



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Wischart
Director

March 28, 2022

Naomi M. Barry-Perez
Director
Civil Rights Center
U.S. Department of Labor
Room N-4123
200 Constitution Avenue, NW
Washington, DC 20210

Dear Ms. Barry-Perez:

In response to your letter dated March 9, 2022, and pursuant to 29 CFR 38.54, wherein it is the responsibility of the State of Arizona to provide a Nondiscrimination Plan to the Department of Labor/Civil Rights Center Director every two years, Arizona Department of Economic Security is pleased to submit our Nondiscrimination Plan.

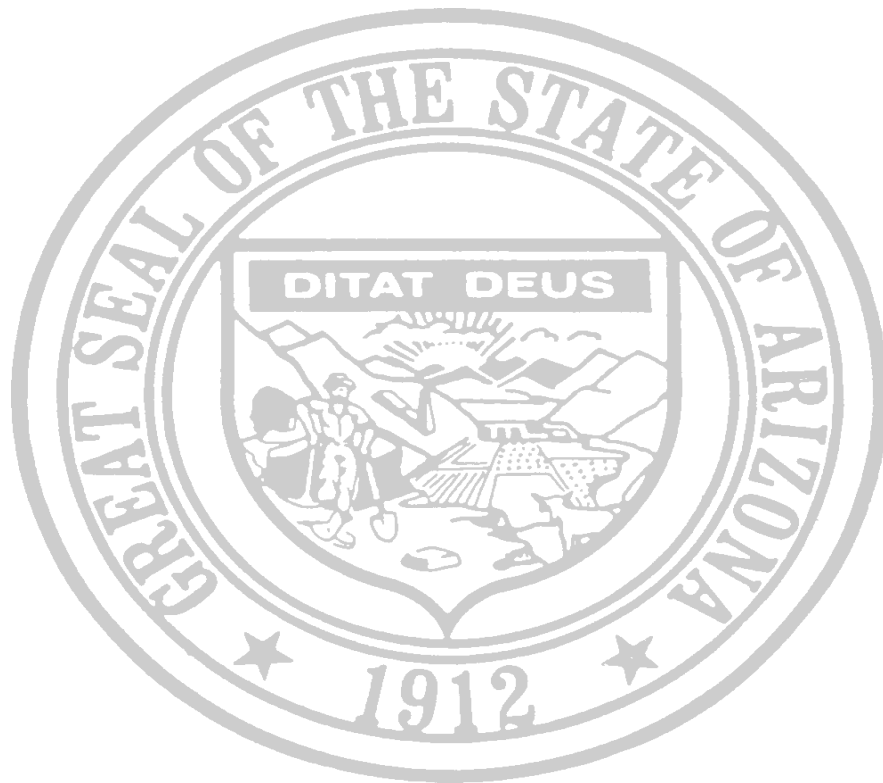
If you have any questions, please contact me at (602) 478-4047 or email at KBernard@azdes.gov.

Sincerely,

Kerry Bernard

Kerry Bernard,
State-level EO Officer
Office of Equal Opportunity

State of Arizona



Nondiscrimination Plan

2021 – 2022

Element One
Designation of State and Local Level Equal Opportunity Officers
(29 CFR 38.23 - 28)

PURPOSE:

The purpose of this Nondiscrimination Plan (NDP) is to provide a reasonable guarantee of the State of Arizona's (State) compliance with the Americans with Disability Act, Section 504 of the Rehabilitation Act of 1973 (as amended), Section 188 of the Workforce Innovation and Opportunity Act (WIOA) of 2014, and 29 CFR Part 38. The NDP applies to: (1) any recipient; (2) programs, services and activities that are part of the ARIZONA@WORK Job Center (AWJC) delivery system and that are operated by Arizona Job Center partners (AJCP) listed in this element, to the extent that the programs, activities, and services are being conducted as part of the AJC delivery system; and (3) the employment practices of a recipient and/or AJCPs, as provided in 29 CFR 38.2. The NDP is renewed every two years, and the state must advise the United States Department of Labor's (USDOL) Civil Rights Center (CRC) promptly of updates to the NDP, and of changes to the State-level WIOA Equal Opportunity (EO) Officer to ensure compliance with 29 CFR 38.55(b). Additionally, the State-Level WIOA EO Officer is not in a position that would constitute a conflict of interest. The State must assure that on equal opportunity matters, the State-level WIOA EO Officer reports directly to the State of Arizona's Governor's Designee.

NARRATIVE:

Each individual designated as a State-level Equal Opportunity (EO) Officer and each individual designated as a local level Equal Opportunity Officer, by name, position title, business address and telephone number. (29 CFR 38.23)

State-level WIOA EO Officer

Monica Sheble

Administrator

Office of Equal Opportunity

Arizona Department of Economic Security

1717 West Jefferson Street

Phoenix, Arizona 85007 / MD51H3

Phone: (602) 364-3976

Fax: (602) 364-3982

TTY/TTD: 7-1-1

Email: OfficeofEqualOpportunity@azdes.gov

Local Workforce Development Area (LWDA) EO Officers:

The State of Arizona has 12 designated LWDA's. Each LWDA has identified an EO Officer and their Director.

CITY OF PHOENIX

LWDA Director

LaSetta Hogans

Executive Director
City of Phoenix
Phoenix Workforce Connection
200 West Washington Street, 19th Floor
Phoenix, Arizona 85003-1611
Phone: (602) 261-8522
Fax: (602) 534-3915
Email: lasetta.hogans@phoenix.gov

Equal Opportunity Officer

Don Logan

Director/EO Officer
City of Phoenix
200 West Washington Street, 15th Floor
Phoenix, Arizona 85003-1611
Phone: (602) 534-0548
TDD/TYY: (602) 534-5500
Email: donald.logan@phoenix.gov

COCONINO COUNTY

LWDA Director

Billy Francis

WIOA Director
Coconino County Career Center
110 East Cherry Avenue
Flagstaff, Arizona 86001
Phone: (928) 679-7400
Email: bfrancis@coconino.az.gov

Equal Opportunity Officer

Regina Salas

Assistant Director for Workforce Development
Coconino County Health and Human Services
2625 North King Street
Flagstaff, Arizona 86004
Phone: (928) 679-7400
TDD/TTY: (928) 679-7131
Email: rsalas@coconino.az.gov

LA PAZ COUNTY

LWDA Director

Michael Smith

Director of Community Services
Mohave County Career Center
700 West Beale Street
Kingman, Arizona 86401
Phone: (928) 753-0723
Cell: (928) 263-9590
Email: SmitMi@mohave.gov

Equal Opportunity Officer

Ken Cunningham

HR Director/EO Officer
Goodwill of Central/Northern Arizona
700 West Beale Street
Kingman, Arizona 86401
Phone: (928) 753-0736 Ext. 4117
Fax: (928) 669-6326
TDD/TTY: (928) 669-8400
Email: cunmik@mohave.gov

MARICOPA COUNTY

LWDA Director

Jason Beard

Assistant Director
Maricopa Workforce Connections 234
234 North Central Avenue, Suite 3201
Phoenix, Arizona 85004
Phone: (602) 506-4146
Fax: (602) 506-2375
Email: Jared.Beard@maricopa.gov

Equal Opportunity Officer

Diana Shepherd

QI Program Supervisor/EO Officer
Maricopa Workforce Development
1001 West Southern Avenue, Suite 101
Mesa, Arizona 85201
Phone: (602) 372-9784
TDD/TTY: (602) 506-4802
Email: DShepherd@mail.maricopa.gov

MOHAVE COUNTY

LWDA Director

Michael Smith

Director of Community Services
Mohave County Career Center
700 West Beale Street
Kingman, Arizona 86401
Phone: (928) 753-0723
Cell: (928) 263-9590
Email: SmitMi@mohave.gov

Equal Opportunity Officer

Ken Cunningham

HR Director/EO Officer
Goodwill of Central/Northern Arizona
700 West Beale Street
Kingman, Arizona 86401
Phone: (928) 753-0736 Ext. 4117
Fax: (928) 669-6326
TDD/TTY: (928) 669-8400
Email: cunnik@mohave.gov

NORTHEASTERN ARIZONA@WORK

LWDA Director

Jeremy Flowers

Executive Director
NE Arizona Workforce Development Area
180 North 9th Street
Show Low, Arizona 85901
Phone: (928) 221-1591
Email: Jeremy.Flowers@navajocountyaz.gov

Equal Opportunity Officer

Vacant (Sherri Davis interim)

EO Officer NE Arizona Workforce Development
550 North 9th Place
Show Low, Arizona 85901
Phone: (928) 524-4327
TDD/TTY: 7-1-1
Email: Sherri.Davis@cplc.org

NINETEEN TRIBAL NATIONS

LWDB Chair

Crystal Banelos

NTNWDB Chairperson

Hopi Tribe

P.O. Box 123

Kykotsmovi, Arizona 86039

Phone: (928) 225-7996

Email: crystal.banelos@srpic-nsn.gov

Equal Opportunity Officer

Connie Fraijo

Executive Director/Tribal EO Officer

Nineteen Tribal Nations

P.O. Box 52275

Mesa, Arizona 85208

Phone: (480) 529-2559

Fax: (602) 237-5920

Email: ntnposting2021@gmail.com

NOTE: The Nineteen Tribal Nations Workforce Development Area (NTNWDA) is a designated LWDA for Arizona. The NTNWDA is a consortium of 13 Arizona Tribal entities. The NTNWDA Strategic Plan states, "As Sovereign Nations, Tribal Governments establish their own policy regarding equal opportunity commitments on each Indian reservation to ensure compliance with applicable Federal and Tribal laws and regulations." Thus, it is the decision of the Nineteen Tribal Nations Workforce Development Board (NTNWDB) to designate their own NTN EO Officer to resolve any disputes in a timely manner and at a local level.

PINAL COUNTY

LWDA Director

Joel Millman

Director

ARIZONA@WORK Pinal County

970 North Eleven Mile Corner Road

Casa Grande, Arizona 85194

Phone: (520) 866-7200

Fax: (520) 866-7235

Email: Joel.Millman@Pinal.gov

Equal Opportunity Officer

Moriah Robles

Compliance and Monitoring Specialist

ARIZONA@WORK Pinal County

318 North Florence Street, Suite A

Casa Grande, Arizona 85122

Phone: (520) 866-3600

Email: Moriah.Robles@pinal.gov

PIMA COUNTY

LWDA Director

Dan Sullivan

Community Services Director
Pima County
Community Services Employment & Training
2797 East Ajo Way
Tucson, Arizona 85713
Phone: (520) 724-6742
Fax: (520) 724-6796
Email: daniel.sullivan@pima.gov

Equal Opportunity Officer

Eddie Saavedra

Community Service Manager/EO Officer
Pima County
Community Services Employment & Training
2797 East Ajo Way
Tucson, Arizona 85713
Phone: (520) 724-6748
Fax: (520) 838-7434
TDD/TTY: (520) 724-8778
Email: Eddie.Saaverda@pima.gov

SANTA CRUZ COUNTY

LWDA Director

Irasema Olvera

WIOA Director
Santa Cruz County Workforce Development
610 North Morley Avenue
Nogales, Arizona 85621
Phone: (520) 375-7670 ext. 8016
Fax: (520) 281-1166
Email: iolvera@santacruzcountyaz.gov

Equal Opportunity Officer

Zaida Bustamante

WIOA Program Manager
Santa Cruz County Workforce Development
610 North Morley Avenue
Nogales, Arizona 85621
Phone: (520) 375-7670 ext. 8014
TDD/TTY: (520) 287-2946
Email: zbustamante@santacruzcountyaz.gov

SOUTHEASTERN ARIZONA@WORK

LWDA Director

Vada Phelps

Executive Director
Southeastern Arizona Workforce Connection
900 Carmelita Drive
Sierra Vista, Arizona 85635
Phone: (520) 439-3542
Fax: (520) 417-9910
Email: vphelps@cpic-cas.org

Equal Opportunity Officer

Ashley Hamilton

Human Resources Manager
Southeastern Arizona Workforce Connection
900 Carmelita Drive
Sierra Vista, Arizona 85635
Phone: (520) 439-3541
TDD/TTY: (520) 452-1667
Email: ahamilton@cpic-cas.org

YAVAPAI COUNTY

LWDA Director

Teri Drew

Executive Director
Northern Arizona Council of Government
221 North Marina Street, Suite 201
Prescott, Arizona 86301
Phone: (928) 213-5209
Email: tdrew@nacog.org

Equal Opportunity Officer

Leah Cickavage

HR Manager
Northern Arizona Council of Government
221 North Marina Street, Suite 201
Prescott, Arizona 86301
Phone: (928) 213-5249
Email: Lcickavage@nacog.org

YUMA COUNTY

LWDA Director

Nidia Herrera

Executive Director
Yuma Private Industry Council
3834 West 16th Street
Yuma, Arizona 85364
Phone: (928) 329-0990
Email: nherrera@ypic.com

Equal Opportunity Officer

Adriana McBride

EO Officer
Yuma Private Industry Council
3834 West 16th Street
Yuma, Arizona 85364
Phone: (928) 329-0990
TDD/TTY: (928) 329-6466
Email: AMcB0ride@ypic.com

The level within the organization (described in such terms as the individual's authority and position relative to the top of the hierarchy) occupied by the EO Officer(s). (29 CFR 38.29-30)

In accordance with the U. S. Department of Labor (DOL) regulations at 29 CFR Part 38.28, the State of Arizona has designated Kerry Bernard, Administrative Services Officer III, as the State-level WIOA EO Officer responsible for ensuring that all WIOA Title I, ARIZONA@WORK Job Center Partners (AWJCP) and the State Unemployment Insurance (UI) programs are operated in a nondiscriminatory manner. The State-level WIOA EO Officer is appointed by the Governor's designee and as a senior-level employee has full accessibility to the Governor's designee for matters related to equal opportunity and nondiscrimination. The State-level WIOA EO Officer is responsible for ensuring the ARIZONA@WORK Job Center's programs that receive federal financial assistance are following the nondiscrimination and equal opportunity provisions of Section 188 of WIOA and 29 CFR Part 38.29. The State-Level WIOA EO Officer has knowledge of the WIOA, principles and practices of compliance monitoring, federal and state laws, as well as rules and regulations.

In addition, the State-Level WIOA EO Officer's body of knowledge includes the workforce system policies, computerized products used in tracking, performance reports, the monitoring of systems and processes, and compliance practices and techniques.

The State-level WIOA EO Officer and EO Staff are afforded the opportunity to receive all EO related trainings at the State's expense to maintain these competencies to oversee and assist in the development and implementation of Arizona's Nondiscrimination Plan (NDP) under 29 CFR 38.54.

The duties of the EO Officer(s), and the way those duties are carried out (At a minimum, duties assigned to the EO Officer must include those listed in 29 CFR 38.28). Describe both the EO duties, responsibilities and activities associated with the implementation of 29 CFR part 38, and all other duties, responsibilities and activities associated with the implementation of 29 CFR part 38, and all other duties, responsibilities, and activities. (29 CFR 38.31)

The State-level WIOA EO Officer's designated duties corresponding to the implementation of 29 CFR Part 38.31 includes:

- Monitoring the Local Workforce Development Areas (LWDAs), American Job Center Partners (AJCPs), and State UI program to ensure the WIOA Title I financially assisted programs, services, and/or activities are operating in a nondiscriminatory manner. The EO Officer prepares monitoring reports including any needed corrective actions and monitors the corrective actions for completion and compliance.
- Developing, coordinating, providing oversight, researching, analyzing data, preparing reports, revising policies and procedures for equal opportunity and civil rights as well as other communications relative to programmatic performance on assigned LWDAs, AJCPs, and UI,
- Conducting, leading, or assisting monitoring investigations (i.e., determines nature, scope, and direction of the investigation);
- Writing correspondence and reports regarding findings of investigations,
- Providing appropriate resource and referral information for complainants and for members of the public relative to discrimination and employment law.
- Reviewing and analyzing complaints for WIOA jurisdiction and basis of discrimination,
- Reviewing data and information to discern specific trends or patterns which could reflect possible accessibility issues or need for targeted outreach.
- Initiating and coordinating meetings to provide information to or resolve issues with contractors, programs, or other groups both within and outside the department and/or the public.
- Providing technical assistance and training, as required, to local area EO officers and department staff relating to the implementation of services, activities and trainings in a nondiscriminatory manner,
- Interpreting federal and state laws, regulations, policies, and procedures related to program services, as well as LWDA, OSP, UIA policies and procedures to ensure compliance with equal opportunity and civil rights,
- Assisting in the client advocacy process as it relates to issues with contractors and One-Stop programs for designated LWDAs,
- Overseeing and assisting the development and implementation of the recipient's Non-Discrimination Plan under 29 CFR 38.54,
- Preparing and presenting Equal Opportunity information and/or concerns to executive management, regional directors, managers, and supervisors; and
- Performing equal opportunity related work as required.

The way the recipient makes the identity of the EO Officer(s) known to applicants, registrants, eligible applicants/registrants, participants, employees, and applicants for employment, as well as interested members of the public. (29 CFR 38.34)

The “Equal Opportunity Is the Law” notice/poster is distributed by the State-level WIOA EO Officer to all LWDA electronically (English and Spanish) and can be edited to include LWDA EO Officer before being printed and posted. The “Equal Opportunity Is the Law” notice/poster can be included with LWDA forms, such as participant enrollment forms, policies, etc. Registrants, eligible applicants, participants, claimants, employees, and applicants for employment and interested members of the public are made aware of the LWDA EO Officer’s information through the LWDA nondiscrimination posters, administrative orders, policies, and letters. The State-level WIOA, LWDA Officer’s name and contact information must appear on any communications regarding nondiscrimination and equal opportunity programs. (*Element #1 – Att. 1 & 2*)

The level of staff and other resources available to State and local level EO Officer(s) to ensure that WIOA Title I financially assisted programs and activities operate in a nondiscriminatory way. (29 CFR 38.28)

The Office of Equal Opportunity (OEO) of the Arizona Department of Economic Security (DES), employs sufficient staff and adequate resources to ensure the State-level WIOA EO Officer is in compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and with 29 CFR 38.29(e).

The Office of Equal Opportunity staff is available to assist the State-level WIOA EO Officer in completing his/her duties when needed. The State-level WIOA EO Officer does utilize as needed with the DES Office of Equal Opportunity staff. The State-level WIOA EO Officer meets and corresponds with the program EO Officers on a as needed basis to discuss updates in regulations, monitoring strategies, data analysis and other EO matters.

All WIOA staff salaries and other costs, including a portion of the State-level WIOA EO Officer’s salary, are funded by the WIOA Administrative funds allowable per the new Uniform Guidance for State, Local and Tribal Governments.

When the State-Level WIOA EO Officer or designee conducts the One-Stop monitoring he/she utilizes the Office of Equal Opportunity’s “Equal Opportunity Monitoring Review Guide”. In the guide, the “Designation of Equal Opportunity Officer” asks for the following information:

- “Does the EO Officer have sufficient staff and resources to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA?” Yes No

Each program has appointed an EO Officer that has staff and other available resources to ensure that programs and activities operate in a non-discriminatory way.

The State’s plan for ensuring that State and local level EO Officers and their staff are sufficiently trained to maintain competency. (29 CFR 38.31)

The State-level WIOA EO Officer is a member and attends annually sponsored National Association of State Workforce Agencies (NASWA) Equal Opportunity trainings, as well as EO classes and training conferences offered through webinars from Workforce GPS, U.S. Department of Labor (USDOL), National Skills Coalition (NSC), Equal Employment Opportunity Commission (EEOC) to maintain competency. The State-level WIOA EO Officer as a member of National Association of State

Workforce Agencies and a member of the Equal Opportunity Committee attends annual meetings and quarterly conference calls. The NASWA organization provides the opportunity to network with top experts in the fields in equal opportunity, diversity and builds partnerships with the other States. The State requires that local staff receive annual EO training via the local EO Officers or through the WIOA Technical Assistance Conferences held annually to maintain compliance.

DES makes training available to staff in areas related to equal opportunity and nondiscrimination, such as the Americans with Disabilities Act 504, Fair Labor Standards Act, Family and Medical Leave Act, Sexual Harassment and Diversity, Limited English Proficiency, Equal Employment Opportunity Principles and Practices, American Disability Act Management Responsibilities, and the Health Insurance Portability Accountability Act. These classes help ensure the State WIOA EO Officer understand the responsibilities required in the enforcement of equal opportunity and nondiscrimination laws under WIOA.

