy

the benefits of DLR and WIOA Title I-financially assisted programs and/or activities. In determining what type of auxiliary aid or service is appropriate and necessary, DLR must give primary consideration to the requests of the individual with a disability and may include, but are not limited to, sign language, interpreters, readers, adaptive equipment, taped materials, relay services, or TDD/TTYs for individuals with hearing impairments.

2. DLR is required to make reasonable accommodations for qualified applicants and employees with disabilities who can perform the essential functions of the job; do not discriminate against persons with a history of disabilities or those regarded as disabled; and prohibit discrimination against persons with disabilities in all employment practices including recruitment, hiring, training, job assignment, pay, layoff, firing, promotion, leave, benefits, and all other employment related activities. When alternative provisions must be made, they are provided in the most integrated setting possible. DLR takes appropriate steps to ensure communication with applicants, eligible applicant, participants, employees, applicants for employment, and members of the public who are persons with disabilities, are as effective as communication with others.

3. DLR must ensure interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence of accessible services, activities, and facilities. Where DLR communicates by telephone with beneficiaries, registrants, applicants, eligible applicant/registrants, participants, applicants for employment, and/or employees, DLR must use telecommunications devices for individuals with hearing impairments such as TDD/TTYs, or equally effective communications systems, such as telephone relay services.

4. The international symbol for accessibility is used at each primary entrance of an accessible facility. Signage is provided at the primary entrance to each inaccessible facility directing users to a location at which they can obtain information about accessible facilities.

5. DLR is required to evaluate job qualifications regularly to ensure the qualifications do not discriminate on the ground of disability. DLR may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

D. Procedures for Maintaining Confidentiality of Disability-Related Information

1. Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

2. Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:
   a. Program 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 underlying documentation related to a participant's medical condition in an emergency;
   c. Government officials engaged in enforcing these provisions, any other laws administered by the U.S.DOL, or any other Federal laws; and
   d. Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

3. Pre-employment or employment medical inquires apply to all employment and employment related training, are not made before a conditional offer of employment or participation, and are made to all in same jobs or training programs, expect as provided in paragraphs a. and b. of this section:

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a. DLR may not conduct pre-employment medical examinations or make pre-employment inquiry of an applicant for employment or training as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. DLR may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

b. When DLR is taking remedial action to correct the effects of past discrimination, when DLR is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally-assisted programs and/or activities, or when DLR is taking affirmative action pursuant to section 503 of the Act, DLR may invite applicants for employment or training to indicate whether and to what extent they are handicapped if:

   i. DLR states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.

   ii. DLR states clearly the information is being requested on a voluntary basis, it will be kept confidential as provided in paragraph D. of this section, and refusal to provide it will not subject the applicant or employee to any adverse treatment and it will be used only in accordance with this part.

c. An employer who routinely requires medical examinations as part of the employment selection process must demonstrate each of the requirements of this subsection are met:

   i. The medical examination shall be performed by a physician qualified to make functional assessment of individuals in a form, which will express residual capacity for work or training. Such an assessment does not require clinical determinations of disease of disability, but shall provide selecting or referring official's sufficient information regarding any functional limitations relevant to proper job placement or referral to appropriate training programs. Factors which may be assessed may include, for example, use of limbs and extremities, mobility an posture, endurance and energy expenditure, ability to withstand various working conditions and environments, use of senses and mental capacity;
   ii. The results of the medical examination shall be specific and objective so as to be susceptible to review by independent medial evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;
   iii. The results of the medical examination shall not be used to screen out qualified applicants and employees but to determine proper placement and reasonable accommodation. The employing official using physical or mental information obtained pursuant to this section should be familiar with physical or mental activities involved in performing the job, and the working conditions and environment in which it is carried out. If the applicant is being considered for a variety of jobs having different requirements or skills, the employing official should make a functional assessment of the physical or mental demands of the jobs in order to match the applicant with the most suitable vacancy;
   iv. All of the potential employees for the jobs are subjected to the medical examinations;
   v. The procedures for using medical examinations or the medical information shall be constructed in the following manner:
      a) A conditional job offer was made or the individual was conditionally placed in a job pool, or conditionally placed on an eligibility list prior to the medical examination being performed; or
      b) The results of the medical examination were considered by the employing official only after a conditional decision to make a job offer or the individual has been placed conditionally in a job pool or conditionally placed on an eligibility list; the medical results were the last factor evaluated by the employing officials before a final decision to make an offer of employment was make.
   vi. Unless a conditional job offer is made prior to the medical examination, all potential employees for the job shall be informed at the time of the medical examination that:

a) The results of the medical examination are the last factor evaluated by the employing official before a final decision to make an offer of employment is made, and
b) The medical examination results shall be transmitted to the employing official and the applicant only after a conditional decision of a job offer has been made.

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II. Element 5 Documentation:

Exhibit A – ADA Physical Checklist
Exhibit B – One-Stop Certification
Exhibit C – 4.1 Wagner-Peyser, Adult, and Dislocated Worker Eligibility
Exhibit D – 4.3 Youth Eligibility

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Element 6: Collection and Maintenance of Equal Opportunity Data and Information

29 CFR 38.37-38.41; 29 CFR 32.15 (d)

I. Criteria for Element 6

The Department of Labor and Regulation (DLR) has developed a standardized record data collection by means of a management information system called SDWORKS (See Element 4, Exhibit D). The system allows for statistical or other quantifiable data analyses to verify DLR compliance with section 188 of WIOA and 29 CFR 38.

A. Responsibilities to Collect and Maintain Data and Other Information

1. Required Data

DLR shall collect specific information during the intake process and update, as needed, paper files and SDWORKS data pertaining to an individual's participation in the WIOA Title I programs. SDWORKS must contain information on the quality and quantity of services provided to: program applicants, applicants for program employment, registrants, eligible applicants/registrants, participants, terminees, and employees. This data must provide demographic information which shall include:

a. Race/ethnicity
b. Sex
c. Age
d. Disability status, if known
e. Limited English proficiency and preferred language

2. Statistical/Quantifiable Data

The data collected in the DLR management information system allows the CRC, SD Governor, and Equal Opportunity Officer to:

a. Conduct statistical or other quantifiable data analyses to verify DLR compliance with section 188 of WIOA and 29 CFR 38 (see Element 6, Exhibit A);
b. Monitor DLR equal opportunity performance;
c. Identify instances or areas of discrimination; and
d. Identify individuals or groups who have been discriminated against.

3. Confidentiality

Information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities; determining the extent to which DLR is operating its WIOA Title I-financially assisted program or activity in a non-discriminatory manner; or other use authorized by law.

All related electronic records are maintained in a confidential manner using SDWORKS. The system assigns passwords and entry codes for access to predetermined areas of the computer system and provides access to authorized users only. Data security and confidentially of information are emphasized at all levels. Service-delivery staff receives training in the proper collection and reporting of required information.

4. Complaint Log

The DLR shall maintain a log of complaints filed alleging discriminations on the grounds of (see Element 6, Exhibit B and Element 8, Exhibit A):

a. Race
b. Color

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c. Religion
d. Sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity)
e. National Origin (including limited English proficiency)
f. Age
g. Disability
h. Political affiliation or belief
i. Citizenship
j. WIOA Participation

The following information will be included in the Discrimination Complaint Log:
a. Name and address of complainant.
b. Ground or basis of complaint.
c. Description of the complaint.
d. Date the complaint was filed.
e. Disposition of complaint and date of issuance.
f. Any other pertinent information.

A copy of the complaint log shall be maintained by each job service office EO Coordinator and forwarded to the State EO Officer so all complaints can be maintained and processed according to the DLR Discrimination Complaint policy and procedure (see Element 8, Exhibit A). The Discrimination Complaint Log, and actions taken regarding the complaints, must be maintained for three (3) years from the date of the resolution of the complaint.

5. Data Retention Period

The records of applicants, registrants, eligible applicants/registrants, participants, terminees, employee, applicants for employment, and other required records must be maintained for a period of three (3) years from the close of the applicable program year.

B. Medical or Disability-related Information

The medical information from a participant shall be collected only when necessary to fulfill the intent of the program. Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:
1. Program staff that are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.
2. First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.
3. Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws.

Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

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C. DLR Obligation on Notification of Action

1. The DLR EO Officer and the Director of the CRC shall be promptly notified when any administrative enforcement actions or lawsuits are filed against DLR alleging discrimination on the grounds of race, color, religion, sex (including pregnancy, childbirth or related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I financially assisted program or activity. This notification must include:
   a. The Names of the parties to the action or lawsuit;
   b. The forum in which each case was filed; and
   c. The relevant case numbers.

2. In addition, the DLR EO Officer and the CRC Director have the discretionary authority to request any information and data necessary from recipients for the purpose of investigating complaints and conducting compliance reviews.

3. Whenever any information the State EO Officer and/or the CRC asks a recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the recipient will certify to the EO Officer and/or the CRC that it has made efforts to obtain the information and the agency, institution, or person has failed or refused to provide it. This certification will include the name and address of the agency, institution, or person in possession of the information, and the specific efforts the recipient made to obtain it. Considerations of privacy or confidentiality are not reasons for withholding information from the State EO Officer and/or the CRC.

II. Element 6 Documentation

Exhibit A – SD Works EEO Fed Report – Sioux Falls FY17
Exhibit B – Discrimination Complaint Log

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Element 7: Monitor Recipients for Compliance

29 CFR 38.54 (d) (2) (ii)

I. Element 7 Criteria

A. A System for Monitoring

DLR will monitor job service offices and subrecipients who receive WIOA Title I funds through DLR to ensure compliance with WIOA section 188 and 29 CFR 38, including a determination as to whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way.

At minimum, each periodic monitoring review will include:

1. A statistical or other quantifiable analysis of records and data kept by the recipient under 29 CFR 38.38, including analyses by race/ethnicity, sex, age, and disability status (see Element 7, Exhibit B, E, and F);
2. An investigation of any significant differences identified in paragraph 1. of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and
3. An assessment to determine whether the recipient has fulfilled its administrative obligations under section 188 or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the NDP;

B. Equal Opportunity Monitoring Policy

1. EO Monitoring Responsibility

The DLR EO Officer will have the overall responsibility for EO monitoring. Job Service EO Coordinators will assist the EO Officer in conducting the reviews.

2. EO Monitoring Frequency

The EO Officer will schedule desk reviews of each job service office and subrecipient on an annual basis. The DLR EO Officer shall collaborate with the EO Coordinators to do on-site visits of their office once every three (3) years, unless a complaint is received or a desk audit indicates the need of an immediate on-site review.

3. EO Monitoring Requirements

a. Each EO monitoring review shall include a review of each job service office and sub-recipient's:
   i. Compliance with its administrative obligations under WIOA section 188 and 29 CFR 38;
   ii. Compliance with responsibilities it has been assigned through the NDP;
   iii. Programs and activities to determine whether discrimination is occurring.

b. Such monitoring review shall include a statistical or other quantifiable analysis of data and records collected by DLR and sub-recipients, including analyses by race/ethnicity, sex, age, and disability status, pursuant to 29 CFR 38.41 (see Element 7, Exhibit B, E, and F). An investigation of any significant differences identified in participation in the programs, activities, or employment provided by DLR, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means.

c. Both desk and on-site monitoring reviews will assess each recipient's compliance with 29 CFR 38 related to:
   i. Element 1: Designation of EO Officer
   ii. Element 2: Notice and Communication
   iii. Element 3: Assurances
   iv. Element 4: Universal Access

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v. Element 5: Compliance with Section 504
vi. Element 6: Data and Information Collection and Maintenance
vii. Element 7: Monitor Recipients for Compliance
viii. Element 8: Complaint Processing Procedures
ix. Element 9: Corrective Actions/Sanctions

4. EO Monitoring Tools

The DLR EO Officer monitors One-Stop Career Centers and subrecipients receiving WIOA Title I-funding by conducting desk and or on-site monitoring reviews using a monitoring tool (see Element 7, Exhibit A). The tool meets all requirements outlined in section 3 of this element.