The State-level WIOA EO Officer communicates via telephone, email and in person with local EO Officers regarding equal opportunity and nondiscrimination issues, policies, training opportunities, and other relevant matters as they are presented for public knowledge by USDOL.

The identity, by name, title, and organization, of the individual to whom each State and local level EO Officer reports on equal opportunity matters.

The State-level WIOA EO Officer reports to the General Counsel & Chief Governance Officer (GCCGO), Department of Economic Security (DES) on as needed basis. The State-level WIOA EO Officer has full accessibility to the Governor's designee on equal opportunity matters. Local EO Officers report to their LWDA Directors on all equal opportunity matters as well.

A description of the professional and support staffing levels and resources provided to each State and local level EO Officer to assist him or her in ensuring compliance with WIOA Section 188 and 29 Part 38.

The OEO assists with the development and dissemination of policy guidelines for use in equal opportunity and nondiscrimination issues, directives, etc. The State-level WIOA EO Officer/designee conducts annual compliance monitoring to examine the LWDA written materials such as, case files, policies, procedures, and physical locations, for items relating to equal opportunity and nondiscrimination issues. If any discrimination issues arise during the monitoring, then a follow up monitoring could be more often depending upon the issue. DES/WA and UI provides assistance with information technology services, administrative planning, budgeting, personnel, and facilities.

The type and level of training each State and local level EO Officer has received and will receive to ensure that he or she can fulfill his or her responsibilities as an EO Officer.

The EO Officers attend seminars conducted by Equal Employment & Opportunity Commission (EEOC), Equal Opportunity Conferences hosted by National Associated State Workforce Agency (NASWA, EO Committee and the Department of Labor, webinars provided by the Civil Rights Center, National Skills Coalition, Workforce GPS, and other organizations via the internet.

The State-level WIOA EO Officer/ or designee provides training to LWDA EO Officers and (if necessary) American Job Center Partners (AJCP) to ensure that LWDA, AJCPs and other recipients understand and implement the requirements of the equal opportunity provisions of the WIOA, Section 188 and 29 CFR Part 38. The State-Level EO Officer provides links and makes suggestions to all EO Officers on relevant webinars related to equal opportunity and nondiscrimination issues, policies, and training opportunities.

The means by which the State makes public the names, position titles and telephone numbers (including TDD/TTY numbers) of State-Level WIOA EO Officer and each local level EO Officer.

The primary dissemination of the State-level EO Officer's name and contact information is on the "Equal Opportunity Is the Law" notice/poster. The notice/poster contains the Local Workforce Development Area EO Officer and the Civil Rights Center Director by name, title, business address, e-mail address, and telephone number including the TDD/TTY number. Additionally, the State publishes a directory on the DES website to locate the State WIOA and LWDA EO Officers.

Igualdad de Oportunidad es la Ley

Es contra la ley que el Estado de Arizona, siendo recipiente de asistencia financiera federal, discrimine por las siguientes razones:

- Contra cualquier individuo en los Estados Unidos por su raza, color, religión, sexo (incluyendo el embarazo, el parto y las condiciones médicas relacionadas, y los estereotipos sexuales, el estatus transgénero y la identidad de género), origen nacional (incluyendo el dominio limitado del inglés), edad, discapacidad, afiliación o creencia política.
- Contra cualquier beneficiario, solicitante de trabajo o participante en programas de capacitación que reciben apoyo financiero bajo el Título I de la ley de Innovación y Oportunidad en la Fuerza Laboral (WIOA, por sus siglas en inglés), debido a su ciudadanía, o por su participación en un programa o actividad que recibe asistencia financiera bajo el Título I de WIOA.
- Los beneficiarios de asistencia financiera federal deben tomar medidas razonables para garantizar que las comunicaciones con las personas con discapacidades sean tan efectivas como las comunicaciones con los demás. Esto significa que, a petición y sin costo alguno para el individuo, los recipientes están obligados a proporcionar ayuda auxiliar y servicios para individuos con discapacidades calificados.

El Estado de Arizona no discriminará en ninguna de las siguientes áreas:

- Decidiendo quien será admitido o tendrá acceso a cualquiera de los programas o actividades asistidos financieramente por el Título I de WIOA;
- Proveyendo oportunidades en o el trato de cualquier persona con relación a dicho programa o actividad;
- En la toma de decisiones sobre el empleo en la administración de, o en conexión con dicho programa o actividad.

Que hacer si usted cree que ha experimentado discriminación?

Si usted cree que ha sido objeto de discriminación bajo cualquiera de los programas o actividades asistidos financieramente por el Título I de WIOA, usted puede presentar una querrela dentro de los primeros 180 días después de la alegada violación, a través de:

La Oficina Local

EO Officer Name,
Local Area EO Officer
Agency name (NOTE: Please translate this into Spanish, if at all possible)
Mailing address
City, AZ zip
Phone: (xxx) xxx-xxxx
Fax (zzz) zzz-zzzz
your@email.address

o

El Estado de Arizona

Kerry Bernard, Administrator
State-Level WIOA EO Officer
Oficina de igualdad de Oportunidades
Departamento de Seguridad
Económica de Arizona
1789 West Jefferson (MD 51H3)
Phoenix, AZ 85007
Phone (602) 364-3976
Fax (602) 364-3982
TTY/TDD: 7-1-1

OfficeofEqualOpportunity@azdes.gov

o

El Centro de Derechos Civiles

Naome M. Barry-Perez, Esq.
Centro de Derechos Civiles
Departamento de Trabajo
de los Estados Unidos
200 Constitution Avenue NW
Room N-4123
Washington, DC 20210
Phone: (202) 693-6500
Fax: (202) 693-6505
TTY: (202) 693-6516

- Si usted presenta una queja ante el **Estado de Arizona**, deberá esperar hasta que el **Estado de Arizona** extienda una Notificación de Acción Final por escrito o hasta que pasen 90 días de haber iniciado la queja (lo primero que suceda), antes de presentar su queja ante el Centro de Derechos Civiles (vea la dirección arriba).
- Si el **Estado de Arizona** no le provee una Notificación de Acción Final por escrito durante los 90 días de la fecha en que usted presentó su queja, usted no tiene que esperar que el **Estado de Arizona** expida la notificación para presentar su queja al CRC. Sin embargo, usted deberá presentar su queja durante los 30 días después de expirar la fecha límite de 90 días (en otras palabras, 120 días después de haber presentado la queja al **Estado de Arizona**).
- Si el **Estado de Arizona** le emite una Notificación de Acción Final por escrito respondiendo a su queja pero usted no está satisfecho con la decisión o resolución, usted puede presentar su queja al CRC. Su queja deberá ser presentada al CRC durante los 30 días a partir de la fecha en que usted reciba su Notificación de Acción Final del **Estado de Arizona**.

Equal Opportunity Is the Law

It is against the law for the State of Arizona, as a recipient of Federal financial assistance, to discriminate on the following bases:

- Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, child birth or related medical condition, sex stereotyping, transgender status, and gender identity), national origin (including Limited English Proficiency), age, disability, political affiliation or belief; and
- Against any beneficiary of programs financially assisted under Title I of the Workforce Innovation and Opportunity Act of 2014 (WIOA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIOA Title I-financially assisted program or activity.
- Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

The State of Arizona must not discriminate in any of the following areas:

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

What to Do If You Believe You Have Experienced Discrimination

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

The Local Office

Name
Local Area EO Officer
Area
Program
Address
City, State, Zip
Phone:
Fax:
Email:
TTY/TTD:

State of Arizona

Kerry Bernard
State WIOA EO Officer
Office of Equal Opportunity
Department of Economic Security
1789 W. Jefferson Ave. MD 51H3
Phoenix, Arizona 85007
Phone: (602) 364 -3976
Fax: (602) 364 - 3982
TTY/TDD: 7-1-1
Email: OfficeofEqualOpportunity@azdes.gov

Or

Or

Civil Rights Center

Naomi M. Barry-Perez, Director
Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue NW
Room N-4123
Washington, DC 20210
Phone: (202) 693-6500
Fax: (202) 693-6505
TTY: (202) 693-6516

- If you file your complaint with the State of Arizona, you must wait either until the State of Arizona issues a written Notice of Final Action, or until 90 days have passed, (whichever is sooner), before filing a complaint with the Civil Rights Center (see address above).
- If the State of Arizona does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the State of Arizona to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the State of Arizona).
- If the State of Arizona does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

Element One
Documentation Section

Attachment(s)

1	Equal Opportunity Is the Law Notice – State-level WIOA EO Officer <i>(Spanish)</i>
2	Equal Opportunity Is the Law Notice – State-level WIOA EO Officer <i>(English)</i>

Element Two

Notice and Communication

(29 CFR 38.34 through 38.40)

PURPOSE:

In Element Two, the State of Arizona (State) addresses how the State and its Workforce Innovation and Opportunity Act (WIOA) One-Stop system partners (OSPs) and their recipients comply with the requirements of 29 CFR 38.34 through 38.39. The State ensures the establishment of a notice and communication system that is accessible to all registrants for WIOA funded services, applicants for employment, employees, interested members of the public, participants, professional organizations, and subrecipients of WIOA funds. This system informs these individuals and the public of WIOA One-Stop's requirements to operate its programs and activities in a nondiscriminatory manner and the rights they have to file complaints of discrimination. All unemployment insurance (UI) claimants are required to certify that they have read and understand a publication titled "A Guide to Arizona UI Benefits," which provides the equal opportunity law and information regarding services available for those with disabilities. This publication is posted on the UI website at: <https://des.az.gov/services/employment/unemployment-individual>.

NARRATIVE:

The methods and frequency of dissemination of the notice/poster, including initial dissemination. (29 CFR 38.34)

The "Equal Opportunity is The Law" notice (English and Spanish) is electronically sent annually to the Local Workforce Development Area (LWDA) Directors, Equal Opportunity (EO) Officers, and, if needed, the One-Stop Partners (OSPs). The notice allows the LWDA and OSPs to edit the documents to include information about the identification and contact information of the EO Officer for each LWDA. (*Element #1 – Attachments #1 & #2*)

As changes occur, a notice is sent electronically to all WIOA recipients and includes the name of any new State WIOA and/or LWDA EO Officer(s). The notice explains how to file a complaint at the local level, the state level or directly with the US Department of Labor/Civil Rights Center (USDOL/CRC). In addition, UI claimants who file their claims online receive a publication titled "A Guide to Arizona UI Benefits," which includes the "Equal Opportunity is The Law" notice (English and Spanish). That publication is also available at: <https://des.az.gov/services/employment/unemployment-individual>.

The means by which the notice is made available to individuals with disabilities. (29 CFR 38.36)

In 29 CFR 38.36 the instructions for posting the "Equal Opportunity is the Law" notice/poster, the LWDA and OSPs are instructed to read the notice/poster to anyone who requests assistance or staff have observed that the customer is visually impaired or might have difficulty reading the poster without assistance.

Auxiliary aids must be obtained for an individual who requests an aide, or where staff have observed that the customer is visually or hearing impaired or might have difficulty reading. Auxiliary aids or services include qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments. Also used are qualified readers, recorded texts, audio recordings, Braille materials, large print materials, and other effective means of making visually delivered materials available to individuals with visual impairment(s).

The means by which the State ensures that recipients post the notice. (29 CFR 38.37)

The State has notified the ARIZONA@WORK system partners in writing as required by the law under WIOA Section 188 to clearly display the *Equal Opportunity is The Law* notice/poster in all facilities that provide WIOA Title I-B funded services throughout the State. This includes facilities where ARIZONA@WORK partners, Unemployment Insurance (UI), and WIOA Title 1 funded activities are conducted, including ARIZONA@WORK Job Centers and the one stand-alone Unemployment Insurance (UI) Office in Yuma County, which the State - Level EO Officer monitors.

The State's WIOA partners must follow the directives in a State publication titled "Equal Opportunity & Nondiscrimination Monitoring Guide," which gives instructions regarding equal opportunity issues, including but not limited to verifying that the "Equal Opportunity is the Law" notices/posters are prominently displayed and easily accessible to the public. The State requires at least two posters be available in an 11x14-inch size in all offices. One poster must be in English and the other in a predominant language within the local area.

The means by which a copy of the notice is placed in the participant's file (29 CFR 38.36), or where the files are maintained electronically, how the requirement of 38.36(a)(4) is and will continue to be met.

The State requires that a permanent paper file or electronic record be maintained for all participants. All LWDA's in the State are required, at the time of orientation whether in a group setting or one on one, to include the notice detailing the equal opportunity law and all other WIOA documentation in the participant's permanent paper or electronic file. The "Equal Opportunity & Nondiscrimination Monitoring Guide" requires that orientations include a discussion of equal opportunity and nondiscrimination under WIOA Section 188 and 29 CFR Part 38. It also requires that a paper and/or electronic copy of the notice be placed in a participant's file. The State requires each participant to register in the Arizona Job Connection system and, as part of that registration, to actively acknowledge the EO statement. *(Element #2, Attachment #1)*

State ensures that recruitment brochures and other materials routinely made available to the public include the statements "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities." (29 CFR 38.34(a))

In accordance with 29 CFR 38.38, recipients—including the State, LWDA and sub-recipients—must include, in their publications, an equal opportunity policy statement indicating that the recipient is "an equal opportunity employer/program." Additionally, all publications must include the statement "auxiliary aids and services available upon request to individuals with disabilities." The State requires that LWDA's and OSPs include these statements in any publication or broadcast. Each recipient must ensure sub-recipients include these statements on all brochures, publications, websites, and broadcasts. The State ensures each recipient is in compliance with this requirement during compliance reviews by using the State WIOA Section "Equal Opportunity and Nondiscrimination Monitoring Guide." *(Element #2, Attachment #2)*

Where a telephone number is included on recruitment brochures and other materials, the means by which the State ensures that the materials indicate a TDD/TTY number or provide for an equally effective means of communication with individuals with hearing impairments. (29 CFR 38.38(a))

During desk and on-site compliance reviews, the State checks each of the LWDA/OSP sites for recruitment brochures and other materials ensuring that such materials provide an equally effective means of communication for individuals with hearing and visual impairments.

The State requires that all recipients provide any materials that are intended for public notification to be reviewed by either the State or LWDA EO Officers prior to the release of the material. This ensures compliance with 29 CFR 38.38 is met. The State also requires that LWDA's use the State's 7-1-1 system or another TDD/TTY-compatible telecommunications system that makes communication equally available to individuals with disabilities.

The steps taken to ensure that communications with individuals with disabilities are as effective as communications with others. (29 CFR 38.38)

The State WIOA EO Officer conducts on-site compliance reviews to ensure that communications, offices and programs are physically accessible to disabled individuals. The State ensures that publications and other materials available to the public provide a TDD/TTY number and include the statements "equal opportunity employer/program" and "auxiliary aids and services available upon request to individuals with disabilities." The State requires that all available auxiliary aids must be maintained by each LWDA, and all One-Stop Center staff must be trained to assist individuals with disabilities with using the auxiliary aids.

The means by which program-related information is published or broadcast in the news media (e.g., Youth Summer Employment/Training Programs; job fairs) and the means by which the State ensures that publications/broadcasts state that the program is an equal opportunity employer/program and that auxiliary aids and services are available upon request to individuals with disabilities. (29 CFR 38.38)

The State requires all recipients of WIOA Title I financially assisted programs to advertise in their broadcasts or media publications that they are an equal opportunity employer/program with auxiliary aids and services available upon request for individuals with disabilities.

During desk reviews, the State WIOA EO Officer ensures the LWDA/OSP publications to the public include statements that the program is an equal opportunity employer/program and that auxiliary aids and services are available upon request to individuals with disabilities. During on-site compliance reviews, the State checks each of the LWDA sites for evidence that program-related news media publications (e.g., publication of Requests for Proposal) includes statements that the program is an equal opportunity employer/program and that auxiliary aids and services are available upon request to individuals with disabilities. The State Employment Service staff are alert to employers who may use discriminatory terms when placing a job order. If an employer uses a discriminatory term or attempts to place a discriminatory order, the staff courteously and diplomatically call his/her attention to that fact. If an employer persists the staffs indicate that they are unable to accept the order unless the discriminatory terms or language are withdrawn.

The manner in which and the extent to which information in languages other than English is provided, and the manner in which the State ensures that persons of Limited English-Speaking ability have access to its programs and activities on a basis equal to that of those who are proficient in English. (29 CFR 38.40)

It is the policy of the State to provide services and information in a language other than English for customers with Limited English Proficiency (LEP) in order to effectively inform or enable those customers to participate in departmental programs or activities. When a Local Workforce Development Area (LWDA)/ARIZONA@WORK Job Center Partner determines that a significant proportion of the population eligible to be served needs information in a single language other than English in order to have equal access to programs and activities, the LWDA and/or partner must translate its written program materials into that predominate language and provide effective interpretation services to members of the significant LEP group. The State requires that LWDA/partner provide interpreters for LEP customers who are not part of a significant group in order to provide the customer meaningful access to programs and services.

When an interpreter for the needed language cannot be located, the Director's Office Language Line Services from the Department of Economic Security website, which is provided by the Director's office, is used to serve the customer.

The manner in which and the extent to which orientations for registrants, applicants, eligible applicants/registrants, employees, applicants for employment, and members of the public include a discussion of the rights of such persons under WIOA section 188 and 29 CFR part 38. (29 CFR 38.39)

All LWDA and OSPs include a discussion of equal opportunity and nondiscrimination rights as part of orientations for registrants, applicants, eligible applicants/registrants, and employees. LWDA are required, at the time of orientation, to include a written copy of the notice detailing the equal opportunity law and all other WIOA documentation in the participant's permanent file. The State WIOA EO Officer ensures the participant's permanent paper files or electronic records for these documents are compliant during onsite monitoring. One-Stop applicants/registrants must register using the AJC system and are required to acknowledge the "EO is the Law" notice in order to complete registration and use the AJC system.

The process the State has used and will continue using to develop and communicate policy and conduct training regarding nondiscrimination and equal opportunity. (29 CFR 38.29(f), and 38.31(f))

The Arizona WIOA Unit has used and will continue to use WIOA Policy and Procedure Manual which is posted on the Arizona WIOA Unit website at: <https://des.az.gov/services/employment/workforce-innovation-and-opportunity-act-wioa/wioa-policy-and-procedure-manual>

To ensure that training is accessible to more LWDA/OSP staff at lower costs, the Arizona WIOA Unit incorporates technology-based training solutions, statewide technical assistance conferences, Question & Answer section, as well as the posting of the Workforce Administration Training calendar on the Arizona WIOA Unit's webpage.

Equal Opportunity Statement in Arizona Job Connection System

It is against the law for a recipient of federal financial assistance, including a recipient of funds under Title I of the Workforce Innovation and Opportunity Act (WIOA) of 2014, to discriminate against:

- Any individual in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation, or belief; and
- Any beneficiary of programs financially assisted under Title I of WIOA, on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIOA Title I-financially assisted program or activity.

A "recipient" means an entity that is awarded a WIOA grant from the U.S. Department of Labor and is legally responsible for carrying out a WIOA program under Title I of WIA.

A "recipient" may be:

- The state of Arizona,
 - One or more Local Workforce Development Areas (LWDAs) throughout the State,
- Any sub-recipient or vendor that sub-contracts with the State or an LWIA to administer all or part of a WIOA program.

All recipients and sub-recipients must ensure all individuals have equal opportunity under Title I of WIOA. All recipients or sub-recipients may also receive a complaint and must ensure that the complaint is addressed in accordance with WIOA Section 188 of and 29 CFR Part 38.

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

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

The following provisions apply specifically to Employment Service operations conducted by Employment Service Offices. States shall assure that:

- No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any services or activities authorized under the Wagner-Peyser Act in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation, or belief. All complaints alleging discrimination shall be filed and processed according to the procedures in the applicable U.S. Department of Labor nondiscrimination regulations.
- Discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ).
- Employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable employers to meet their affirmative action obligations.
 - Employment testing programs will comply with all applicable federal regulations.