5. Elements of the Monitoring

a. The desk monitoring review shall consist of the following segments:
   i. Notification Letter – Including Monitoring Tools
   ii. Statistical Analysis – Desk Review
   iii. Exiting Conference
   iv. Monitoring Report – Report of results
   v. Follow-up – Corrective Actions/Sanctions

b. The on-site monitoring review shall consist of the following segments:
   i. Notification Letter – Including Monitoring Tools
   ii. Statistical Analysis – Desk Review
   iii. Onsite Review
   iv. Exiting Conference
   v. Monitoring Report – Report of results
   vi. Follow-up – Corrective Actions/Sanctions

C. Equal Opportunity Monitoring Procedures

1. Notification Letter and Monitoring Tools

The notification letter announces the details and scope of the review. The letter should be sent 30 days prior to the review to the appropriate EO Coordinator/Administrator. The monitoring tools should accompany the letter. The letter should include instructions for the monitoring tools and all applicable supporting documents requested be returned at least ten (10) days prior to the review.

2. Desk Review

Upon receipt of the monitoring tool, the desk review should be performed. The reviewer should review the data analysis reports and the monitoring tool responses. This part of the process will help to identify potential items to be addressed during the on-site review.

3. On-Site Review

The focus of the on-site review is to determine compliance with equal opportunity and nondiscrimination requirements and to review significant differences or disparities identified during the desk review. It is recommended, upon entering the site, the reviewer meet with the appropriate EO Coordinators/Administrator to discuss the scope of the review, to make arrangements for client and staff interviews or file reviews, and to discuss preliminary findings.

The following are areas of emphasis during the on-site review:
a. Staff composition;
b. Management and client interviews (see Element 7, Exhibit A, C, and D);

c. Staff awareness of nondiscrimination and EO laws;
d. Complaint files (if appropriate);
e. Client files;
f. Physical aspects of the site — programmatic and architectural accessibility;
g. Observance of reception, intake, and assessment processes, if applicable;
h. Maintenance of EO policies and complaint files;
i. Interviews with community-based organizations (when complaints or concerns have been identified or expressed);
j. Agreements with local organizations to provide needed services to persons with special needs; and
k. Display of announcement, mandatory WIOA "Equal Opportunity is the Law" posters, and posters and signs for clients with limited English-speaking abilities.

4. Exit Conference

Immediately following the review, the reviewer may conduct an exit meeting with the appropriate EO Coordinator/Administrator or designee to discuss the findings and clarify areas in question. A preliminary compliance status may be given at this time, and corrective action(s) may be suggested.

5. Initial Determination Letter

At the conclusion of the monitoring review process, an "Initial Determination Letter" shall be written by the EO Officer conducting the review. The report shall be due within thirty (30) working days of the completion of the review. Copies of the report shall be distributed to the recipient's management. A copy shall be maintained by the local EO Officer conducting the review. The written report shall contain all the information pertinent to the review, including the following:

a. Name, location, and contact information of the recipient reviewed;
b. A brief description of the services or program provided by the recipient;
c. Name and contact information of the EO Officer conducting the review;
d. Reason(s) for the review;
e. Results of any analytical data;
f. Names of staff interviewed;
g. Names of participants interviewed;
h. Overall results of the review;
i. Any findings of noncompliance including condition, cause, and criteria;
j. Sanctions or corrective actions called for; and,
k. Method and time frame for follow-up.

In areas of noncompliance, the reviewer shall make required corrective action(s) in the report.

If management agrees with the corrective actions, an implementation plan shall be forwarded to the reviewer within thirty (30) days of the date recommendations are received.

However, if management disagrees with corrective action, management shall contact the reviewer to attempt an informal resolution of the issue(s).

a. Where an informal resolution is reached, an implementation plan shall be forwarded to the reviewer within thirty (30) days of the date recommendations are received.
b. Where an informal resolution is not reached, a meeting shall be held among the reviewer, State EO Officer, and the appropriate management official for the program/unit under review.