What to do if you believe you have experienced discrimination:

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

- The recipient's WIOA Equal Opportunity (EO) Officer (or the person whom the recipient has designated for this purpose); or
- The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the State WIOA EO Officer or the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the CRC. If you are not satisfied with the recipient's final action on the complaint, you must file a complaint with CRC within 30 days of the date on the Notice of Final Action but no later than 120 days from the date you filed your complaint.

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

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

The Equal Opportunity Officer for the Arizona Department of Economic Security is:

Kerry Bernard, State WIOA EO Officer
Office of Equal Opportunity
Arizona Department of Economic Security
PO Box 6123 MD51H3
Phoenix, Arizona 85007
Phone: (602) 364-3976
TTY/TTD: 7-1-1 wiastateeoofficer@azdes.gov

Element Three

Review Assurances, Job Training Plans, Contracts and Policies and Procedures (29 CFR 38.25 and 38.54)

PURPOSE:

The State of Arizona (State) ensures that nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) are incorporated in all grants, agreements or other similar applications for federal financial assistance under WIOA. Each application for WIOA funds includes the specified assurance committing the potential sub-recipient to comply fully with the nondiscrimination and equal opportunity provisions of WIOA. The assurance is deemed incorporated, whether or not it is physically incorporated in the resulting contract or other arrangement.

NARRATIVE:

Each grant applicant, and each training provider seeking eligibility, includes in its application for financial assistance under Title I of WIOA the required EO assurance. (29 CFR 38.25(a) (1)(A-E))

The State requires each of the Local Workforce Development Board (LWDB) to include the required equal opportunity assurances in the submissions of their Local Workforce Development Plans with the following language, (*Documentation Section – Attachment 1*):

A system that includes compliance with:

- Section 188 of the WIOA of 2014, 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, 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 WIOA Title I financially assisted program or activity;
- 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. The grant recipient also assures compliance with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant recipient's operation of the WIOA Title I financially assisted program or activity and to all agreements the grant recipient makes to carry out the WIOA Title I financially assisted program or activity.

Each Local Plan is reviewed to ensure that all required assurances are included and the recipient's EO Officer review all contracts and agreements of sub-recipients verifying that assurances are included also.

The required assurances are incorporated into each grant, cooperative agreement, contract, or other arrangement whereby Federal financial assistance under Title I of WIOA is made available. (29 CFR 38.25 (ii))

The State provides funds to all approved grant applicants. Contracts provided for each recipient through the Department of Economic Security's (DES) Office of Procurement must include nondiscrimination assurances required by the Federal regulations, the State (*Documentation Section - Attachment 2*) and DES (*Documentation Section - Attachment 3*) in each contract agreement, assuring each entity complies with this requirement. Intergovernmental Agreements (IGA) between any recipients, sub-recipient or service provider must include a section on nondiscrimination (*Documentation Section - Attachment 4*). The IGA assures that all recipients, participants and applicants, including Native Americans, must comply with the regulations required by grantees accepting federal financial assistance under Title I of WIOA.

Each grant applicant, and each training provider seeking eligibility, is able to provide programmatic and architectural accessibility for individuals with disabilities. (Subpart C of 29 CFR part 32.28)

The Training Provider Assurances form indicates that the training provider will comply with non-discrimination and equal opportunity provisions of all federal and state applicable laws. Every training provider that applies to be listed on the Eligible Training Provider List (ETPL) must sign this training provider assurance form before getting final approval to be added to the ETPL. When providers come up for renewal, they must sign this assurance form.

The EO Officers utilize a monitoring tool to guide them in monitoring the contracts established by the recipients for activities, trainings and services. In the State-level WIOA EO Officer's desk review it asks for the following information:

- Is the EO assurance incorporated into each grant, cooperative agreement, plan, contract, or other similar document with your service providers and contractors, and their sub-recipients? _____ Yes _____ No (if "Yes" provide a copy for review, if "NO" this is a finding)

The compliance results from the reviews completed by the EO Officers should show that the recipients, sub-recipients, and service providers are meeting the programmatic and architectural accessibility guidelines. These annual reviews also showed they met the required assurances from their sub-recipients of accessibility for individuals with disabilities. The State requires that corrective action plans are developed and follow-up monitoring conducted to ensure that any noncompliance findings are corrected within the identified timeframes.

Job training plans, contracts, assurances, and other similar agreements entered into by recipients are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity. (29 CFR 38.20)

The State has taken steps to ensure that the EO Officers check job training plans, contracts, assurances, and other similar agreements entered into by the grantee and its recipients to ensure compliance with the requirement that these documents contain the required language regarding nondiscrimination and equal opportunity.

State and local level policy issuances, or issuances from other recipients, are not discriminatory either in intent or effect. (29 CFR 38.24)

The State requires equal opportunity policies for all recipients and sub-recipients' programs receiving financial assistance through WIOA Title I. The policies developed are checked carefully by the State WIOA EO Officer to ensure they are not discriminatory either in intent or effect.

Policies on WIOA Title I nondiscrimination and/or equal opportunity issues are developed and implemented in a timely manner.

The State has made a concerted effort to ensure all needed nondiscrimination and/or equal opportunity policies are published as quickly as possible. The State reviews and rewrites all policies to ensure that our directives are in compliance with the federal regulations. EO Officers throughout the State have made a commitment to ensure that all recipients are in full compliance with all parts of WIOA Section 188 and the requirements of 29 CFR Part 38.

The State issued Discrimination Complaint Policy in September 2016 which included guidance for recipients on this issue. The Workforce Administration (WA) Policy and Support Unit has issued a comprehensive policy manual for the WIOA programs and revising it as needed.

The State demonstrates its commitment to equal opportunity and nondiscrimination by the approval of a full-time position to act as the State-level WIOA EO Officer and staff to fulfil the requirements of WIOA.

Department of Economic Security (DES) has issued several policies on equal opportunity and nondiscrimination matters. DES has a Sexual Harassment Policy (*Documentation Section - Attachment 5*) and a general policy to identify the responsibilities and authority of the Office of Equal Opportunity (OEO) within DES. The Department's Equal Opportunity policy (DES 1-01-16) states "no employee or job applicant shall be discriminated against on the basis of race, color, religion, national origin, sex, age, handicap, or political affiliation and/or beliefs." DES's Discrimination Complaint Process demonstrates that it is committed and commits it's employees, contractor, sub-contractors, grantees, sub-grantees, vendors, and suppliers, to the concept of equality and nondiscrimination. (*Documentation Section – Attachments 6*)



ARIZONA DEPARTMENT OF ECONOMIC SECURITY

CHAPTER 1 Department of Economic Security	POLICY NUMBER DES 1-01-14	Page 1	
SUBJECT 14 Office of Equal Opportunity: Client Complaints	ARTICLE 01 Director	DATE 8/29/2016	REVISION 2

DES 1-01-14
Office of Equal Opportunity: Client Complaints

I. POLICY STATEMENT

The Department of Economic Security (DES) strives to ensure that persons are protected by various laws, regulations, rules, and policies against unlawful discrimination on the basis of race, color, religion, disability, age, sex, genetics, sex stereotypes, gender identity, national origin, and political beliefs when applying for or receiving services from DES. The Office of Equal Opportunity (OEO) is established to facilitate the filing, investigation, and resolution of complaints of discrimination by DES clients.

II. APPLICABILITY

This policy applies to all DES clients and employees.

III. PROCEDURES

This policy is supported by a single departmental procedure, which identifies how action related to this policy will be conducted, including responsibilities, time frames, and required actions. To view this procedure, access the link below:

DES 1-01-14-01 Office of Equal Opportunity Procedures: Client Complaint Process

IV. AUTHORITY

ACA Section 1557 Nondiscrimination in Health Programs and Activities

P.L. 110-233 Genetic Information Non-discrimination Act of 2008

20 U.S.C. § 1681 – 1688 Discrimination Based on Sex or Blindness

29 U.S.C. § 701 et seq. Rehabilitation Act of 1973, as amended

42 U.S.C. § 1981 Equal Rights Under the Law

42 U.S.C. § 1983 Civil Action for Deprivation of Rights

42 U.S.C. § 2000D et seq. Federally Assisted Programs

42 U.S.C. § 12101 et seq. Equal Opportunity for Individuals with Disabilities

42 U.S.C. § 6101-6107 Age Discrimination Act of 1975

28 CFR 35 Nondiscrimination on the Basis of Disability in State and Local Government Services

29 CFR 1635 et seq. Genetic Information Nondiscrimination Act of 2008

V. DEFINITIONS

Client: Any person who inquires about, seeks assistance with, applies for, receives, or participates in a DES program, service, or activity.

VI. STANDARDS

A. General Statements

1. OEO shall be responsible for coordinating and responding to charges of discrimination filed against DES. Further, OEO shall be responsible for providing leadership and assistance in the development, implementation, and evaluation of the DES equal opportunity plan and cooperating with other entities in the performance of activities relating to discrimination. OEO shall attest that:
 - a. Equal opportunity shall be provided by DES and DES employees for clients regardless of race, color, religion, disability, age, sex, genetics, sex stereotypes, gender identity, national origin, political beliefs, and other protected classes.
 - b. No client shall be intimidated, harassed, threatened, retaliated against, or coerced by DES or DES employees because he or she has filed a complaint or otherwise participated in any manner in the discrimination complaint process.
 - c. No client shall be discriminated against by DES or DES employees during application or delivery of services or benefits.
2. DES shall adopt a process to address client complaints concerning discrimination or harassment in compliance with state and federal laws.
3. DES shall provide clients 60 calendar days from the date of the alleged discrimination act to file a charge with OEO.
4. DES shall require that clients clearly outline the allegations to be addressed in the charge, including whether the basis of the complaint is:
 - a. Unlawful discrimination based on race, color, national origin, religion, sex/gender (including pregnancy and sexual harassment), age, genetic information, gender identity, sex stereotypes, political beliefs, or disability.
 - b. Retaliation for filing a complaint.

- c. Retaliation or intimidation for exercising any right under state or federal law.
5. DES shall ensure that in the course of the discrimination complaint process, all information received and the results are confidential and shall not be released to any person unless authorized by this policy or provision of law.
6. DES shall ensure that clients are informed that the use of the complaint process does not preclude the complainant's right to pursue any other remedy allowed by law with any appropriate federal or state agency.
7. DES shall ensure that the use of the discrimination complaint procedure does not stay or suspend any timeliness requirements of other processes and remedies.

B. Responsibilities

1. OEO shall:
 - a. Conduct appropriate technical studies to achieve the purpose of this policy to promote and ensure equal opportunity within DES.
 - b. Receive, investigate, and resolve, if possible, discrimination complaints filed with OEO.
 - c. Investigate, respond for DES, and coordinate the resolution of discrimination complaints filed with other state and federal agencies.
 - d. Access, examine, and copy relevant client files, records, reports, and other property in the possession of DES, and interview any person on relevant matters in conducting an investigation or a study.
 - e. Provide information and advice on OEO procedures to DES clients.
 - f. Conduct itself at all times in a manner that:
 - i. Ensures confidentiality when possible or practicable.
 - ii. Demonstrates respect for all parties.
 - iii. Represents all parties fairly and impartially.
 - iv. Seeks a fair resolution during settlement negotiations on complaints filed.
 - v. Avoids conflicts of interest.
 - vi. Promotes confidence in the integrity and impartiality of OEO professional staff and avoids the appearance of impropriety.

2. The Director, Deputy Director, and Division Management shall:
 - a. Submit a written response to OEO in response to charges of discrimination.
 - b. Maintain confidentiality of the complainant and the OEO employee(s) assigned to investigate the complaint when possible or practicable.
 - c. Establish procedures for compliance with this policy and with other applicable provisions of law as necessary.
 - d. Ensure that Equal Opportunity posters are prominently displayed in both English and other languages, as appropriate, in all DES offices.
 - e. The Director or their designee shall monitor all recommendations for corrective action submitted by the Deputy Director, Assistant Director, Deputy Assistant Director, or Program Administrator.

3. DES Managers, supervisors, and employees shall:
 - a. Refer clients who want to file a complaint to the OEO. The OEO shall provide clients with the necessary forms.
 - b. Utilize the [Client Discrimination Process Screening Tool \(J-098-A\)](#) to ensure that the complaint conforms to the appropriate definitions under the Civil Rights Act of 1964, or applicable civil rights laws.
 - c. Forward complaints of discrimination using the *Client Discrimination Complaint Process* (J-098) form as outlined in DES 1-01-14-01.
 - d. Complete the [Client Discrimination Complaint \(J-020-FF\)](#) form when necessary and forward it to the OEO as outlined in DES 1-01-14-01.
 - e. Keep discussions with OEO confidential when possible or practicable.
 - f. Refrain from pressuring clients to reveal the substance of their discussions with OEO employees.

**ARIZONA DEPARTMENT OF ECONOMIC SECURITY
SPECIAL TERMS AND CONDITIONS**

- 1.0 **Definition of Terms.** In addition to the terms and conditions defined in section 1 of the Uniform Terms and Conditions, the following shall apply:
 - 1.1 **“Award Date”** means the date the Contract is executed by the Department. This may or may not be the same date as the “Effective Date” which is the date specified on the Offer and Award or Signature Page.
 - 1.2 **“Department”** means the Arizona Department of Economic Security (ADES), unless otherwise indicated.
 - 1.3 **“Effective Date”** means the date the Contractor is to start delivering services. The Effective Date is specified on the Offer and Award or Signature Page.
 - 1.4 **“Equipment”** means all vehicles, furniture, machinery, electronic data processing (EDP) equipment, software and all other equipment costing \$5,000.00 or more, including all normal and necessary expenses incurred to make the equipment ready for its intended use (e.g., taxes, freight, installation, assembly and testing charges, etc.), and with a useful life of greater than one (1) year. Equipment as used herein does not include real property (e.g., land, building, structures, or facilities’ improvements).
 - 1.5 **“May”** indicates something that is not mandatory but permissible.
 - 1.6 **“Shall, Must”** indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
 - 1.7 **“Should”** indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the State may, at its sole option, ask the Contractor to provide the information.
 - 1.8 **“Vulnerable adult”** means an individual who is eighteen years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment.
- 2.0 **Advertising, Publishing and Promotion of Contract.** In addition to the terms and conditions in Section 3.6 of the Uniform Terms and Conditions, the following shall apply:
 - 2.1 The Contractor shall provide to the Department for review and approval all reports or publications (written, visual or sound) which are funded or partially funded under this contract, a minimum of fifteen (15) calendar days prior to public release. All reports and publications whether written, visual or verbal shall contain the following statement:
 - 2.2 “This program was funded through a contract with the Arizona Department of Economic Security. Points of view are those of the author and do not necessarily represent the official position or policies of the Department.”
- 3.0 **Audit.** In addition to the terms and conditions in section 3.3 of the Uniform Terms and Conditions, the following shall apply:
 - 3.1 In compliance with the Federal Single Audit Act (31 U.S.C. § 7501-7507 as may be amended), Contractors designated as sub-recipients shall comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as prescribed in 2 C.F.R. § 200.
 - 3.2 Audits of non-profit corporations receiving Federal or State monies are required pursuant to Federal or State law and shall be conducted as provided in 31 U.S.C. § 7501-7507, and A.R.S. § 35-181.03, as may be amended, and any other applicable statutes, rules, regulations, and standards.
- 4.0 **Availability of Funds.**
 - 4.1 The Department may reduce payments or terminate this contract without further recourse, obligation or penalty in the event that insufficient funds are appropriated or allocated. The Director of the Department shall have the sole and unfettered discretion in determining the availability of funds. The Department and the Contractor may mutually agree to reduce reimbursement to the Contractor when the payment type is Fixed Price with Price Adjustment by executing a contract amendment.

- 5.0 Background Checks for Employment through the Central Registry.** If providing direct services to children or vulnerable adults, the following shall apply:
- 5.1 The provisions of A.R.S. § 8-804 (as may be amended) are hereby incorporated in their entirety as provisions of this Contract.
- 5.2 The Department will conduct Central Registry Background Checks and will use the information contained in the Central Registry as a factor to determine qualifications for positions that provide direct service to children or vulnerable adults for:
1. Any person who applies for a contract with this State and that person's employees;
 2. All employees of a contractor;
 3. A subcontractor of a contractor and the subcontractor's employees; and
 4. Prospective employees of the contractor or subcontractor at the request of the prospective employer.
- 5.3 Volunteers who provide direct services to children or vulnerable adults shall have a Central Registry Background Check which is to be used as a factor to determine qualifications for volunteer positions.
- 5.4
1. A person who is disqualified because of a Central Registry Background Check may apply to the Board of Fingerprinting for a Central Registry exception pursuant to A.R.S. § 41-619.57. A person who is granted a Central Registry exception pursuant to A.R.S. § 41-619.57 is not entitled to a contract, employment, licensure, certification or other benefit because the person has been granted a Central Registry exception.
 2. Before being employed or volunteering in a position that provides direct services to children or vulnerable adults, persons shall certify on forms that are provided by the Department whether an allegation of abuse or neglect was made against them and was substantiated. The completed forms are to be maintained as confidential.
- 5.5 A person awaiting receipt of the Central Registry Background Check may provide direct services to ADES clients after completion and submittal of the Direct Service Position certification form if the certification states:
1. The person is not currently the subject of an investigation of child abuse or neglect in Arizona or another state or jurisdiction; and
 2. The person has not been the subject of an investigation of child abuse or neglect in Arizona, or another state or jurisdiction, which resulted in a substantiated finding.
- 5.6 If the Central Registry Background Check specifies any disqualifying act and the person does not have a Central Registry exception, the person shall be prohibited from providing direct services to ADES clients.
- 5.7 The Contractor shall maintain the Central Registry Background Check results and any related forms or documents in a confidential file for five (5) years after termination of the Contract.
- 5.8 The Contractor shall require each employee to complete and sign the Direct Service Position form, and retain in a confidential file for five (5) years after termination of the Contract. The Direct Service Position form can be found at: <https://des.az.gov/documents-center>
- In the "Search" field type "Direct Service" and click on "Apply". This will produce two results:
 - Document Number DDD-1727A (English)
 - Document Number DDD-1727A-S (Spanish)
- 6.0 Certification of Cost or Pricing Data.**
- 6.1 By submittal of the offer, the Contractor is certifying that, to the best of the Contractor's knowledge and belief, any cost or pricing data submitted is accurate, complete and current as of the date submitted or other mutually agreed upon date. Furthermore, the price to the State shall be adjusted to exclude any significant amounts by which the State finds the price was increased because the Contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date of certification. Such adjustment by the State may include overhead, profit or fees. The certifying of cost or pricing data does not apply when contract rates are set by law or regulation.

7.0 Certification Regarding Lobbying.

7.1 The Contractor agrees by submittal of the Certification Regarding Lobbying form, compliance with 49 CFR part 20. (RFP Part 2 of 2)

8.0 Code of Conduct.

- 8.1 The Contractor shall avoid any action that might create or result in the appearance of having:
1. Inappropriate use or divulging of information gathered or discovered pursuant to the performance of its duties under the contract;
 2. Acted on behalf of the State without appropriate authorization;
 3. Provided favorable or unfavorable treatment to anyone;
 4. Made a decision on behalf of the State that exceeded its authority, could result in partiality, or have a political consequence for the State;
 5. Misrepresent or otherwise impeded the efficiency, authority, actions, policies, or adversely affect the confidence of the public or integrity of the State; or,
 6. Loss of impartiality when advising the State

9.0 Competitive Bidding.

9.1 If the Contractor is authorized to purchase the supplies and equipment itemized in the contract for utilization in the delivery of contract services. Contractor shall procure all such supplies and equipment at the lowest practicable cost and shall purchase all non-expendable items having a useful life of more than one year and an acquisition cost of \$1,000 or more, through generally accepted and reasonable competitive bidding processes. Any procurement in violation of this provision shall be considered a financial audit exception.