Six to nine months after the recommendations are implemented; another (follow-up) review shall be scheduled by the State EO Officer to assess the progress made in resolving the identified problem areas.

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6. Follow-up – Findings of Noncompliance

If the investigating authority finds reasonable cause to believe the recipient has violated the nondiscrimination and equal opportunity provisions of WIOA, 29 CFR 38 during the initial compliance review, a follow-up shall be conducted by the reviewing officer regarding any corrective actions or sanctions.

7. Final Determination

a. If compliance cannot be secured by voluntary means, the EO Officer must either:
   i. Issue a Final Determination;
   ii. Refer the matter to a DLR Staff Attorney with a recommendation that an appropriate civil action be instituted; or
   iii. Take such other action as may be provided by law.

b. A Final Determination must contain the following information:
   i. A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
   ii. A statement of those matters upon which the parties continue to disagree;
   iii. A list of any modifications to the findings of fact or conclusions set forth in the Initial Determination, Notice to Show Cause, or Letter of Findings;
   iv. A statement of the sub-recipients, contractors, and other service providers' (such as eligible training providers) liability, and, if appropriate, the extent of that liability;
   v. A description of the corrective or remedial actions the grant applicant or recipient must take to come into compliance;
   vi. A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
      a) After the sub-recipients, contractors, and other service providers (such as eligible training providers) are given the opportunity for a hearing, its WIOA funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
      b) DLR may refer the case to a DLR staff attorney with a request to file suit against the sub-recipients, contractors, and other service providers; or
      c) DLR may take any other actions against the sub-recipients, contractors, and other service providers provided by law.
   vii. A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in 29 CFR 38.111; and
   viii. A determination of DLR, entity's authorized signatory, and the violating sub-recipient, contractors, and other service provider's liability, if any.

8. Sanctions

a. If compliance has not been achieved after issuance of a Final Determination or a Notification of Breach of Conciliation Agreement, DLR may apply sanctions or judicial enforcement as follows:
   i. After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA financial assistance, in whole or in part;
   ii. Refer the matter to the a DLR staff attorney or CRC with a recommendation that an appropriate civil action be instituted; or
   iii. Take such action as may be provided by law.

b. In addition to sanctions and judicial enforcement, if there is no voluntary compliance there may be a deferral of new grants. When the applicable hearing procedures have been initiated against a particular recipient, DLR or the CRC may defer action on that recipient's applications for new WIOA financial assistance until a Final Decision as required has been rendered. Deferral is not appropriate when WIOA financial

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assistance is due and payable under a previously approved application. The following criteria are applied to determine New WIOA financial assistance:

i. New WIOA financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.
ii. New WIOA financial assistance does not include assistance approved before the beginning of proceedings, or increases in funding because of changed computations of formula awards.

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II. Element 7 Documentation

Exhibit A – Monitoring Tool
Exhibit B – Data Analysis Guide
Exhibit C – Client Interview
Exhibit D – Employee Interview
Exhibit E – Data Analysis – Population Served
Exhibit F – Data Analysis – Registered/Enrolled

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Element 8 – Complaint Processing Procedures

29 CFR 38.70 through 38.89

I. Element 8 Criteria

The Department of Labor and Regulation (DLR) has developed complaint procedures applicable to all WIOA Title I discrimination complaints (see Element 8, Exhibit A). DLR requires individuals filling a complaint use the ETA 8429 form (see Element 8, Exhibit B). Entities operating federal or state funded programs for DLR are also allowed to use the procedures.

A. Required Elements of Discrimination Complaint Processing Policy and Procedure

1. Initial Written Notice

Initial written notice to the complainant, within ten (10) days of receiving the complaint, containing the following information:

a. An acknowledgement DLR has received the complaint.
b. The complainant's right to be represented in the complaint process.
c. The DLR policy to initially attempt resolution of the complaint through mediation, which is an alternative dispute resolution (ADR). The mediation process is explained to the complainant.