10.0 Compliance with Applicable Laws. In addition to the terms and conditions in section 7.6 of the Uniform Terms and Conditions, the following shall apply:

- 10.1. In accordance with A.R.S. §36-557 as may be amended (Purchase of community developmental disabilities services; application; contracts; limitation), as applicable, all recipients of contract services shall have all of the same specified rights as they would have if enrolled in a service program operated directly by the State.
- 10.2 The Contractor shall comply with the requirements related to reporting to a peace officer or child protective services incidents of crimes against children as specified in A.R.S. §13-3620 as may be amended.
- 10.3 The Contractor shall comply with P.L. 101-121, Section 319 (31 U.S.C. section 1352) as may be amended and 29 C.F.R. Part 93 as may be amended which prohibit the use of federal funds for lobbying and which state, in part: Except with the express authorization of Congress, the Contractor, its employees or agents, shall not utilize any federal funds under the terms of this contract to solicit or influence, or to attempt to solicit or influence, directly or indirectly, any member of Congress regarding pending or prospective legislation. Indian tribes, tribal organizations and any other Indian organizations are exempt from these lobbying restrictions with respect to expenditures that are specifically permitted by other federal law.
- 10.4 The Contractor shall comply with all applicable state and federal statutes and regulations. This shall include A.R.S. § 23-722.01 as may be amended relating to new hire reporting, A.R.S. § 23-722.02 as may be amended relating to wage assignment orders to provide child support, and A.R.S. § 25-535 as may be amended relating to administrative or court-ordered health insurance coverage for children.

11.0 Confidentiality.

- 11.1 The Contractor shall observe and abide by all applicable State and federal statutes, rules and regulations regarding the use or disclosure of information including, but not limited to, information concerning applicants for and recipients of contract services. To the extent permitted by law, the Contractor shall release information to the Department and to the Attorney General's Office as required by the terms of this contract, by law or upon their request.
- 11.2 The Contractor shall comply with the requirements of Arizona Address Confidentiality Program, A.R.S. §41-161 et. seq. The Arizona Department of Economic Security will advise the Contractor as to applicable policies and procedures the Arizona Department of Economic Security has adopted for such compliance.

12.0 Contract Term and Option to Extend.

- 12.1 The term of the resultant contract shall be effective the date specified on the Offer and Award or Signature page and shall remain in effect for one (1) year or otherwise specified date, unless terminated, cancelled, or extended as otherwise provided herein.
- 12.2 The State has no obligation to extend or renew this contract. However, the State shall have the right, at its sole option, to renew the contract in accordance with any extensions the State may receive for supplemental periods up to a maximum contract term of five years. In the event that the State exercises such right, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period with the exception of price. The Contractor shall agree that the price stated in the original contract shall apply unless otherwise allowed.
- 12.3 Any extension or renewal must be made prior to the end of the contract period specified in this contract.
- 12.4 The Contractor shall not provide services prior to contract term commencing or after the end date of the contract. There shall be no billable activity outside of the contract effective dates.

13.0 Cooperation.

- 13.1 The Department may undertake or award other contracts for additional work related to the work performed by the Contractor, and the Contractor shall fully cooperate with such other Contractors and State employees, and carefully fit its own work to such other Contractors' work. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by State employees. The Contractor shall cooperate as the State deems necessary, with the transfer of work, services, case records and files performed or prepared by the Contractor to other Contractor(s).

14.0 Cooperation with the Department's Investigation.

- 14.1 All contractors, providers, vendors and volunteers are to cooperate fully and truthfully with any ADES investigation, including but not limited to an Investigation by Division or Internal Affairs. Failure to adhere to this policy may result in ADES taking whatever actions it deems appropriate, from removal of the subject and or witness from working with ADES clients up to terminating the contract with ADES.

15.0 Data Sharing Agreement.

- 15.1 When determined by the Department that sharing of confidential data will occur with the Contractor, the Contractor shall complete the ADES Data Sharing Request Agreement and submit the completed Agreement to the DES Program Designated Staff prior to any work commencing or data shared. A separate Data Sharing Request Agreement shall be required between the Contractor and each DES Program sharing confidential data. The Data Sharing Request Agreement is located at:
<http://des.az.gov/documents-center>
 - o In the "Search" field type "Data Sharing" and click "Apply". This will produce two results:
 - o Document Number J-119-Single (For requests involving a single division or program)
 - o Document Number J-119-Multi (For requests involving multiple divisions or programs)

16.0 Eligible Agencies (Statewide)

- 16.1 This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

17.0 Equipment.

- 17.1 If the Contractor is authorized to purchase Equipment, it shall be itemized in the contract for utilization in the delivery of contract services. If Equipment is purchased as authorized by this contract, the Contractor shall maintain complete and up-to-date inventory records for all Equipment purchased hereunder. Equipment specifically designated within this contract, to be purchased in whole or part with the Department funds, shall be reported in accordance with Department inventory policies and procedures. The Contractor shall report

Equipment purchased with contract funds to the Department within thirty (30) days of purchase, perform an annual inventory of all Equipment purchased with Department funds and submit the Equipment inventory form to the Department person designated to receive notices.

- 17.2 The Department shall retain an equitable interest equal to the purchase price paid, or a fair estimate or appraisal of current market value, whichever is greater, in all Equipment purchased under this contract. The Department shall be included as a co-insured on any insurance policy which covers Equipment purchased under this contract.
- 17.3 The Contractor shall not dispose of any Equipment purchased under this contract without the prior written consent of the Department during and after the contract term. Such consent, if given, may include direction as to the means of disposition and the utilization of proceeds, including any necessary adjustments to the contract.
- 17.4 Upon termination of this contract, any Equipment purchased under this contract shall be disposed of as directed by the Department and, if sold, the Department shall be compensated in the amount of its equitable interest.
- 17.5 Under a fixed price contract, Section 16.1 through 16.4 do not apply unless specifically required by federal or state law.

18.0 Evaluation.

- 18.1 The Department may evaluate, and the Contractor shall cooperate in the evaluation of, contract services. Evaluation may assess the quality and impact of contract services, either in isolation or in comparison with other similar services, and assess the Contractor's progress and/or success in achieving the goals, objectives and deliverables set forth in this contract.
- 18.2 As requested by the Department, the Contractor shall participate in third party evaluations relative to contract impact in support of Department goals.

19.0 E-Verify.

- 19.1 In addition to the terms and conditions in Section 3.10 of the Uniform Terms and Conditions, the following shall apply:
- 19.2 The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, A, as may be amended. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.")
- 19.3 A breach of a warrant regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract.
- 19.4 Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract.
- 19.5 The Department retains the legal right to inspect the papers of any employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty above.

20.0 Fair Hearings and Service Recipients' Grievances.

- 20.1 The Contractor shall advise all applicants for and recipients of contract services of their right, at any time and for any reason, to present to the Contractor and to the Department any grievances arising from the delivery of contract services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or quality of services. The Department may assert its jurisdiction to hear the grievance or refer the matter to the appropriate authority.

20.2 The Contractor, whenever authorized by law, shall maintain a formal system acceptable to and approved by the Department for reviewing and adjudicating grievances by service recipients or subcontractors arising from this contract.

21.0 Federal Immigration and Nationality Act.

21.1 In addition to the terms and conditions in Section 3.9 of the Uniform Terms and Conditions, the following shall apply:

21.2 By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

21.3 The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract.

22.0 Fees and Program Income.

22.1 Unless specifically authorized in the contract, the Contractor shall impose no fees or charges of any kind upon recipients for contract services.

23.0 Fingerprinting.

23.1 Contractor shall comply with, and shall ensure that all of Contractor's employees, independent contractors, subcontractors, volunteers and other agents comply with, all applicable (current and future) legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks that relate to contract performance.

23.2 Applicable legal requirements relating to fingerprinting, certification, and criminal background checks may include, but are not limited, to the following: A.R.S. §§ 36-594.01, 36-3008, 41-1964, and 46-141. All applicable legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks are hereby incorporated in their entirety as provisions of this contract. The Contractor is responsible for knowing which legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks relate to contract performance.

23.3 To the extent A.R.S. § 46-141 is applicable to contract performance or the services provided under this contract, the following provisions apply:

23.3.1 Personnel who are employed by the Contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall have a valid fingerprint clearance card or shall apply for a fingerprint clearance card within seven working days of employment.

23.3.2 Except as provided in A.R.S. § 46-141, this contract may be cancelled or terminated immediately if a person employed by the Contractor and who has contact with juveniles certifies pursuant to the provisions of A.R.S. § 46-141 (as may be amended) that the person is awaiting trial or has been convicted of any of the offenses listed therein in this State, or of acts committed in another state that would be offenses in this State, or if the person does not possess or is denied issuance of a valid fingerprint clearance card.

23.4 Federally recognized Indian tribes may submit and the Department of Economic Security shall accept certifications that state that no personnel who are employed or who will be employed during the contract term have been convicted of, have admitted committing or are awaiting trial on any offense as described in A.R.S. § 46.321 (as may be amended).

24.0 Inclusive Contractor.

24.1 Contractor is encouraged to make every effort to utilize subcontractors that are small, women-owned or minority owned business enterprises. This could include subcontractors for a percentage of the administrative or direct service being proposed. Contractor who is committing a portion of its work to such subcontractors shall do so by identifying the type of service and work to be performed. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.

**INSERT THE APPROPRIATE INDEMNIFICATION AND INSURANCE MODULE FROM ADOA RISK MANAGEMENT;
BE CERTAIN THAT IF SERVICES WILL BE PROVIDED TO CHILDREN AND VULNERABLE ADULTS SEXUAL ABUSE AND MOLESTATION COVERAGE IS INCLUDED. USE THE PROFESSIONAL SERVICES MODULE, AND REMOVE THE PROFESSIONAL LIABILITY SECTION IF NOT APPLICABLE.**

27.0 IT 508 Compliance.

27.1 Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this contract shall comply with A.R.S. 41-3531 and 3532 as may be amended and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

28.0 Levels of Service.

28.1 If the Contractor determines service recipient eligibility, the Contractor shall maintain and regulate the units or services set forth in this contract to ensure continuity and availability of services to eligible persons during the term of this contract and during any transition to a subsequent Contractor.

28.2 The Department makes no guarantee to purchase specific quantities of goods or services, or to refer eligible persons as may be identified or specified herein. Further, it is understood and agreed that this contract is for the sole convenience of the Department and that the Department reserves the right to obtain like goods or services from other sources when such need is determined necessary by the Department.

28.3 Any administration within the Department may obtain services under this contract.

28.4 Contract services may be moved or expanded to other site locations within the geographic area awarded only by a written contract amendment.

28.5 The Department makes no guarantee to purchase all of the service units authorized or to provide any number of referrals. If quantities of units are specified, they are estimates only and the Department may decrease and/or increase them by providing written notice to the Contractor.

28.6 When the method of compensation for the service is Fixed Price with Price Adjustment, the contract may be amended, by mutual agreement, to purchase additional services by increasing the contract service budget and/or budget summary.

29.0 Limited English Proficiency.

29.1 The Contractor shall ensure that all services provided are culturally relevant and linguistically appropriate to the population to be served following the ADES Policy, Limited English Proficiency, DES 1-01-34. To ensure compliance, the policy may be obtained at the following location: <https://des.az.gov/digital-library/limited-english-proficiency>.

30.0 Monitoring.

30.1 The Department may monitor the Contractor and/or subcontractor and they shall cooperate in the monitoring of services delivered, facilities and records maintained and fiscal practices.

31.0 Non-Discrimination. In addition to the terms and conditions in section 3.2 of the Uniform Terms and Conditions, the following shall apply:

31.1 Unless exempt under Federal law the Contractor shall comply with Title VII of the Civil Rights Act of 1964 as amended. Contractor shall comply with the Age Discrimination in Employment Act. The Contractor shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The Contractor shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended.

31.2. If Contractor is an Indian Tribal Government, Contractor shall comply with the Indian Civil Rights Act of 1968. It shall be permissible for an Indian Tribal Contractor to engage in Indian preference in hiring.

31.3 The Contractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of or participation in contract services on the basis of race, color, or national origin. The Contractor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in delivering contract services; and with Title II of the Americans with Disabilities Act, and the Arizona Disability Act, which prohibit discrimination on the basis of physical or mental disabilities in the provision of contract programs, services and activities.

31.4 The following shall be included in all publications, forms, flyers, etc. that are distributed to recipients of contract services:

“Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI and VII) and the Americans with Disabilities Act of 1990 (ADA) Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, insert Contractor name here) prohibits discrimination in admissions, programs, services, activities or employment based on race, color, religion, sex, national origin, age, and disability. The (insert Contractor name here) must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. Auxiliary aids and services are available upon request to individuals with disabilities. For example, this means that if necessary, the (insert Contractor name here) must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the (insert Contractor name here) will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy please contact: (insert Contractor contact person and phone number here)” *Para obtener este documento en otro formato u obtener información adicional sobre esta política, (insert Contractor contact person and phone number here)”*

32.0 Notices. In addition to the terms and conditions in section 3.5 of the Uniform Terms and Conditions, the following shall apply:

32.1 All notices shall reference the contract number.

32.2 The Contractor shall give written notice to the Department of changes to the following, and a written amendment to the contract shall not be necessary:

1. Change of telephone number;
2. Changes in the name and/or address of the person to whom notices are to be sent;
3. Changes in contract-related personnel positions of the Contractor which do not affect staffing ratios, staff qualifications or specific individuals required under this contract; or
4. In a fixed price with price adjustment contract, whenever there is less than a 10% increase in any budget category; any such increase must be offset by an equal value decrease in another budget category or categories.

33.0 Order of Precedence.

33.1 In addition to the terms and conditions in section 2.3 Contract Order of Precedence of the Uniform Terms and Conditions, the following shall apply:

1. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

1. Division/Administration Special Terms and Conditions;
2. ADES Special Terms and Conditions;
3. Uniform Terms and Conditions;
4. Scope of Work or Specification;

- 5. Attachments;
- 6. Exhibits;
- 7. Documents referenced or included in the Solicitation.

34.0 Pandemic Contractual Performance.

34.1 The State shall require a written plan that illustrates how the contractor shall perform up to contractual standards in the event of a pandemic. The state may require a copy of the plan at any time prior or post award of a contract. At a minimum, the pandemic performance plan shall include:

- 1. Key succession and performance planning if there is a sudden significant decrease in contractor’s workforce.
- 2. Alternative methods to ensure there are services or products in the supply chain.
- 3. An up to date list of company contacts and organizational chart.

34.2 In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this contract impossible or impracticable, the State shall have the following rights:

- 1. After the official declaration of a pandemic, the State may temporarily void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms.
- 2. The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director of the Arizona Department of Administration per A.R.S. § 41-2537 as may be amended of the Arizona Procurement Code.
- 3. Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, the State, at its sole discretion may reinstate the temporarily voided contract(s).

35.0 Participation in Boycott of Israel.

Contractor warrants it is not engaged in a boycott of Israel as defined by A.R.S. § 35-393.01.

36.0 Payments. In addition to the terms and conditions in section 4.1 of the Uniform Terms and Conditions, the following shall apply:

36.1 Payments shall be made according to the type of payment defined as follows:

- 1. Rate (or) Fixed Price- The Contractor is paid a specified amount for each unit of service or deliverable as designated in the contract, not to exceed the maximum number of authorized units if indicated by the Department for each contract service/deliverable. The Department may authorize units throughout the term of the contract by amending the contract or through the process of issuing release orders. A Release Order is a separate document and the amount of the Release Order may be increased or decreased throughout the term of the contract without amending the contract. A client specific referral is considered a form of release order as well as a Purchase Authorization or other similar named document.

36.2 The Contractor shall report to the Department in the manner prescribed by the "Reporting Requirements" section of these terms and conditions. Upon receipt of applicable, accurate and complete reports, the Department will authorize payment or reimbursement in accordance with the type of payment indicated by this contract.

36.3 If the Contractor is in any manner in default in the performance of any obligation under this contract, or if audit exceptions are identified, the Department may, at its option and in addition to other available remedies, either offset the amount or withhold payment up to the amount in dispute or default.

36.4 Under no circumstances will the Department make payment to the Contractor that exceeds the units authorized.

36.5 The Contractor may offer a price reduction adjustment at any time during the term of the contract. Any price reduction shall be executed by a contract amendment.

37.0 Payment Recoupment.

- 37.1 The Contractor shall reimburse the Department upon demand or the Department may deduct from future payments the following:
 1. Any amounts received by the Contractor from the Department for contract services which have been inaccurately reported or are found to be unsubstantiated;
 2. Any amounts paid by the Contractor to a subcontractor not authorized in writing by the Department;
 3. Any amount or benefit paid directly or indirectly to an individual or organization not in accordance with the "Substantial Interest" section of these terms and conditions;
 4. Any amounts paid by the Department for services which duplicate services covered or reimbursed by other specific grants, contracts, or payments;
 5. Any amounts expended for items or purposes determined unallowable by the Department when this contract provides for the reimbursement of costs, see the "Unallowable Costs" section of these terms and conditions;
 6. Any amounts paid by the Department for which the Contractor's books, records, and other documents are not sufficient to clearly substantiate that those amounts were used by the Contractor to perform contract services;
 7. Any amounts received by the Contractor from the Department which are identified as a financial audit exception;
 8. Any amounts paid or reimbursed in excess of the contract or service reimbursement ceiling;
 9. Any amounts paid to the Contractor which are subsequently determined to be defective pursuant to the "Certification of Cost or Pricing Data" section of these terms and conditions.
 10. Any payments made for services rendered before the contract begin date or after the contract termination date.

38.0 Personnel.

38.1 The Contractor's personnel shall satisfy all qualifications, carry out all duties, and work the hours as set forth in this contract.

39.0 Predecessor and Successor Contracts.

39.1 The execution or termination of this contract shall not be considered a waiver by the Department of any rights it may have for damages suffered through a breach of this or a prior contract with the Contractor.

40.0 Professional Standards.

40.1 The Contractor shall deliver contract services in a humane and respectful manner and in accordance with any and all applicable professional accreditation standards. Levels of staff qualifications, professionalism, numbers of staff and individuals identified by name must be maintained as presented in the contract.

41.0 Rate Increase.

41.1 The Contractor may submit a request for a rate increase a minimum of 45 days prior to the contract extension date. The request shall be in writing and include supportive justification for the proposed increase. The rate increase shall only be considered at time of contract extension. The State will review the request and shall determine if the increase shall be granted or if an alternative option is in the best interests of the State. The rate increase adjustment, if approved, will be effective and executed via a contract amendment.

41.2 Any approved rate increase shall be applied to the specific rate(s) in effect prior to the contract extension period.

41.3 The request shall include the contract number and service description.

41.3 The Contractor shall submit the request for a rate increase to:

Procurement Manager
ADES Office of Procurement
1789 West Jefferson, Mail Drop 1222
Phoenix, Arizona, 85007

42.0 Records. In addition to the terms and conditions in section 3.1 of the Uniform Terms and Conditions, the following shall apply:

42.1 Contract service records will be maintained in accordance with this contract. Records shall, as applicable, meet the following standards:

- 1. Adequately identify the service provided and each service recipient's application for contract and subcontract activities;

- 2. Include personnel records which contain applications for employment, job titles and descriptions, hire and termination dates, a copy of the fingerprint clearance card, wage rates, and effective dates of personnel actions affecting any of these items;
- 3. Include time and attendance records for individual employees to support all salaries and wages paid;
- 4. For Fixed Price with Price Adjustment contracts, include:
 - 1. Records of the source of all receipts and the deposit of all funds received by the Contractor;
 - 2. Original copies of invoices, statements, sales tickets, billings for services, deposit slips, etc., and a cash disbursement journal and cancelled checks to reflect all disbursements applicable to the contract;
 - 3. A complete general ledger with accounts for the collection of all costs and/or fees applicable to the contract; and,
 - 4. Copies of lease/rental agreements, mortgages and/or any other agreements which in any way may affect contract expenditures.

42.2 Any such records not maintained shall mandate an audit exception in the amount of the inadequately documented expenditures.

42.3 Contractor shall preserve and make available all records for a period of five (5) years from the date of final payment under this contract except if subject to Health Insurance Portability & Accountability Act which is six (6) years from the date of final payment:

- 1. If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination.
- 2. Records which related to disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by the state, shall be retained by the Contractor until such disputes, litigations, claims or exceptions have been disposed of.

43.0 Relationship of Parties.

43.1 In addition to the terms and conditions in Section 2.4 of the Uniform Terms and Conditions, the following shall apply:

- 1. In the event that the Contractor or its personnel is sued or prosecuted for conduct arising from this contract, the Contractor or their personnel will not be represented by the Department of the Attorney General.
- 2. Taxes or Social Security payments will not be withheld from a State payment issued hereunder and the Contractor shall make arrangements to directly pay such expenses, if any.

44.0 Reporting Requirements.

44.1 Unless otherwise provided in this contract, reporting shall adhere to the following schedule: with the exception of the last month of the contract term, the Contractor shall submit programmatic and financial reports to the Department in the form set forth in the contract no later than the 15th day following the end of each month during the contract term. Failure to submit accurate and complete reports by the 15th day following the end of each month may result, at the option of the Department, in retention of payment. Failure to provide such report within 45 days following the end of a month may result, at the option of the Department, in a forfeiture of such payment.

44.2 Following the end of each contract term, the Contractor shall submit programmatic and financial reports to the Department in the form set forth in the contract no later than the 45th day following the end of the each contract term. The final fiscal report for the contract term shall include all adjustment to prior financial reports submitted for the contract term.

44.3 No later than the 45th day following the termination of this contract, Contractor shall submit to the Department a final program and fiscal report. Failure to submit the final program and fiscal report within the above time period may result, at the option of the Department, in forfeiture of final payment.

44.4 All reports shall reference the contract number and be submitted to the person designated by the Department.

45.0 Responsibility for Payments Indemnification.

45.1 The Contractor shall be responsible for issuing payment for services performed by the Contractor's employees, subcontractors, suppliers, or any other third party incurred in the furtherance of the performance or the arising out of the contract and will indemnify and save the Department harmless for all claims whatsoever out of the lawful demands of such parties. The Contractor shall, at the Department's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

46.0 Subcontracts. In addition to the terms and conditions in section 5.2 of the Uniform Terms and Conditions, the following shall apply:

46.1 Prior to adding a subcontractor to the contract, the Contractor shall submit a formal, written request to the Procurement Officer. The request shall:

46.1.1 Be on the Contractors company letterhead;

46.1.2 Be signed by an authorized representative of the Contractor; and

46.1.3 Contain the following information:

1. The subcontractor's name, address, phone number, e-mail and primary point of contact;
2. The certifications required of the subcontractor (if any);
3. The subcontractor's small business status (if applicable);
4. The type of goods and/or services to be provided by the subcontractor;
5. The amount of time or effort (as a percent of total contract performance) that the subcontractor will perform in relation to total performance of the contract's requirements; and
6. A description of the quality assurance measures that the Contractor shall use to monitor the subcontractor's performance.

46.1.4 The State reserves the right to request additional information deemed necessary about any proposed subcontractor.

46.2 The Contractor shall provide copies of each contract with a subcontractor relating to the provision of contract services to the Department within five (5) calendar days of the request.

47.0 Substantial Interest Disclosure.

47.1 Contractor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization which has a substantial interest in Contractor's organization or with which Contractor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless Contractor has made a full written disclosure of the proposed payments, including amounts, to the Department.

47.2 Leases or rental agreements or purchase of real property which would be covered by Section 46.1 shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.

47.3 For the purpose of this Section, "relative" shall have the same meaning as in A.R.S. §38-502 as may be amended.

48.0 Supporting Documents and Information.

48.1 In addition to any documents, reports or information required by any other section of this contract, Contractor shall furnish the Department with any further documents and information deemed necessary by the Department. Upon receipt of a request for information from ADES, the Contractor shall provide complete and accurate information no later than fifteen (15) days after the receipt of the request.

49.0 Suspension or Debarment.

49.1 In addition to the terms and conditions in section 9.3 of the Uniform Terms and Conditions, the Contractor shall submit the Certification Regarding Debarment, Suspension and Voluntary Exclusion Lower Tier Covered Transactions form (Attachment).

50.0 Technical Assistance.

50.1 The Department may, but shall not be obligated to, provide technical assistance to the Contractor in the administration of contract services, or relating to the terms and conditions, policies and procedures governing this contract. Notwithstanding the foregoing, the Contractor shall not be relieved of full responsibility and accountability for the provision of contract services in accordance with the terms and conditions set forth herein.

51.0 Termination for Any Reason.

- 51.1 In the event the contract is terminated, with or without cause, or expires, the Contractor, whenever determined appropriate by the Department, shall assist the Department in the transition of services or eligible persons to other Contractors. Such assistance and coordination shall include, but not be limited to, the forwarding of program and other records as may be necessary to assure the smoothest possible transition and continuity of services. The cost of reproducing and forwarding such records and other materials shall be borne by the Contractor. The Contractor must make provisions for continuing all management/administrative services until the transition of services or eligible persons is complete and all other requirements of this contract are satisfied.
- 51.2 In the event of termination or suspension of the contract by the Department, such termination or suspension shall not affect the obligation of the Contractor to indemnify the Department and the State for any claim by any other party against the State or Department arising from the Contractor's performance of this contract and for which the Contractor would otherwise be liable under this contract. To the extent such indemnification is excluded by A.R.S. §41-621 et seq. as may be amended or an obligation is unauthorized under A.R.S. §35-154 as may be amended the provisions of this paragraph shall not apply.
- 51.3 In the event of early termination for any reason, any funds advanced to the Contractor shall be returned to the Department within ten (10) days after the date of termination or upon receipt of notice of termination of the contract, whichever is earlier.

52.0 Termination for Default. In addition to the terms and conditions in section 9.5 of the Uniform Terms and Conditions, the following shall apply:

- 52.1 The Department may immediately terminate this contract if the Department determines that the health or welfare or safety of service recipients is endangered.

53.0 Transfer of Knowledge.

- 53.1 The Contractor shall, whenever feasible, share strategies and techniques with Department staff to transfer the skills and knowledge acquired in the delivery of the contracted service.

54.0 Transition of Activities.

- 54.1 In the event that a contract is awarded to a new contractor for services similar to those being performed by Contractor under this contract, there shall be a transition of services period. During this period, the contractor under this contract shall work closely with the new contractor's personnel and/or Department staff to ensure a smooth and complete transfer of duties and responsibilities. The Department's authorized representative will coordinate all transition activities. A transition plan will be developed in conjunction with the existing contractor to assist the new contractor and/or Department staff to implement the transfer of duties. The Department reserves the right to determine which projects/service delivery nearing completion will remain with the current Contractor of record.

55.0 Unallowable Costs.

- 55.1 The cost principles set forth in the Code of Federal Regulations, 48 CFR, Chapter 1, Subchapter e, Part 31, (October 1, 1991), including later amendments and editions, on file with the Arizona Secretary of State and incorporated by this reference, shall be used to determine the allow ability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. Those costs which are specifically defined as unallowable therein will not be submitted for reimbursement by the Contractor and may not be reimbursed with Department funds.
- 55.2 In addition, the Contractor shall comply with the following publications (including subsequent revisions), as applicable:
 - 1. OMB Circular A-87 for State, local and Indian Tribal Governments.
 - 2. OMB Circular A-122 for private non-profit organizations other than institutions of higher education, hospitals or others specified in A-122.
 - 3. OMB Circular A-21 for educational institutions.
 - 4. OMB Circular A-133 for audits of institutions of higher education and other non-profit institutions.

56.0 Visitation, Inspection and Copying.

- 56.1 Contractor's and/or subcontractor's facilities, services and individuals served, books and records pertaining to the contract shall be available for visitation, inspection and copying by the Department and any other

appropriate agent of the State or Federal Government. At the discretion of the Department, visitation, inspection and copying may be at any time during regular business hours, announced or unannounced. If the Department deems it to be an emergency situation, it may at any time visit and inspect the Contractor's or subcontractor's facilities, services and individuals served, as well as inspect and copy their contract-related books and records.

57.0 Warranty of Services.

57.1 The Contractor warrants that all services provided under this contract shall conform to the requirements stated herein and any amendments hereto. The Department's acceptance of services provided by the Contractor shall not relieve the Contractor from its obligations under this warranty. In addition to its other remedies, the Department Procurement Officer may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all of the provisions of this contract in the manner and to the same extent as the services originally furnished.



DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

INTERGOVERNMENTAL AGREEMENT (IGA)

Contract between Arizona Department of Economic Security ("ADES" or "Department") and _____ ("Contractor").

WHEREAS the Department is duly authorized to execute and administer contracts under A.R.S § 41-1954; and

WHEREAS the Contractor is duly authorized to execute and administer contracts under A.R.S. §11-952; and

WHEREAS the Department and the Contractor are authorized by A.R.S. § 11-952 to enter into agreements for joint or cooperative action to contract for the services specified in this contract;

WHEREAS, the Department and Contractor agree to abide by all the terms and conditions set forth in this Contract.

NOW THEREFORE, in consideration of the mutual undertakings herein contained, the Parties agree as follows:

BY SIGNING THIS FORM ON BEHALF OF THE CONTRACTOR, THE SIGNATORY CERTIFIES HE/SHE HAS THE AUTHORITY TO BIND THE CONTRACTOR TO THIS CONTRACT.

FOR AND ON BEHALF OF THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY: _____ FOR AND ON BEHALF OF _____:

Procurement Officer Signature	Signature
Printed Name	Printed Name
Title	Title
Date	Date
ADES Contract Number	Contract Number

IN ACCORDANCE WITH A.R.S. § 11-952, THIS CONTRACT HAS BEEN REVIEWED BY THE UNDERSIGNED WHO HAVE DETERMINED THAT THIS CONTRACT IS IN APPROPRIATE FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO EACH RESPECTIVE PUBLIC BODY.

ARIZONA ATTORNEY GENERAL'S OFFICE

By: _____
Assistant Attorney General

By: _____
Public Agency Legal Counsel

Date: _____

Date: _____

1.0 ADES VISION AND MISSION STATEMENTS

- 1.1 ADES Vision: Opportunity, assistance and care for Arizonans in need.
- 1.2 ADES Mission: The Arizona Department of Economic Security makes Arizona stronger by helping Arizonans reach their potential through temporary assistance for those in need, and care for the vulnerable.

2.0 PARTIES

- 2.1 This Intergovernmental Agreement (IGA or Agreement) is between ADES and City of Phoenix.

3.0 TERM OF AGREEMENT

3.1 TERM

The term of this agreement shall have an effective date of 7/1/2015 and end on 6/30/2020 unless otherwise agreed upon by both parties in writing.

3.2 EXTENSION

This Agreement may be extended through a written amendment by mutual agreement of the parties.

3.3 TERMINATION

- 3.3.1 This Agreement may be terminated by mutual agreement of the parties at any time during the term of this Agreement.

- 3.3.2 Each party shall have the right to terminate this Agreement by hand-delivering to the other party written notice of termination at least thirty (30) days prior to the effective date of said termination.

- 3.3.2.1 It is mutually agreed however that, prior to the termination of this Agreement, reasonable efforts shall be made to discuss options for preserving this Agreement, including amendments if necessary. The ADES reserves the right to terminate the Contract in whole or in part at any time, when in the best interests of the ADES without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the ADES. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ADES upon demand. The Contractor shall be entitled to receive just and, equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

4.0 AMENDMENTS OR MODIFICATIONS

- 4.1 This Agreement may be amended or modified at any time by mutual agreement. No agent, employee or other representative of either party is empowered to alter any of the terms of the Agreement, unless done in writing and signed by the authorized representative of the respective parties.

- 4.2 Either party shall give written notice to the other party of any non-material alteration that affects the provisions of this Agreement. Non-material alterations that do not require a written amendment are as follows:

- 1. Change of telephone number;
- 2. Change in authorized signatory; and
- 3. Change in the name and/or address of the person to whom notices are to be sent.

5.0 PURPOSE OF AGREEMENT

- 5.1 The purpose of this Agreement is to provide Workforce Innovation and Opportunity Act (WIOA) Title 1B services to eligible Youth, Adults, and Dislocated Workers throughout the designated Local Workforce Development Area (LWDA). These services will be provided in accordance with Federal and State regulations and the most current local area plan.

6.0 MANNER OF FINANCING

- 6.1 WIOA Title 1B CFDA # 17.258 (Adult): CFDA #17.259 (Youth): CFDA #17.278 (Dislocated Worker)

6.2 PERIOD OF AVAILABILITY FOR EXPENDITURE OF WIOA FUNDS

- 6.2.1 The Contractor agrees that Pursuant to Notice of Proposed Rule Making (NPRM) 683.110, funds allocated by a State to a local area under subpart- A sections 128(b) and 133(b), for any Program year are available for expenditure only during that program year and the succeeding program year. Funds that are not expended by a local area in the two-year period described in paragraph (b) (1) of section 128 (b) and 133(b) of the Workforce Innovation and Opportunity Act shall be returned to the State. Funds so returned are available for expenditure by State and local recipients and sub recipients only during the third program

year of availability. These funds may be used for statewide projects, or distributed to other local areas, which had fully expended their allocation of funds for the same program year within the two- year period.

6.2.2 The period of availability for funds allocated under this Contract is identified in Attachment B, Allocation by Program & Fiscal Year. Reimbursement shall not exceed the allocations identified in Attachment B.

6.2.3 All final expenditure reports and cash draw requests for the Local Area Formula Funds shall be submitted per Attachment B. No extensions shall be granted to the requirement to submit the final expenditure and cash draw requests.

6.3 **RESCISSION OF FUNDS**

If the Federal Funding Source informs the State that it is rescinding funding from the State and where the State must in turn rescind from a Contractor(s) who may hold one or more Contracts for services funded under the specified Federal Funding Source, the State may take action in the following sequence

6.3.1 Rescind the required amount of funds from unexpended funds to the designated previous period(s) of time.

6.3.2 Rescind the required amount of funds from unexpended funds to the designated current period(s) of time.

6.3.3 Decrease the required amount of funds from funds from a designated future period(s) of time.

7.0 **SERVICE DESCRIPTION**

7.1 Program eligibility will be conducted on each applicant prior to the provision of services. Eligibility will include determination of family size, family income for the previous six-month period, educational status, and identification of any barriers or issues that impact attaining and/or retaining employment. Services shall comply with the Workforce Innovation and Opportunity Act as amended and applicable federal and state regulations.

8.0 **SERVICES:**

8.1 **ADULT AND DISLOCATED WORKERS**

8.1.1 Provided to adults and dislocated workers, as appropriate to meet the individual's needs, may include Career Services and/or Training Services

8.2 **RAPID RESPONSE ACTIVITIES:**

8.2.1 Provide to Dislocated Workers upon notification of a pending layoff or plant closure to inform them of available WIOA Title 1B services and other services available in the community to assist them in transitioning from the layoff employer to other employment or training opportunities.

8.3 **YOUTH WORKFORCE INVESTMENT ACTIVITIES:**

8.3.1 Provided to WIOA Title 1B eligible youth, who are either in-school, ages fourteen to twenty-one (14-21) (unless an individual with a disability who is attending school under State law) or out-of- school, ages sixteen to twenty-four (16-24). Expenditures for in-school youth shall not exceed 25% of all Youth funds available.

8.4 **THE EXPENDITURES FOR ALL PROGRAMS** will comply with 2 C.F.R. § 200; Public Law, 113-128 of the 113th Congress described as the Workforce Innovation and Opportunity Act and Federal and State regulations and guidelines under the WIOA Title, 1-B Federal grant.

9.0 **RESPONSIBILITIES**

9.1 **The ADES and the Contractor agree as follows:**

9.2 **The Contractor shall:**

9.2.1 Provide Workforce Innovation and Opportunity Act (WIOA) Title 1B services to eligible Youth, Adults, and Dislocated Workers throughout the designated Local Workforce Development Area (LWDA). These services will be provided in accordance with Federal and State regulations and the most current local area plan.

9.2.2 Meet all negotiated performance levels for all performance measures contained in the Contractor's Local Area Plan. Failure to meet any of the performance measures contained in the Local Area Plan may result in the Department issuing a Demand for Assurance, which may require a written corrective action plan from the Contractor.

9.2.3 Complete the requirements stated in the Demand for Assurance, including the corrective action plan, by the timeframe prescribed by the Department, failure to complete shall result in the immediate suspension of the Contractor's authority to receive payment under this Contract. Such authority shall

not be reinstated until the Contractor submits, and the Department approves, a revised corrective action plan or submits documentation to show that the issues identified in the Demand for Assurance have been addressed.

- 9.2.4 Comply with the approved Demand for Assurance response. If not in compliance, the Department will proceed with remedies outlined in Section 23.0 up to and including sanctions.
- 9.2.5 Be held responsible for meeting performance measures. If the Contractor fails the same performance measure in two consecutive years, the ADES may impose sanctions up to and including withholding WIOA Title I B funding as outlined in Section 23.0.
- 9.2.6 Send a written notice to the contact in Section 15.2, if it wishes to transfer funds between Adult and Dislocated Workers funds, detailing the amount, up to 100%, of funds that will be transferred and from which funding source the transfer will occur.

9.3 **CONFIDENTIALITY:**

- 9.3.1 The Contractor shall observe and abide by all applicable State and Federal Statutes, rules and regulations regarding the use or disclosure of information including, but not limited to, information concerning applicants for and recipients of contract services. To the extent permitted by law, the Contractor shall release information to ADES and the Attorney General's Office as required by the terms of this contract, by law or upon their request.
- 9.3.2 Arizona Address Confidentiality Program: The Contractor shall comply with the requirements of Arizona Address Confidentiality Program, A.R.S. § 41-161 et seq. The ADES will advise the Contractor as to applicable policies and procedures the ADES has adopted for such compliance.

10.0 **FINGERPRINTING**

- 10.1 Contractor shall comply with, and shall ensure that all of Contractor's employees, independent contractors, subcontractors, volunteers and other agents comply with, all applicable (current and future) legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks that relate to contract performance.
- 10.2 Applicable legal requirements relating to fingerprinting, certification, and criminal background checks may include, but are not limited, to the following: A.R.S. §§ 36-594.01, 36-3008, 41-1964, and 46-141. All applicable legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks are hereby incorporated in their entirety as provisions of this contract. The Contractor is responsible for knowing which legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks relate to contract performance.
- 10.3 To the extent A.R.S. § 46-141 is applicable to contract performance or the services provided under this contract, the following provisions apply:
 - 10.3.1 Personnel who are employed by the Contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall have a valid fingerprint clearance card or shall apply for a fingerprint clearance card within seven working days of employment.
 - 10.3.2 Except as provided in A.R.S. § 46-141, this contract may be cancelled or terminated immediately if a person employed by the Contractor and who has contact with juveniles certifies pursuant to the provisions of A.R.S. § 46-141 (as may be amended) that the person is awaiting trial or has been convicted of any of the offenses listed therein in this State, or of acts committed in another state that would be offenses in this State, or if the person does not possess or is denied issuance of a valid fingerprint clearance card.
 - 10.3.3 The Contractor and subcontractor staff who are required or allowed to provide services directly to juveniles or vulnerable adults shall possess a fingerprint clearance card that meets Level One requirements as described in A.R.S. § 41-1758.07, or, if waiting receipt of their clearance card, shall provide services under direct visual supervision and oversight of an employee who possess a Level One Fingerprint Clearance Card until they are issued a valid fingerprint clearance card that meets the Level One requirements. Contractor and subcontractor staff includes current employees whether paid or not who transfer into a direct service position, volunteers, and new employees whether paid or not.