2. Written Statement of the issue(s)

A written statement of the issue(s), provided to the complainant, including the following information:

a. A list of issues raised in the complaint; and
b. For each issue, a statement whether DLR will accept the issue for investigation or reject the issue, and the reasons for each rejection.

3. A Period for Fact-finding or Investigation

A period for fact-finding or investigation of the circumstances underlying the complaint must be completed within sixty (60) calendar days of the filing of the complaint.

4. Attempts to Resolve the Complaint

Within ten (10) days of filing of the complaint, the complainant is informed of the DLR policy to initially attempt resolution of the complaint through mediation, which is an alternative dispute resolution (ADR). The complainant has twenty (20) calendar days of filing of the complaint to accept or reject the offer of mediation.

5. Written Notice of Final Action

A written Notice of Final Action, provided to the complainant must be completed WITHIN NINETY (90) CALENDAR DAYS of the filing of the complaint and contains the following information:

a. For each issue raised in the complaint, a statement of either:

   i. DLR's decision of the issue and an explanation of the reasons underlying the decision or
   ii. A description of the way the parties resolved the issue.

b. Notice the complainant has a right to file a complaint with the Civil Rights Center within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the final action by DLR.

6. Initial Determinations

a. At the conclusion of an investigation of the complaint, the EO Officer must take the following actions:

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i. Determine whether there is reasonable cause to believe the respondent has violated the non-discrimination and equal opportunity provisions of WIOA or 29 CFR 38; and
ii. Notify the complainant, the respondent, and the grant making agency, in writing, of the determination.

b. Corrective or remedial actions may be imposed with an Initial Determination when the EO Officer determines, after review of a complaint, a violation of the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR 38. The Initial Determination must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance. Such steps must include:
   i. Actions to end and/or redress the violation of nondiscrimination and equal opportunity provisions of WIOA or 29 CFR 38.
   ii. Make whole relief where discrimination has been identified, including as appropriate: back pay or other monetary relief; hire or reinstatement; retroactive seniority; promotion; or benefits or other services discriminatorily denied.
   iii. Such other remedial or affirmative relief as the EO Officer deems necessary, including but not limited to outreach, recruitment, and training designed to ensure equal opportunity.

c. Monetary relief may not be paid from Federal funds.

7. Final Determination

a. The Final Determination will contain the following information:
   i. A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
   ii. A statement of those matters upon which the parties continue to disagree;
   iii. A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause, or Letter of Findings;
   iv. A statement of the sub-recipients, contractors, and other service providers' (such as eligible training providers) liability, and, if appropriate, the extent of that liability;
   v. A description of the corrective or remedial actions the grant applicant or recipient must take to come into compliance;
   vi. A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
   vii. After the sub-recipients, contractors, and other service providers (such as eligible training providers) are given the opportunity for a hearing, its WIOA funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
   viii. DLR may refer the case to a DLR staff attorney with a request to file suit against the sub-recipients, contractors, and other service providers; or
   ix. DLR may take any other actions against the sub-recipients, contractors, and other service providers provided by law.
   x. A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in 29 CFR 38.111; and
   xi. A determination of DLR, entity's authorized signatory, and the violating sub-recipient, contractors, and other service provider's liability, if any.

6. Sanctions

a. If compliance has not been achieved after issuance of a Final Determination or a Notification of Breach of Conciliation Agreement, DLR may apply sanctions or judicial enforcement as follows:
   i. After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA financial assistance, in whole or in part;
   ii. Refer the matter to a DLR staff attorney or CRC with a recommendation that an appropriate civil action be instituted; or
   iii. Take such action as may be provided by law.

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b. In addition to sanctions and judicial enforcement, if there is no voluntary compliance there may be a deferral of new grants. When the applicable hearing procedures have been initiated against a particular recipient, DLR or the CRC may defer action on that recipient's applications for new WIOA financial assistance until a Final Decision as required has been rendered. Deferral is not appropriate when WIOA financial assistance is due and payable under a previously approved application. The following criteria are applied to determine New WIOA financial assistance:
   i. New WIOA financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.
   ii. New WIOA financial assistance does not include assistance approved before the beginning of proceedings, or increases in funding because of changed computations of formula awards.