- 11.0 BACKGROUND CHECKS FOR EMPLOYMENT THROUGH THE CENTRAL REGISTRY.** If providing direct services to children or vulnerable adults, the following shall apply:
- 11.1 The provisions of A.R.S. § 8-804 (as may be amended) are hereby incorporated in its entirety as provisions of this Contract.
- 11.2 The ADES will conduct Central Registry Background Checks and will use the information contained in the Central Registry as a factor to determine qualifications for positions that provide direct service to children or vulnerable adults for:
1. Any person who applies for a contract with this State and that person's employees;
 2. All employees of a contractor;
 3. A subcontractor of a contractor and the subcontractor's employees; and
 4. Prospective employees of the contractor or subcontractor at the request of the prospective employer.
- 11.3 Volunteers who provide direct services to children or vulnerable adults shall have a Central Registry Background Check, which is to be used as a factor to determine qualifications for volunteer positions.
- 11.4
1. A person who is disqualified because of a Central Registry Background Check may apply to the Board of Fingerprinting for a Central Registry exception pursuant to A.R.S. § 41-619.57. A person who is granted a Central Registry exception pursuant to A.R.S. § 41-619.57 is not entitled to a contract, employment, licensure, certification or other benefit because the person has been granted a Central Registry exception.
 2. Before being employed or volunteering in a position that provides direct services to children or vulnerable adults, persons shall certify on forms that are provided by the ADES whether an allegation of abuse or neglect was made against them and was substantiated. The completed forms are to be maintained as confidential.
- 11.5 A person awaiting receipt of the Central Registry Background Check may provide direct services to ADES clients after completion and submittal of the Direct Service Position certification if:
1. The person is not currently the subject of an investigation of child abuse or neglect in Arizona or another state or jurisdiction; and
 2. The person has not been the subject of an investigation of child abuse or neglect in Arizona, or another state or jurisdiction, which resulted in a substantiated finding.
- The Certification for Direct Service Position is located at:
<https://www.azdes.gov/InternetFiles/InternetProgrammaticForms/doc/ACY-1287AFORFF.doc>
- 11.6 If the Central Registry Background Check specifies any disqualifying act and the person does not have a Central Registry exception, the person shall be prohibited from providing direct services to ADES clients.
- 11.7 The Contractor shall maintain the Central Registry Background Check results and any related forms or documents in a confidential file for five (5) years after termination of the Contract. The Request for Search of Central Registry for Background Check is located at:
www.azdes.gov/InternetFiles/Administrative%20Forms/doc/DES-1076AFORFFS.doc - 2013-04-02
- 12.0 MONITORING**
- The Department will monitor the Contractor and /or subcontractor(s) who shall cooperate in the monitoring of services delivered; facilities; records maintained and fiscal practice. The Contractor must conduct regular oversight and monitoring of its WIOA activities and those of its sub-recipients in accordance with Notice of Proposed Rule Making 683.410 and in accordance with the uniform administrative requirements at 29 CFR parts 95 and 97.
- 13.0 REPORTING REQUIREMENTS**
- 13.1 Per Attachment B, the Contractor shall submit to ADES a final financial closeout packet.
- 13.2 Unless otherwise provided in this Contract, reporting shall adhere to the following schedule: No later than the 30th day following each month in which services were provided during the contract term, the Contractor shall submit financial reports to ADES in the form set forth within the contract.
- 13.3 Submit ETA 9130 Quarterly Report within thirty (30) days after the end of the quarter.

13.4 Failure to submit accurate and complete reports by the 30th day following the end of a month may result, at the option of ADES, in retention of payment. Failure to provide such report within 30 days following the end of a month may result, at the option of ADES, in a forfeiture of such payment.

13.5 **THE CONTRACTOR SHALL PROVIDE ADES THE FOLLOWING REPORTS:**

13.5.1 Contractor Monthly Expenditure and Cash Draw Reports and Detailed Expenditure Breakdown. This is the only format that will be accepted for reporting accrued expenditures.

13.5.2 ETA 9130 Quarterly Reports

13.5.3 All reports are available from the contact information located in 13.6.

13.6 All Reports shall be sent to:

WIAFiscalReports@azdes.gov

14.0 PAYMENT REQUIREMENTS

14.1 Contractor Monthly Expenditure and Cash Draw Reports and Detailed Expenditure Breakdown shall be submitted by the 30th day of the month following the month services were provided.

15.0 NOTICES

15.1 All notices to the Contractor regarding this Agreement shall be sent to the following address:

ATTN: [Click here to enter text.](#)

Phoenix AZ

Email:

15.2 All notices to ADES regarding this Agreement shall be sent to the following address:

Arizona Department of Economic Security

ATTN: WIOA Fiscal Compliance Unit

Mail Drop:

1789 W. Jefferson Street

Phoenix, AZ 85007

Phone (602) 542-2474

16.0 DISPOSITION OF PROPERTY

16.1 Transfer/Surplus of Equipment with a Property Value less than \$5,000

Items of equipment with a current per unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency. If property is deemed worthless, documentation must be provided to establish this fact. Property may not be donated to another agency unless it is worthless. An appraiser may establish value. The Equipment Transfer/Surplus Request (J-320) disposition record must be kept for any transaction in accordance with EA/WIOA Section record retention requirements and WIOA Inventory Equipment Database or other internal inventory system annotated accordingly. The Contractor and/or service provider may sell the property and retain the proceeds for use in WIOA programs or divided in accordance with terms of local agency cost sharing agreement.

16.2 **CALCULATION OF "FAIR MARKET VALUE"**

The selling price of an item that is sold through auction, advertisement, or a dealer is the fair market value of the item regardless of any prior estimates. An item that is not sold but retained by the Contractor and/or service provider has a fair market value based on similar items that are offered for sale, using the selling price if known.

16.3 **PROPERTY RECORDS RETENTION**

All property records must be maintained from date of acquisition, through final disposition. The Contractor and/or service providers must also retain these records for a period of five (5) years from the date of their last expenditure report. If any litigation, claim, negotiation, or audit is started before the expiration of the five (5) year period, all records related to this Agreement must be retained until all findings have been resolved and final action taken or until the end of the regular five (5) year period, whichever is later.

16.4 **INVENTORY RECORDS**

The Contractor and/or service providers must maintain accurate inventory records of expendable leased/purchased (value \$2,000.00 to \$4,999.99), and non-expendable leased/purchased equipment \$5,000 or more with WIOA funds. Property records must include:

- a) Asset Number
- b) Item Description
- c) Manufacturer
- d) Serial Number
- e) Acquisition Date
- f) Physical Location
- g) Total Item Cost.

The Contractor and service providers are required to submit an inventory report for all property leased/purchased with WIOA funds costing more than \$2,000.00 to the EA/WIOA Section, Fiscal Manager by August 1 of each year.

16.5 Prior Approval Equipment with a Property Value \$5,000 or more

Before allocating WIOA funds for any non-expendable tangible property purchase (including software purchases) with a per unit cost of \$5,000 or more, or total purchase cost exceeds \$10,000, the Contractor and/or service provider must complete a "WIOA Pre-Approval of Equipment & Vehicles \$5,000 or More Questionnaire" form that must be signed by the Contractor Director or Designee.

- a) The signed form must be forwarded to the WIOA Section Finance Manager for review, approval or disapproval action.
- b) When an approval decision is rendered, the WIOA Section Finance Manager will return the signed questionnaire to the Contractor Director or Designee. Upon receipt of the signed and approved questionnaire, the Contractor can proceed to purchase the equipment or property.
- c) When a decline decision is rendered, the WIOA Section Finance Manager will specify the reason for disapproval and return the signed questionnaire to the LWIOA Director. The LWIOA may appeal this decision to the WIOA Section Finance Manager.

17.0 THIRD-PARTY ANTITRUST VIOLATIONS

The Contractor assigns to ADES any claim for overcharges resulting from antitrust violations, to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

18.0 APPLICABLE LAW

18.1 This Contract shall be governed and interpreted by the laws of the State of Arizona. The materials and services supplied under this Contract shall comply with all applicable Federal, State and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

19.0 ARBITRATION

19.1 The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.

20.0 COPYRIGHTS AND OWNERSHIP OF INTELLECTUAL PROPERTY

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify ADES, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative action that might have the effect of vesting all or part of the Intellectual Property in any entity other than the Department. The Contractor or its subcontractors are not to dispose or distribute any Intellectual Property without the express written authorization of the Department, division, board or commission of the State of Arizona requesting the issuance of this contract shall not disclose the Intellectual Property.

21.0 AUDIT

21.1 In accordance with A.R.S. § 35-214, the Contractor shall retain and shall contractually require each subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five (5) years after the completion of the Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, Contractor shall produce the original of any or all such records.

22.0 CERTIFICATION REGARDING LOBBYING

The Contractor certifies, to the best of its knowledge and belief, that:

- 22.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency. This applies to a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant. Including the making of any Federal, loan the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 22.2 If any funds other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 22.3 The Contractor shall require that the language of this certification be included in the award documents for all sub- awards at all tiers (including subcontracts, sub-grants, and contract under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 22.4 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

23.0 SANCTIONS AND CORRECTIVE ACTIONS

- 23.1 The Department may issue Demand for Assurance notices to the Contractor for failure to comply with any of the conditions, requirements or clauses contained in this Agreement. This Demand for Assurance shall include the citation from the Agreement that the Department requires the Contractor to remedy, the required time frame for a response from the Contractor, what required documents shall be sent with the response and to whom the response shall be sent. Failure to comply with the requirements set forth in the Demand for Assurance, and any corrective action agreed to by the Department, may result in the actions outlined in Section 23.2.1 and 23.2.2
- 23.2 Pursuant to NPRM 683.700, the Department may impose sanctions and corrective actions on recipients and sub recipients of WIOA grant funds as follows:
 - 1. Except for actions under WIOA section 188(a) the Department uses the initial and final determination procedures outlined in NPRM 683.440 to impose a sanction or corrective action. To impose a sanction or corrective action for a violation of WIOA section 188(a) ADES will use the procedures set forth in that regulatory part.
 - 2. The Department may impose sanctions or corrective action for noncompliance with the uniform administrative requirements set forth under section 184(b) (1) and NPRM 683.700 Sanctions or corrective action will be applied for substantial violations of WIOA statutory and regulatory requirements, if the Governor fails to promptly take the actions specified in WIOA sections 184(b)(1), the Grant Officer may impose such actions directly against the local area. The Grant Officer may also impose a sanction directly against a sub recipient, as authorized in section 184(d) (3) of the Act.
- 23.3 Pursuant to NPRM 683, the Department shall impose fiscal sanctions if a local area fails the same performance measure(s) in three or more consecutive years. The sanction shall be applied to the area of funding (i.e. Adult, Youth Dislocated Worker or Rapid Response) in which the failed performance measure(s) applies. Sanctions shall follow the Sanction Schedule (Attachment A) and shall be applied after final performance is reported in October of each contract year.

Sanctions collected shall be held by the Department and the Contract may receive the sanctioned funds if the performance for the failed measure(s) is rectified and the local area passes the performance

measure in the next reporting cycle (i.e. October of the following year). If the local area does not rectify performance in the next reporting cycle, the funds shall revert to the Department.

24.0 CLEAN AIR ACT & CLEAN WATER ACT

As the Contractor you must be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C.1857(h),section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

25.0 ENERGY POLICY AND CONSERVATION ACT

As the Contractor, you must adhere to the standards and policies relating to energy efficiency; which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

26.0 COPELAND "ANTI-KICKBACK" ACT

As the Contractor to this Agreement, you are expected to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in the Department of Labor regulations (29 CFR part 3). This regulation applies to all contracts and sub grants for construction or repair.

27.0 DAVIS-BACON ACT

As the Contractor to this Agreement, you must comply with the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) when required by Federal grant program legislation.

28.0 DEBT COLLECTION AND AUDIT RESOLUTION

As the Contractor to this Agreement, you must comply with P.L. 105-220 Sections 128, 133, and 184; 20 CFR Part 652, Subpart D,E and G; 20 CFR Part 667 Subparts D – H; 29 CFR Parts 95, 96, 97, and 99; OMB Circular A-21. As the Contractor to this Agreement, you must comply with 2 CFR 200 and all subparts. As the Contractor to this Agreement, you are required to adhere to Federal Acquisition Regulation 97-03 Part 31; ADES Policies 1-47-01 and 1-47-08.

28.1 Among the required controls specified in NPRM 683.750 is the process for collecting debts.

NPRM 683.410 states it is the responsibility of the Contractor, sub-grantee, sub-recipient and/or service provider to conduct regular oversight and monitoring of its WIOA activities to determine whether expenditures made against the cost categories are within the cost limitations specified in WIOA laws and regulations. NPRM 683.710 states that:

- (a) The Contractor is responsible for all funds under its grant(s):
- (b) The political jurisdiction(s) of the chief elected official(s) in a Local Workforce Development Area is liable for any misuse of the WIOA grant funds allocated to the local area under WIOA sections 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability. The Arizona Department of Economic Security (ADES) holds all direct recipients (Contractors) liable for all expenditures of funds.

29.0 RIGHT TO ASSURANCE

If the Department in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of "Days" specified in the demand may, at the Department's option be the basis for terminating the contract under the rights and remedies available by law or provided by this contract.

30.0 REVIEW

This Agreement shall be reviewed at any time at the written request of either party.

31.0 CONFLICT OF INTEREST

31.1 In accordance with A.R.S. § 38-511, the State may within three years after execution cancel the Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State, at any time while the Agreement is in effect, becomes an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the matter of the Agreement.

32.0 DATA SHARING AGREEMENT

32.1 If determined by the Department that sharing of confidential data will occur with the Contractor, the Contractor shall complete the ADES Data Sharing Request Agreement and submit the completed Agreement to the ADES Program Designated Staff prior to any work commencing or data shared. A separate Data Sharing Request Agreement shall be required between the Contractor and each ADES Program sharing confidential data.

33.0 E-VERIFY

33.1 In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.

34.0 FEDERAL IMMIGRATION AND NATIONALITY ACT

34.1 By entering into the Agreement, the Contractor warrants compliance with the Federal Immigration and Nationality Act. (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Agreement. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Agreement. I-9 forms are available for download at USCIS.GOV.

34.2 The State may request verification of compliance for any Contractor or subcontractor performing work under the Agreement. If the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the Agreement for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

35.0 INDEMNIFICATION

35.1 INDEMNIFICATION FOR CONTRACTOR:

35.1.1 Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

35.2 INDEMNIFICATION FOR SUBCONTRACTOR

35.2.1 In addition, Contractor shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

36.0 INSURANCE REQUIREMENTS

361 INSURANCE REQUIREMENTS FOR GOVERNMENTAL PARTIES TO AN IGA:

361.1 None.

36.2 INSURANCE REQUIREMENTS FOR ANY CONTRACTORS USED BY A PARTY TO THE INTERGOVERNMENTAL AGREEMENT:

(Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.)
 The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

1. **Minimum Scope and Limits of Insurance:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to **include coverage for sexual abuse and molestation.**
- b. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.**
 (Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)
- c. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.**
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

3. **Worker's Compensation and Employers' Liability**

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$ 500,000
 - Disease – Each Employee \$ 500,000
 - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.
 2. **Additional Insurance Requirements:** The policies shall contain, or be endorsed to contain, the following provisions:
 1. The State of Arizona and the Department of Economic Security, wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Agreement.
 2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
 3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
 3. **Notice of Cancellation:** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to the **Department of Economic Security, Office of Procurement, 1789 W. Jefferson St. Site Code 805Z, Phoenix, AZ 85007** and shall be sent by certified mail, return receipt requested.
 4. **Acceptability of Insurers:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
 5. **Verification of Coverage:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
 All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of Agreement.
- All certificates required by this Agreement shall be sent directly to **Department of Economic Security, Office of Procurement, 1789 W. Jefferson St. Site Code 805Z, Phoenix, AZ 85007 unless the Reporting Requirements specifies otherwise.** The State of Arizona **contract number and contract description shall be noted or referenced on the certificate of insurance.** The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
6. **Subcontractors:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.
 7. **Approval:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal amendment to the Agreement, but may be made by administrative action.
 8. **Exceptions:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

37.0 IT 508 COMPLIANCE

37.1 Unless specifically authorized in the Agreement, any electronic or information technology offered to the State of Arizona under this Agreement shall comply with A.R.S. § 41-3531 and § 3532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access

to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

38.0 NON-AVAILABILITY OF FUNDS

38.1 In accordance with ARS § 35-154, every payment obligation of the State under the Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event his provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

39.0 NON-DISCRIMINATION

39.1 The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

40.0 OFFSHORE PERFORMANCE OF WORK PROHIBITED

40.1 Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers

41.0 RIGHT OF OFFSET

41.1 The Department shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the Department, or damages assessed by the Department concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses, costs and damages.

42.0 CULTURALLY RELEVANT AND LINGUISTICALLY APPROPRIATE

42.1 The Contractor shall ensure that all services provided are culturally relevant and linguistically appropriate to the population to be served.

43.0 ATTACHMENTS

43.1 The following list of attachments constitutes an integral part of subject Agreement.

43.1.1 Attachment A – Sanction Schedule

43.1.2 Attachment B – WIOA Allocation by Program and Fiscal Year

ARIZONA DEPARTMENT OF ECONOMIC SECURITY



PROCEDURE NUMBER DES 1-01-09-01	
TITLE Sexual Harassment Procedures	POLICY DES 1-01-09
PROCESS OWNER Director's Office of Equal Opportunity	EFFECTIVE DATE 10/06/2014
	REVISION 2

DES 1-01-09-01
Sexual Harassment Procedures

I. PURPOSE

- Establish a process to provide employees, supervisors, and managers with a working knowledge of sexual harassment.
- Designate appropriate reporting requirements.
- Provide guidelines and instructions for addressing allegations of sexual harassment in the work place.

II. PROCESS**A. Employee Reporting Requirements**

1. All Department employees are responsible for addressing or reporting alleged sexual harassment. The Department encourages individuals who believe they have been subjected to sexual harassment to inform the alleged harasser that the conduct is unwelcome and request that the individual cease the behavior immediately.
2. If the employee is not comfortable confronting the alleged harasser or if the conduct continues, the employee must do one of the following:
 - a. Inform his or her immediate supervisor of the alleged harassment.
 - b. Inform a higher-level supervisor or member of management in his or her chain of command, including, but not limited to, his or her Manager, Program Manager or Administrator, Assistant Director, or Deputy Director.
 - c. Inform his or her Division Personnel Liaison.

NOTE: If the employee is unsure of the Division Personnel Liaison's identity, contact the Human Resources Administration Employee Relations Manager at (602) 771-2870.

- a. File a complaint with the Director's Office of Equal Opportunity (DOEO) office.

B. Supervisory and Managerial Reporting Requirements

1. Supervisory personnel who receive reports regarding alleged sexual harassment must do the following:

- a. Contact his or her Division Personnel Liaison or DOEO for additional assistance regarding what, if any, investigation or other action is necessary to determine whether the allegations can be substantiated pursuant to this policy. Investigations should be initiated as soon as possible, but no later than three (3) business days following receipt of the complaint.
 - b. Document the allegations and any action taken in response to the allegations, including any disciplinary action, in a confidential interoffice memorandum sent to the Division Personnel Liaison.
2. Members of management, other than direct supervisors, who receive complaints directly from an employee or from the employee's direct supervisor, must do the following:
- a. Discuss with the employee's direct supervisor what, if any, investigation or other action is necessary to determine whether the allegations can be substantiated pursuant to this policy.

NOTE: When an employee's direct supervisor is the person alleged to have committed the sexual harassment, contact shall be made with the next higher supervisor.
 - b. If necessary, contact his or her Division Personnel Liaison or DOEO for assistance with determining what, if any, investigation or other action is necessary to determine whether the allegations are substantiated pursuant to this policy.
 - c. If it is determined that an investigation is necessary, conduct the investigation or direct the employee's direct supervisor to conduct the investigation as soon as possible, but no later than three (3) workdays after receipt of the complaint. The Division Personnel Liaison and OEO remain resources for consultation throughout the investigative process.
 - d. Document or oversee the documentation of the allegations and any action taken in response to the allegations, including any disciplinary action, in a confidential interoffice memorandum sent to the Division Personnel Liaison.
3. Division Personnel Liaisons who receive complaints directly from an employee must do the following:
- a. Contact the complaining employee's direct supervisor and notify him or her of the complaint. (See NOTE in section II.B.2.a.)
 - b. Discuss with the supervisor and at least one other member of management in the complaining employee's chain of command what, if any, investigation or other action is necessary to determine whether the allegations can be substantiated pursuant to this policy.
 - c. If necessary, coordinate an investigation into the allegations as soon as possible, but no later than three (3) workdays after receipt of the complaint.
 - d. Maintain documentation of the allegations and any action taken by the Department in response to the allegations, including any disciplinary action.

C. Complaints Filed with the Director's Office of Equal Opportunity (DOEO)

1. Employees may file a complaint alleging sexual harassment with DOEO by completing and submitting a written [Employee Discrimination Complaint Questionnaire \(DES-1075A\)](#) form. Copies of this form may be obtained from the DES Digital Library.
2. DOEO investigates and makes recommendations regarding all complaints received by its office as
3. DOEO is available as a resource to all Department employees regarding the definitions and procedures outlined in this policy and shall assist members of management, when necessary, regarding the appropriate procedures for investigating complaints of sexual harassment.
4. Employees can contact DOEO by visiting the DOEO located at 1717 W. Jefferson, Room 109, Phoenix, Arizona 85007, Site Code 049Z, or by telephone at (602) 364-3976.