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II. Element 8 Documentation

Exhibit A – The DLR Discrimination Complaint Policy and Procedure
Exhibit B – ETA 8429 Complaint/Apparent Violation Form

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Element 9 – Corrective or Remedial Actions and Sanctions

29 CFR 38.90 through 38.115

I. Element 9 Criteria

The Governor of the State of South Dakota will comply with all requirements of 29 CFR 38 related to corrective actions and sanctions for violations of nondiscrimination and equal opportunity provisions of the WIOA and 29 CFR 38. Both the DLR Discrimination Complaint Policy and Procedures and Equal Opportunity Monitoring Policy and Procedure include a process for corrective or remedial actions and sanctions (See Element 8 Exhibit A and Element 9 Exhibit A).

Corrective actions and sanctions are intended to guarantee equal access to programs, activities, and employment opportunities provided by WIOA financially assisted programs and services. Corrective actions must be appropriate for the violation identified and serve to end the discrimination or redress specific violation(s).

A violation is a failure to comply with WIOA regulations. A violation may range in seriousness from an infraction, or a technical violation, to a more significant discrimination violation.

The violation may be identified as a result of a:

a. Monitoring review;
b. Discrimination complaint

Job service office EO Coordinators must notify the DLR EO Officer if they are contacted directly by the U.S. DOL CRC regarding an alleged violation. All corrective actions, if necessary, will be reported to the U.S. DOL CRC.

A. Initial Determination

DLR determines at the conclusion of an investigation of a discrimination complaint or on conclusion of a monitoring review whether there is reasonable cause to believe a violation of the nondiscrimination and equal opportunity provisions has occurred. A violation may range in seriousness from a technical violation to discrimination:

- Technical violations may include but are not limited to: failure to designate an EO Officer, failure to collect data, failure to include required language in assurances, and failure to post EO notices.
- Discrimination violations include but are not limited to: findings of disparate treatment, disparate impact, and failure to provide a reasonable accommodation.

1. Initial Determination Requirements

DLR issues an initial determination or notice of findings informing the parties or entities involved in writing of:

a. The specific findings of the investigation or review;
b. The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
c. The time by which the respondent must complete the corrective or remedial action;
d. Whether it will be necessary for the parties or entities involved to enter into a written agreement; and
e. The opportunity to engage in voluntary compliance negotiations.

2. No Determination Made

Where a no cause determination is made, DLR will issue a Final Determination. The Final Determination represents final action by DLR.

B. Corrective or Remedial Actions Imposed

DLR strives to attain voluntary compliance with the nondiscrimination and equal opportunity provisions of the Act. A letter of Findings, Notice to Show Cause, or an initial Determination shall include specific steps that must be taken within a set time period to achieve voluntary compliance. Such steps include but are not limited to:

1. Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR 38;
2. Correcting technical violations where identified include, as appropriate;
   a. Ensuring the violation is corrected, and
   b. Educating individuals responsible for implementing the violated requirement.
3. Make whole relief where discrimination violations have been identified, including, as appropriate:
   a. Retroactive relief (e.g. back pay, front pay, retroactive benefits or other services discriminatorily denied, etc.); and
   b. Prospective relief (e.g. change of policy, training, development of new policy, training on policy communication, etc.).
4. Provisions for follow-up monitoring to ensure commitments are fulfilled;
5. Provisions for reports from the violating recipient regarding the actions to be taken;
6. Provisions for the execution of a written agreement or assurance to document the correction of the violation; and
7. Such other remedial or affirmative relief as deemed necessary by DLR.
8. Monetary relief may not be paid from Federal funds.

C. Assurances and Conciliation Agreements

Where a compliance review or complaint investigation results in a finding of noncompliance DLR must require written assurances, conciliation agreements or both to bring compliance with the nondiscrimination and equal opportunity provisions of the Act.

1. A written assurance certifies the deficiency has been corrected. The assurance should include:
   a. Listing of the deficiency and the corrective actions required;
   b. Description of the corrective actions taken and the dates the action was taken
   c. Statement that steps have been taken and will continue to be taken to assure the deficiency does not recur; and
   d. Must be signed by appropriate officials.

2. A conciliation agreement is a more formal document between the state and the service provider found in violation of the nondiscrimination and equal opportunity provisions of the Act. The conciliation agreement must:

   a. Be in writing;
   b. Address each cited violation;
   c. Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
   d. Provide for periodic reporting on the status of the corrective and remedial action;
   e. Provide the violation(s) will not recur; and
   f. Provide for enforcement for a breach of the agreement.

D. Sanctions

Sanctions are judicial enforcement actions (i.e., suspension, termination, termination of funding, etc.) that are applied when appropriate corrective actions are not taken in compliance with WIOA regulations.

1. If DLR concludes that compliance cannot be secured by voluntary means, one of the following actions is taken:
   a. Issue a Final Determination;
   b. Refer the matter to a DLR staff attorney with a recommendation that an appropriate civil action be instituted;
   c. Take such other action as may be provided by law (such as refer to CRC).

2. The Final Determination will contain the following information:

a. A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
b. A statement of those matters upon which the parties continue to disagree;
c. A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause, or Letter of Findings;
d. A statement of the sub-recipients, contractors, and other service providers' (such as eligible training providers) liability, and, if appropriate, the extent of that liability;
e. A description of the corrective or remedial actions the grant applicant or recipient must take to come into compliance;
f. A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
g. After the sub-recipients, contractors, and other service providers (such as eligible training providers) are given the opportunity for a hearing, its WIOA funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
h. DLR may refer the case to a DLR staff attorney with a request to file suit against the sub-recipients, contractors, and other service providers; or
i. DLR may take any other actions against the sub-recipients, contractors, and other service providers provided by law.
j. A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in 29 CFR 38.111; and
k. A determination of DLR, entity's authorized signatory, and the violating sub-recipient, contractors, and other service provider's liability, if any.

3. If DLR concludes compliance cannot be secured by voluntary means due to the breach of a Conciliation Agreement, DLR will issue a Notification of Breach of Conciliation Agreement. This Notification of Breach of Conciliation Agreement will be sent to entity's authorized signatory and the violating sub-recipients, contractors, and other service providers (such as eligible training providers), the grant-making agency, the DLR Staff Attorney, and/or other parties such as the CRC. The Notification of Breach of Conciliation Agreement will include the following:
   a. Specify any efforts made to achieve voluntary compliance, and indicate those efforts have been unsuccessful;
   b. Identify the specific provisions of the Conciliation Agreement violated;
   c. Determine liability for the violation and the extent of the liability;
   d. Indicate failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the DLR Staff Attorney with a request to file suit;
   e. Advise the violating party of the right to request a hearing, and reference the applicable procedures in; and
   f. Include a determination as to of liability (if any).

4. If compliance has not been achieved after issuance of a Final Determination or a Notification of Breach of Conciliation Agreement, DLR may apply sanctions or judicial enforcement as follows:
   a. After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA financial assistance, in whole or in part;
   b. Refer the matter to a DLR staff attorney or the CRC with a recommendation that an appropriate civil action be instituted; or
   c. Take such action as may be provided by law.

5. In addition to sanctions and judicial enforcement, if there is no voluntary compliance there may be a deferral of new grants. When the applicable hearing procedures have been initiated against a particular recipient, DLR or the CRC may defer action on that recipient's applications for new WIOA financial assistance until a Final Decision

as required has been rendered. Deferral is not appropriate when WIOA financial assistance is due and payable under a previously approved application. The following criteria are applied to determine New WIOA financial assistance:

a. New WIOA financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.
b. New WIOA financial assistance does not include assistance approved before the beginning of proceedings, or increases in funding because of changed computations of formula awards.

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II. Element 9 Documentation

Exhibit A – DLR Equal Opportunity Monitoring Policy and Procedure

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