D. Disciplinary Action

1. Any employee found to have committed sexual harassment in the workplace as outlined in this policy and State and Federal law shall receive formal disciplinary action up to and including dismissal.
2. All formal disciplinary actions taken in response to sexual harassment must be approved by the accused employee's Division Personnel Liaison prior to being enacted.

E. Confidentiality

All Department employees shall deal with allegations of and investigations into sexual harassment in as confidential a manner as practicable; however, absolute confidentiality is not guaranteed.



ARIZONA DEPARTMENT OF ECONOMIC SECURITY

POLICY NUMBER DES 1-01-07		
CHAPTER 1 Department of Economic Security	ARTICLE 01 Director's Office	
SUBJECT 07 Office of Equal Opportunity	EFFECTIVE DATE 8/1/17	REVISION 7

**DES 1-01-07
Office of Equal Opportunity**

This policy does not create a contract for employment between any employee and the Department. Nothing in this policy changes the fact that all uncovered employees of the Department are at-will employees and serve at the pleasure of the appointing authority.

I. POLICY STATEMENT

The Department of Economic Security (DES) is committed to establishing and maintaining the highest quality workforce. As a result, DES will not tolerate employment discrimination. The Department has adopted a process for addressing employee complaints concerning discrimination or harassment in compliance with A.A.C. R2-5A-901 and A.A.C. R2-5A-902. The Office of Equal Opportunity (OEO) is established to facilitate the filing, investigation, and resolution of complaints of discrimination by DES employees.

II. APPLICABILITY

This policy applies to all DES covered and uncovered employees, contracted employees, and persons applying for employment with DES.

III. PROCEDURES

This policy is supported by a single DES procedure:

DES 1-01-07-01 Office of Equal Opportunity Procedures: Employee Complaint Process

IV. AUTHORITY

29 U.S.C. Chapter 14 § 623	Age Discrimination in Employment Act (ADEA) of 1967, as amended
42 U.S.C. Chapter 126, Title I & Title V	Americans with Disabilities Act of 1990, as amended
29 U.S.C. § 206 (d)	Equal Pay Act, as amended
29 C.F.R. Part 1635	Genetic Information Nondiscrimination Act of 2008
29 C.F.R. Part 38.18	Employment Practices Covered
42 U.S.C. Chapter 21	U.S. Civil Rights Act of 1964, as amended

A.R.S. § 41-1463	Discrimination; unlawful practices; definition
A.A.C. R2-5A-104	Prohibition Against Discrimination, Harassment and Retaliation
A.A.C. R2-5A-308	Applicant Complaint
A.A.C. R2 5A Article 9	Complaints

V. DEFINITIONS

Applicant: Any individual, including a current DES employee, who applies for a DES position.

DES Complaint Coordinator: The OEO employee designated to receive, investigate, and resolve, if possible, discrimination complaints filed with OEO.

Director's Designee: For the purpose of this policy, the Administrative Director of OEO.

VI. STANDARDS

A. General Statements

1. OEO shall operate under the authority delegated to it by the DES Director. OEO is responsible for receiving complaints, determining applicability under the Department complaint system, investigating or assigning the complaint to the appropriate individual within the Department for review and investigation, and tracking the processing of complaints. Further, OEO is responsible for providing leadership and assistance in the development, implementation, and evaluation of the DES Equal Opportunity Plan and for cooperating with other entities in the performance of activities relating to employment discrimination and equal opportunity employment. In compliance with state and federal laws, the Director, through OEO, has the responsibility to attest that:
 - a. No employee or job applicant shall be discriminated against on the basis of race, color, genetics, religion, national origin, sex, age, or disability, with respect to the hiring, selection/testing, compensation, evaluation, termination, and in any other employment practice.
 - b. Equal opportunity shall be taken to improve the work opportunities of women, racial and ethnic minorities, people with disabilities, and other protected classes.
 - c. No person shall be intimidated, harassed, threatened, retaliated against, coerced, or disciplined because he or she has filed a complaint, responded, made a statement, assisted, or otherwise participated in any manner in the discrimination complaint process.

2. Employees who become aware that discrimination or harassment is occurring in the agency shall immediately report the situation to OEO.
3. Retaliation against an employee for filing a complaint in good faith is not permitted and shall not be tolerated.
4. Employees shall have no more than 180 days from the date of the alleged discrimination act to file a complaint with OEO and shall clearly outline the allegations to be addressed, including whether the basis of the complaint is:
 - a. Unlawful discrimination based on race, color, national origin, religion, sex (including pregnancy), age, genetic information, or disability.
 - b. Allegation of sexual harassment or other form of harassment.
 - c. Retaliation for filing a complaint.
 - d. Retaliation or intimidation for exercising any right under state or federal law.
5. Employees shall not be allowed to use state time or state property to prepare a complaint, prepare for a meeting with agency management, or meet with a representative. Subject to supervisory approval, an employee may request appropriate leave for this purpose.
6. In the course of the discrimination complaint process, all information and results received are confidential and must not be released to any person unless authorized by this policy or provision of law.
7. An employee who is not satisfied with the resolution of their complaint within DES may elevate the complaint to the Director of the Arizona Department of Administration (ADOA) for review.
 - a. The request must be submitted to the ADOA Director no later than five days after receipt of the agency response.
 - b. Review by ADOA is the final step in the complaint process.
8. The use of the complaint process does not, in any way, preclude the complainant's right to pursue any other remedy allowed by law, including, but not limited to:
 - a. The U.S. Equal Employment Opportunity Commission (EEOC);
 - b. Any appropriate federal or state agency; or
 - c. For covered employees, the DES *Covered Employee Grievance* process for grievances not related to employment discrimination and equal opportunity employment (refer to DES 1-26-12 *Covered Employee Grievance* policy).

9. The use of the Department discrimination complaint process shall not stay or suspend any timeliness requirements of those other processes and remedies.

B. Responsibilities

1. Responsibilities and Authority of OEO

The Director, in the furtherance of the Department's purposes, objectives, and programs, delegates OEO with the responsibility and authority to:

- a. Conduct appropriate technical studies to achieve the purpose of this policy to promote and ensure equal opportunity within the Department.
- b. Receive, investigate, and resolve, if possible, discrimination complaints filed with OEO.
- c. Investigate, respond on behalf of the Department, and coordinate the settlement of discrimination complaints filed with other state and federal agencies.
- d. Access, examine, and copy relevant files, records, reports, and other property in the Department's possession and interview any person on relevant matters in conducting an investigation or study.
- e. Provide Divisions with the results of investigations and request corrective action plan as appropriate.
- f. Provide information and advice on OEO procedures to DES employees.
- g. Provide training and technical assistance regarding discrimination and civil rights laws in compliance with this policy and other applicable provisions of law.
- h. Conduct compliance reviews of program operations, including entrance and exit meetings, responses, monitoring of corrective action, and implementation of other mandates of federal and state law.
- i. Conduct itself at all times in a manner that:
 - i. Ensures confidentiality when possible or practicable.
 - ii. Demonstrates respect for all parties.
 - iii. Represents all parties fairly and impartially.
 - iv. Seeks a fair resolution during settlement negotiations on complaints filed.
 - v. Avoids conflicts of interest.

- vi. Promotes confidence in the integrity and impartiality of OEO professional staff and avoids the appearance of impropriety.
 - j. Provide requested statistical information regarding charges of discrimination, such as the number received, categories, and recommendations for corrective action.
 - i. Each Assistant Director may receive information pertinent to their Division.
 - ii. The Director may receive information pertinent to each individual Division as well as the entire Department.
2. Responsibilities of the Director, Deputy Director, and Executive Leadership
- a. Submit a written response to OEO in response to charges of discrimination.
 - b. Provide copies of relevant files, records, reports, and other items in the possession of the Division, as legally defined by statute, as requested by OEO.
 - c. Maintain confidentiality of the complainant and OEO employee(s) assigned to investigate the complaint.
 - d. Implement procedures to ensure continuing compliance with this policy and with other applicable provisions of law.
 - e. Assist OEO in the development and implementation of the DES Equal Opportunity Plan.
 - f. Identify and refer Equal Opportunity liaisons for OEO training and technical assistance. Ensure that remaining employees are trained and aware of the OEO.
 - g. Ensure that Equal Opportunity posters are prominently displayed in both English and other languages, as appropriate, in all DES offices.
 - h. The Director or designee shall monitor all recommendations for corrective action submitted by the Deputy Director, Assistant Director, Deputy Assistant Director, or Program Administrator.
3. Responsibilities of DES Managers, Supervisors, and Employees
- a. Refer employees who want to file a discrimination complaint to OEO, who will provide employees with the necessary forms.
 - b. Forward complaints of discrimination using the process as outlined in the DES 1-01-07-01 *Office of Equal Opportunity Procedures – Employee Complaint Process*.

- c. Keep discussions with OEO employees confidential. This includes refraining from pressuring other employees to reveal the substance of their discussions with OEO employees.



ARIZONA DEPARTMENT OF ECONOMIC SECURITY

PROCEDURE NUMBER DES 1-01-07-01		
TITLE Office of Equal Opportunity - Employee Complaint Process Procedures	POLICY DES 1-01-07	
PROCESS OWNER Office of Equal Opportunity	EFFECTIVE DATE 8/1/17	REVISION 7

DES 1-01-07-01

Office of Equal Opportunity Procedures – Employee Complaint Process

This procedure does not create a contract for employment between any employee and the Department. Nothing in this procedure changes the fact that all uncovered employees of the Department are at-will employees and serve at the pleasure of the appointing authority.

I. PURPOSE

The purpose of these procedures is to establish and implement guidelines and instructions to ensure the Department is in continuing compliance with this policy and with other applicable provisions of the law in addressing complaints of discrimination filed against the Department by DES employees. These guidelines include the process a DES employee must follow when filing a complaint of discrimination against the Department as well as the responsibilities and required actions of Department leadership in resolution of complaints.

II. PROCESS

A. Filing a Complaint with the Office of Equal Opportunity (OEO)

1. A visual representation of the complaint resolution process is provided in Exhibit A.
2. Employees may use the [Employer Discrimination Complaint Screening Tool \(DES-1073A\)](#) to ensure that the complaint conforms with the appropriate definitions under the Civil Rights Act of 1964, or other applicable civil rights laws.
3. Complaints shall be filed using the [Employee Discrimination Complaint Questionnaire \(DES-1075A\)](#) form.
4. During the entire complaint process, a complainant shall not use state time or property to prepare the complaint, prepare for a meeting with management, or meet with a representative. Subject to supervisory approval and the operational needs of the unit, a complainant may request and use appropriate available leave for this purpose.
5. The complaint shall contain the following information:

- a. Name, job title, address, and daytime telephone number of the complainant, the respondent, and any other persons who were involved, including witnesses.
 - b. The date of the alleged discrimination or harassment.
 - c. Type of discrimination being alleged, which would meet Equal Employment Opportunity Commission (EEOC) requirements.
 - d. Description of the incident.
 - e. Resolution sought.
 - f. Any concurrent or prior filing of a related complaint with a federal or other agency.
6. All complaints shall be submitted in writing and may be filed using any of the following methods:
- a. In person: 1789 W. Jefferson, 4th Floor SE, Phoenix, Arizona
 - b. By mail:

Office of Equal Opportunity
Attn: DES Complaint Coordinator
P.O. Box 6123 - Mail Drop 1323
Phoenix, Arizona 85005-6123
 - c. By fax: (602) 364-3982
 - d. By email: OfficeofEqualOpportunity@azdes.gov
7. Once submitted to the DES Complaint Coordinator, a complaint may not be amended; if additional documentation is submitted to OEO after the initiation of a complaint, the DES Complaint Coordinator may return the original complaint to the complainant for resubmission.

B. Resolution of Complaints Filed with OEO

1. Upon receipt of a complaint, the DES Complaint Coordinator shall log and date the complaint, determine the timeliness of the complaint, and determine whether the complaint meets EEOC requirements.
 - a. When the DES Complaint Coordinator determines that the complaint does not meet EEOC requirements, the complaint shall be referred to the applicable Division Personnel Liaison or another entity who might be appropriate for review and resolution. This ends the OEO activity with the complaint.
 - b. When the DES Complaint Coordinator determines that the complaint does meet EEOC requirements, the process continues.

2. When the DES Complaint Coordinator determines that the complaint involves a DES employee in a Workforce Innovation and Opportunity Act (WIOA) funded position, the DES Complaint Coordinator will notify the WIOA Equal Opportunity Officer, by email to: StateWIOAEOOfficer@azdes.gov.
3. The DES Complaint Coordinator shall acknowledge receipt of the alleged complaint and send written confirmation to the complainant within five business days.
4. At any point during the investigation, the DES Complaint Coordinator may meet with the complainant, the appropriate members of the Executive Leadership Team as well as other Division Management, witnesses, and employees who have information about the complaint, as needed. State time may be used for these interviews.
5. The DES Complaint Coordinator or designee shall complete the investigation within 60 work days.
6. When no corrective action is warranted, the DES Complaint Coordinator shall notify the complainant in writing within 10 business days. The notification shall include the following:
 - a. That the investigation has been completed;
 - b. That no corrective actions are being recommended; and
 - c. The steps the complainant may take to elevate the complaint.
7. In the event corrective action is warranted, the individual responsible for the investigation shall provide the following information to the Director or designee, the appropriate Executive Leader, and the Chief Counsel of the Child and Family Protection Division of the Attorney General's Office or designee:
 - a. The identity of the investigator;
 - b. The identity of the complainant;
 - c. The substance of the complaint;
 - d. Pertinent information compiled during the investigation; and
 - e. The recommended steps for resolution.
8. Corrective action may be taken regardless of whether there is a finding of possible discrimination.
9. When a corrective action is recommended to the Division, the Division shall provide written follow-up regarding the implementation of the recommendation(s) to the appropriate Deputy Director and the DES Complaint Coordinator within 30 calendar days of receipt of the notice of recommendation(s).

10. The DES Complaint Coordinator shall make a recommendation to the DES Director/designee within ten work days after receiving the Division report.
11. The DES Director or designee shall review the findings and the recommended corrective action, identify further actions when needed, and issue a written decision to the complainant within 10 work days.
 - a. All remaining actions will be implemented; and
 - b. The complaint will be closed.
12. When the complainant is not satisfied with the written decision, the complainant may elevate the complaint and decision within five work days after receipt of the decision to the Arizona Department of Administration (ADOA) Director at:

Arizona Department of Administration
ADOA Director
100 North 15th Avenue, 4th Floor
Phoenix, Arizona 85007

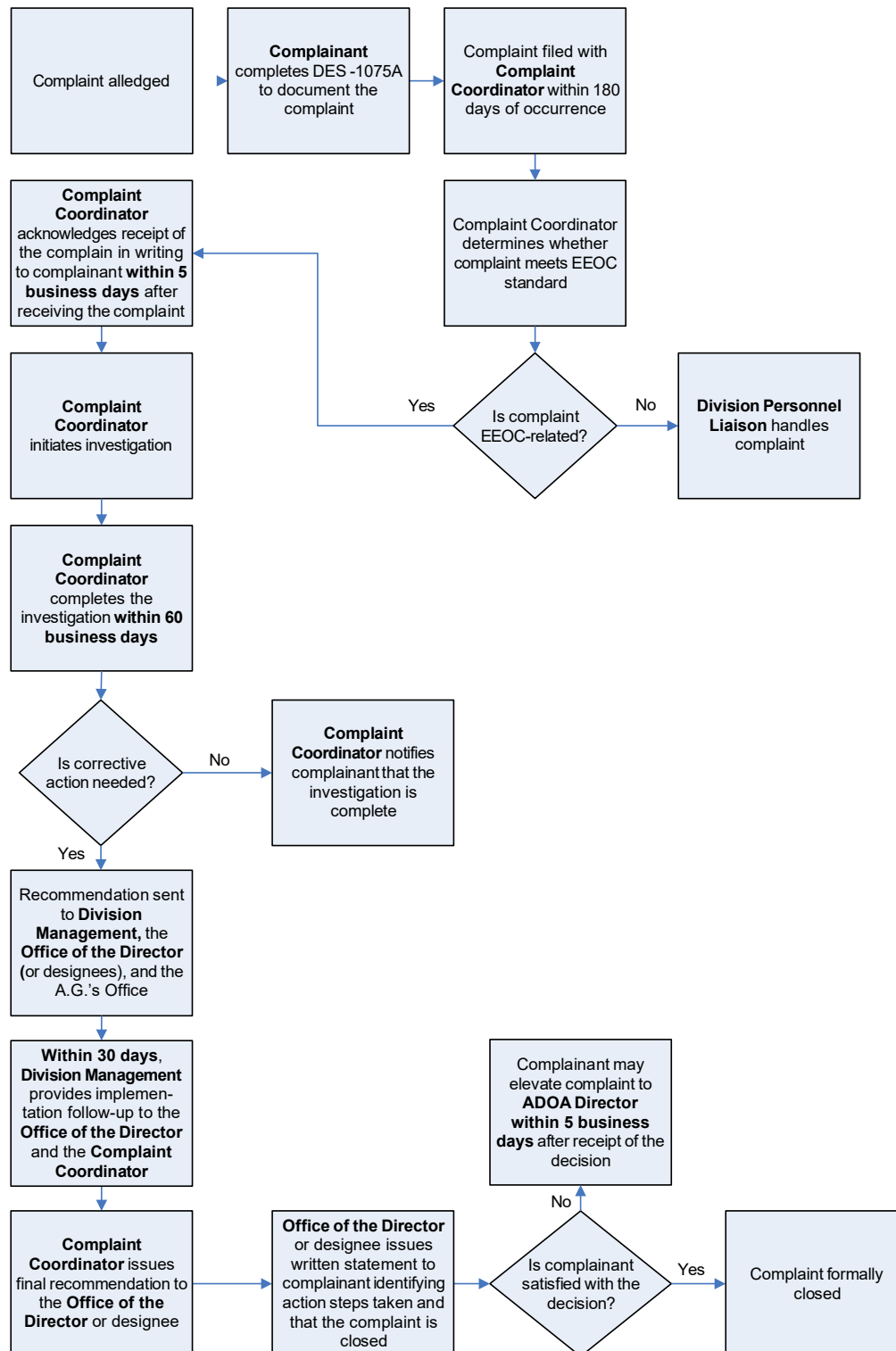
C. Complaints Filed with Other State and Federal Agencies

1. If the complainant files a lawsuit, charge, or complaint with another state or federal agency concerning the same acts of alleged discrimination as the complaint filed with OEO, OEO shall inform the complainant that the investigations will be conducted simultaneously.
2. OEO shall respond for the Department and coordinate the resolution or settlement of discrimination complaints filed with other state and federal agencies.
3. OEO shall send acknowledgment and copies of the complaint to the Chief Counsel of the Child and Family Protection Division of the Attorney General's Office or designee. OEO will consult with the Attorney General's Office in resolving complaints.
4. Upon request, OEO shall send the acknowledgment of the complaint and other relevant information to the appropriate member of the Executive Leadership Team and to the appropriate Deputy Director.

III. EXHIBITS

Exhibit A – Complaint Process

Complaint Process



Element Three Documentation Section

Attachment(s)

1	Office of Equal Opportunity: Client Complaints Policy (DES-1-01-14) and Procedures (DES-1-01-14-01)
2	Arizona Department of Economic Security, Special Terms and Conditions
3	Arizona Department of Economic Security, Intergovernmental Agreement
4	Sexual Harassment Policy (DES-1-01-09) and Procedures (DES-1-01-09-01)
5	Office of Equal Opportunity Employee Complaints Policy (DES-1-01-07) and Procedures (DES-1-01-07-01)

Element Four

Affirmative Outreach

(29 CFR 38.40)

PURPOSE:

It is the intent of Element Four to address how the State of Arizona (State) and its recipients are complying with the requirements of 29 CFR 38.40 relating to the provision of affirmative outreach to programs and activities.

NARRATIVE:

The State requires WIOA Title I financial assistance recipients (e.g., Local Workforce Development Areas (LWDAs), American Job Center Partners (AJCPs), Unemployment Insurance (UI), Wagner-Peyser (WP) partners and all service providers) to conduct outreach efforts in order to broaden the pool of those considered for participation or employment in their programs and activities. The State will ensure that recruitment of potential participants is conducted in a non-discriminatory manner and that the participant pool fairly represents local demographics and includes individuals with disabilities.

The State-Level EO Officer uses a desk monitoring tool to make all EO Officers cognizant of their Affirmative Outreach obligations. by inquiring into their process of broadening the participation in their programs with such questions as:

- How has the recipient broadened the composition of the pool of those considered for participation or employment in their programs and activities (Provide an explanation and procedure) (Documentation Section - Attachment 1 & 2)

The Department of Economic Security (DES), Division of Employment and Rehabilitation Services (DERS), Rehabilitation Services Administration (RSA) provides services to individuals with disabilities that break down barriers to employment and independent living. As a required core partner in the One-Stop system, RSA's Vocational Rehabilitation program staff work with the One-Stop operators and other WIOA Partner programs to increase employment opportunities for individuals with disabilities. Untapped Arizona (<http://www.untappedarizona.com>) is a network of organizations partnering together in an effort to support Arizona businesses in meeting their workforce needs by tapping into the labor pool of individuals with disabilities.

DES's Ticket to Work program (<http://www.chooseworkttw.net/>) is authorized by the Ticket to Work and Work Incentives Improvement Act (TWWIIA), which was signed into law December 1999. This program expands the universe of service providers available to assist beneficiaries with disabilities who are seeking employment services, vocational rehabilitation services, and other support services in obtaining, regaining and maintaining self-supporting employment.

Under the Ticket to Work Program, the Social Security Administration provides disability beneficiaries with a "ticket" they may use to obtain the services and jobs they need from a new universe of organizations called Employment Networks (ENs).

Beneficiaries receiving tickets can contact one or more ENs to discuss services and, once an agreement between the beneficiary and EN is reached, the beneficiary and EN staff collaboratively develop a work plan to assist the beneficiary in reaching his or her employment goal.

For WP, LWDA's and AJCPs, technology is a key component in ensuring affirmative outreach by employing a number of strategies, including the following:

- Referral services;
- Provision of equal opportunities for workforce training services for both rural and urban areas, as well as for persons with disabilities or barriers to communication;
- Access to services for persons of all levels of computer literacy; and
- Assistance in using the self-service component of the American Job Center (AJC).

All recipients and sub-recipients work to enhance the employability and increase the earning potential of individuals with multiple barriers to employment. Strategies to address an individual's needs include:

- Assessments of skills and abilities;
- Basic skill programs;
- Occupational skill training;
- Job analyses and accommodations;
- Disability awareness training; and
- Other activities that address barriers and support achievement of positive employment outcome.

Individuals with multiple barriers to employment are offered a continuum of education, job training, career counseling and job development to enhance attainment and retention of employment. To enhance the employability of individuals with disabilities, Local Workforce Development Boards, One-Stop Centers and providers assure:

- Priorities of services for participants beyond the self-service phase are implemented;
- Representation of individuals with disabilities on staff, where feasible;
- Cross training of staff;
- Disability awareness training for staff;
- Outreach programs for individuals with disabilities;
- Specific staff, service goals and expectations;
- Technical assistance to employers including information regarding ADA requirements and available tax credits; and
- Outcome measures of goals and expectations.

Individuals eligible for One-Stop services include:

- Special needs participants;
- Individuals with disabilities;
- Persons with limited English-speaking ability;
- Persons training for nontraditional employment;
- Displaced homemakers;
- Public assistance recipients;
- Veterans;
- Persons with multiple barriers to employment;
- Elderly participants;
- Women;
- Minorities;
- Lesbian, Gay, Bisexual and Transgender (LGBT) communities; and
- Individuals with religious requirements

Recipients and their service providers strive to provide access to services for clients of both sexes, the LGBTQ community, the various races, ethnic backgrounds and age groups, individuals with disabilities as well as individuals with Limited English Proficiency (LEP) which includes:

- Publicity materials (brochures, letters) designed to provide an overview of employment services to the general public. These materials can be mass mailed, used as handouts, or provided to libraries and schools.
- Participation in statewide job-related events. Among these are job fairs, school career days, media feature stories, seminars and networking groups.
- Coordination and involvement with various agencies, committees, task forces, and projects that focus on employment-related functions, and WP special programs for targeted groups (e.g., veterans, youth, dislocated workers, etc.).

One-Stop Centers have taken the following actions to ensure affirmative outreach:

- Signs have been posted to inform customers of telephone numbers to call or to see the manager if an accommodation is needed to receive services;
- Individuals and organizations have been identified and are available if assistance is needed to provide services or information in a language other than English, and written procedures are available to staff to assist LEP individuals;
- Employees who have skills in languages other than English have identified themselves and offered their services in assisting any customers by providing instruction, conveying information, or assisting with completing forms;
- Ensures a list of local community organizations that serve or represent the various ethnic, gender and age group segments and individuals with disabilities has been maintained;
- Ongoing contacts have been maintained with community-based organizations and advocacy groups to ensure the Center meets the specific needs of each constituency;
- Centers coordinate with other federal, state and local agencies serving diverse segments of the population;
- Publicizing Center services through community employment events such as job fairs, seminars, and public recruitment for employers;
- One-Stop Center staff serve on the advisory boards of, and offer technical assistance to, advocacy groups and community-based organizations;
- Conduct on-site visits with employers and community agencies, participation in job fairs, special recruitment efforts, employer seminars, and public relations campaigns have encouraged employer use of the AJC system;
- Arizona@Work is the statewide workforce development network that helps employers of all sizes and types recruit, develop and retain the best employees for their needs, and;
- One-Stop Center office space, where available, has been provided to local groups and organizations for recruitment, promotional efforts and other related activities.

The State monitors and evaluates the success of recipient efforts to broaden the composition of those considered for participation and employment in their programs and activities, as described above.

The State is aware of the significant population increase of individuals with LEP and takes reasonable steps to ensure that policies and procedures do not deny equal access. The State implements, evaluates and documents programs, activities and services to customers with LEP.

The EO Officers are responsible for monitoring recipient programs and ensuring compliance with the affirmative outreach element of nondiscrimination and equal opportunity provisions of Section 188 of WIOA. The State continually stresses to recipients the importance of their obligation to expand the diversity of the participant pool and staffing selections. The State annually monitors the recipients to measure the

effectiveness of their efforts to serve and employ a diverse population, including diversity in gender, racial, ethnic and age groups, and individuals with disabilities.

The State has developed policies to address the segments of the population who need equitable services and outreach efforts in languages other than English. All recipients are required to provide translation services when the local population needs services or information in an alternate language.

In the selection of site locations, satellite offices, and outstations, consideration is given to accessibility to all members of the general population for all programs, services, and benefits.

Current State practices designed to broaden the composition of those considered for participation and employment at the One-Stop Centers include the following:

- Recruitment of applicants with bilingual skills and experience (for which a stipend is provided);
- Identification of staff with bilingual skills;
- Information exchange and collaboration with community organizations regarding translators, interpreters and resources for LEP;
- Publication of selected materials in languages other than English;
- Use of volunteer interpreters, telephone interpreters and contract interpreters as needed to provide language assistance to customers on a case-by-case basis;
- The State offers a language line (7-1-1) to allow LEP individuals access to all services available through the DES webpage.

**Workforce Innovation & Opportunity Act (WIOA)
EO Monitoring Review Guide**

Element 4 – Attach 1

*State of Arizona
Department of Economic Security*



**Workforce Innovation & Opportunity Act
(WIOA)
EO Monitoring Review Guide**

(LWDA Name)

Program Year ____

(DESK REVIEW SECTION)

Workforce Innovation & Opportunity Act (WIOA) EO Monitoring Review Guide

Instructions:

Place a checkmark next to each document that has **changed** since your last desk review and you have submitted a new document for review during the Program Year (PY) ____ Equal Opportunity Monitoring Review Guide, along with the completed desk review portion. Some requested items will change **annually** and are required to be sent for every review.

DOCUMENTATION	
<input type="checkbox"/>	Job description for the EO Officer
<input type="checkbox"/>	Organizational Chart
<input type="checkbox"/>	EO is the Law Notice/Poster (English, Spanish, and any other language the poster is available in.)
<input type="checkbox"/>	Discrimination Complaint Processing Policies and Procedures
<input type="checkbox"/>	Reasonable Accommodation Policy
<input type="checkbox"/>	Limited English Proficiency Policy
<input type="checkbox"/>	ADA Checklist/Survey for One-Stop Center and service providers/contractors
<input type="checkbox"/>	Brochures, pamphlets, flyers, public announcements, broadcasts, agendas, letterheads, etc. that have been produced in the <u>PAST 12 MONTHS</u>
<input type="checkbox"/>	LWDA EO Monitoring Tool (if changed)
<input type="checkbox"/>	LWDA EO Monitoring Schedule for the current Program Year (Annually)
<input type="checkbox"/>	Copies of the annual EO monitoring visits of service provides/contractors (dates, locations, entities, findings) (Annually)
<input type="checkbox"/>	OJT/WEX agreement or other contracts, agreements, or similar applications for federal financial assistance under WIOA that includes written WIOA EO assurance statement (including at least the reference to WIOA Section 188 and 29 CFR Part 38)
<input type="checkbox"/>	EO Corrective Action/Sanction Policy
<input type="checkbox"/>	Equity of Service Reports (Annually)
<input type="checkbox"/>	EO Staff Data Analysis (Annually)
<input type="checkbox"/>	All documents that have been deemed “vital” per Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency”
<input type="checkbox"/>	Dates and locations of EO training provided to staff, service providers, and contracts (include copies of sign-in sheets) (Annually)
<input type="checkbox"/>	EO and Nondiscrimination policies (employee manual/handbook for employees)

LWDA EO Officer or Designee Signature

Date

Local Workforce**Development Area:** _____**Administrative Entity:** _____**Address:** _____**City, State, Zip:** _____**Contact:** _____**Address:** _____**City, State, Zip:** _____**Phone:** _____**State WIOA EO****Officer/EO Compliance****Program Manager:** _____**Review Period/Dates:** _____**PURPOSE**

The purpose of Arizona's Workforce Innovation and Opportunity Act (WIOA) oversight and monitoring responsibilities are to ensure recipients are complying with the requirements of WIOA Section 188 and 29 CFR Part 38. Each equal opportunity monitoring review includes a review of compliance to ensure each recipient's programs, services, and employment, including those of sub-recipients and contractors, are provided in a manner that ensures Equal Opportunity (EO) and nondiscrimination are in compliance. That applicants, participants, and employees who may be individuals with disabilities or who are limited in English proficiency will have access to WIOA financially-assisted programs, services and employment.

Section 188 of WIOA requires that States develop, implement and maintain, for each of their State programs, a document known as the Nondiscrimination Plan (NDP). The NDP describes the actions the State takes to ensure its One-Stop Partners (OSP), Local Workforce Development Areas (LWDA), and WIOA Title I financially assisted programs, activities, and program operators are complying with the EO and nondiscrimination requirements of WIOA and its implementing regulations. The regulations that implement the nondiscrimination provisions of the WIOA, published at 29 CFR Part 38, require that each Governor establish and adhere to an NDP for their State programs.

MONITORING METHODS

The monitoring process is accomplished through a combination of desk and onsite reviews. Both the desk review and the onsite review occur on an annual basis for each LWDA and One-Stop Partners (OSP). Desk reviews include a desk analysis of the data and records collected by the recipient pursuant to 29 CFR 38.51 through 29 CFR 38.54 and to prepare for onsite reviews.

Onsite reviews must involve the following:

- A preview of the monitoring activities and requirements
- Interviews with staff and participants;
- Review of client and employee paper and electronic files;
- Review of the physical aspects of the site;
- Review of EO, nondiscrimination, and programmatic accessibility issues in the facility.

Element 1: Designation of Local EO Officers

Ref: Non-Discrimination Plan, Element 1; 29 CFR 38.28 through 38.33

1) Name of Local EO Officer or Designee:

2) To whom does the EO Officer report too? (Name and Title)

3) Does the Local EO Officer:

- | | | |
|---|------------------------------|-----------------------------|
| a) Process complaints. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b) Review participant reports for equity of service? Please provide any reports (i.e. AJC reports). | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c) Conduct on-site visits to service providers (OJT/WEX) and contractors to ensure that they are in compliance with WIOA Section 188? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| d) Review service providers written policies to make sure they are nondiscriminatory? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| e) Develop and publish discrimination complaint procedures for participants? (Please provide a copy of the procedures) | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| f) Perform any non-EO related job functions that may create a conflict of interest or the appearance of a conflict of interest? If yes, please explain. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

4) How are eligible applicants/registrants, participants, employees and applicants for employment made aware of the identity of the local EO Officer?

5) On what internal and external communications concerning the LWDA nondiscrimination and EO programs does the EO Officer's identity and contact information appear?

6) What training has the Local EO Officer attended? (List locations and dates)

7) What EO training has been provided to staff, service providers and contractors within the local area?
(List dates and locations, include a copy of sign-in sheets).

8) How are all service providers, sub-recipients, and contractors provided with a clear written explanation of their EO and nondiscrimination responsibilities?

9) Does the Local EO Officer have sufficient staff and resources to ensure compliance with the nondiscrimination and EO provisions of WIOA?

Do you need technical assistance in this element? Circle (Y – N) If so, explain:

Element 2: Notice and Communication

Ref: Non-Discrimination Plan, Element 2; 29 CFR 38.34 through 38.39

1) Is the "Equal Opportunity is the Law" notice:

- a) Made available to each participant, and made part of each participant's file? Yes No
- b) Posted prominently, in reasonable numbers and easily accessible for all including those individuals with disabilities? Yes No
- c) Disseminated in internal memoranda and other written or electronic? Yes No
- 1) Available in alternate format and languages (*i.e. for individuals with language barriers, vision or hearing disabilities*). Yes No
- d) What languages are the EO is the Law offered in? (List all)
- _____
- _____
- e) Is EO is the Law Included in handbooks or manuals for employees? Yes No

2) How and when is it that participants are provided an explanation of their rights to file a complaint?

3) Do local policies on Limited English Proficiency (LEP) allow individuals with limited English proficiency equal and meaningful access to benefits, activities and services?

- a. How and when are LEP individuals made aware of their rights?
- b. What steps are taken to provide services and information in appropriate languages?
- c. Is staff knowledgeable and aware of LEP policies and procedures?

a. _____

b. _____

c. _____

4) Are the EO taglines ("Equal Opportunity Employer/Program" and "Auxiliary aids and services are available upon request to individuals with disabilities") included in all WIOA publications, brochures, meeting notices/agendas, and broadcasts print mass media? (provide examples)

5) Is the EO policy communicated at **orientation or at the one on one interview** for new participants, new employees and/or the general public? (Please provide a written process.)

6) How does the LWDA/OSP ensure that continuing notice is provided to the following applicable groups that it does not discriminate on any prohibited ground?

- Applicants, registrants, participants in activities or services;
- Employees and applicants for employment;
- Other recipients of WIOA funds in the LWDA;
- Members of the public;
- Members of the public with disabilities, including impaired vision and hearing; and
- Unions or professional organizations that hold collective bargaining or professional agreement with your organization.

7) How has the LWDA/OSP communicated “The requirement not to discriminate on the basis of disability and the obligation to provide reasonable accommodations to its sub-recipients?”

8) What efforts does the LWDA/OSP’s make to ensure that communications with individuals with disabilities are just as effective as communications with others?

Is the telephone number for the TDD/TTY or relay service provided by LWIA/OSP on all communication that also provides a contact number for the public?

9) Are photographs, posters and other pictorial displays include and portray positive images of women, minorities, and individuals with disabilities and persons of varying age groups engaged in a variety of workplace and skilled training capacities?

Do you need technical assistance in this element? If so, explain:

Element 3: Assurances

Ref: Non-Discrimination Plan, Element 3; 29 CFR 38.25 through 38.27

- 1) Describe how the EO assurance language incorporated into each grant, cooperative agreement, plan, contracts, or other similar documentation with your service providers and contractors, and their sub-recipients? (Please explain and provide a sample)

- 2) Explain how you ensure that your employees are made aware of their EO and Nondiscrimination rights?

- 3) What EO and Nondiscrimination policies are in place for employees and where are they located?

- 4) What trainings are in place to inform employees of their rights to file a discriminatory complaint? How often are the trainings conducted?

- 5) When and how often are orientations conducted for clientele informing them of their rights to file a discriminatory complaint?

Do you need technical assistance in this element? If so, explain:

Element 4: Affirmative Outreach

Ref: Non-Discrimination Plan, Element 4; 29 CFR Part 38.40

- 1) What steps has the recipient taken to broaden the composition pool of those considered for participation or employment in their programs and activities including members of different sexes, various racial/ethnic groups, and individuals with disabilities or differing age groups?

- 2) Briefly explain what reasonable steps has the LWDA taken to ensure services and other information is provided to Limited English Proficient (LEP) persons?

- 3) In what languages is information within the LWDA provided, other than English? (Provide an example and list the languages available)

- 4) What documents have been determined “vital” per Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” and translated into languages designated as essential? (Please list the documents you have translated).

- 5) Do the recipient’s brochures, pamphlets and flyers include a TDD or relay service telephone number for the hearing impaired?

- 6) Are the required notifications provided in alternative formats for the visually impaired? (provide an example and list the notifications)

Do you need technical assistance in this element? If so, explain:

Element 5: Compliance with Section 504

*Ref: Non-Discrimination Plan, Element 5; 29 CFR Part 38.6;
29 CFR Part 38.54; 29 CFR Part 32 Subparts B and C*

- 5.1) Has a self-evaluation or assessment been conducted by the recipient to determine its accessibility in the last year? Yes No

If "YES", list a date and who conducted it: _____

- 5.2) Is the physical location architecturally accessible? Yes No
Do you have a copy of the ADA checklist or other assessment tool(s) used to determine accessibility? (Provide a completed copy for each office) Yes No

- 5.3) What policies or procedures are in place to ensure that individuals with disabilities are provided reasonable accommodation? (Provide a copy)

- 5.4) Does each recipient of federal WIOA Title I funds, including One-Stop Partners, service and training providers, assure programmatic accessibility and architectural accessibility? (Explain how this is ensured?) Yes No

- 5.5) Are contractor and service provider sites (including OJT/WEX providers) accessible to individuals with disabilities? Yes No

- Is there at least one entrance to the building that is wheelchair accessible? Yes No
- If yes, does it have the international symbol for accessibility for individuals with disabilities posted? If no, where are these clients directed to go? (explain) Yes No

- a. Do inaccessible entrances have signs indicating the location of the nearest accessible entrance? (Please explain if not?)

- b. Are there designated restrooms with appropriate signage available for individuals with disabilities? (If "NO", how are they accommodated?) Yes No

c. Is a TDD or relay service available for use?

Yes No

(If NO, Please explain how the hearing impaired are being accommodated?)

d. When are contractors and service providers (*including OJT/WEX providers*) facilities monitored to ensure accessibility?

e. How does the recipient ensure that communication with persons with disabilities is as effective as communication with others? Explain:

f. How does the recipient ensure that each individual with a disability can participate in the most integrated setting appropriate to that individual? Explain:

5.6) Describe what efforts are made to prohibit discrimination on the basis of disability in employment practices?

a. Describe how is the provision of reasonable accommodations provided when requested?

b. Are job qualifications reviewed to ensure that it does not use a selection criteria that screens out or tends to screen out an individual with a disability? (Unless the criteria is job related for the position in question and consistent with the business necessity) How is it handled if it found?

c. Prohibiting pre-employment inquiries regarding disability except to ask for the individual to self-identify himself or herself as a person with a disability on a voluntary basis for reporting purposes and will be maintained confidentially.

5.7) How does the LWDA/OSP ensure that an individual with a disability is not required to accept an accommodation, aid, benefit, service, training, or opportunity that the individual chooses not to accept?

5.8) How does the LWDA/OSP ensure that, for employment-related training, the selection criteria are reviewed to ensure that they do not screen out, or tend to screen out, an individual with a disability or any class of individuals with disabilities from fully and equally enjoying the training unless the criteria can be shown to be necessary for the training being offered?

5.9) What assistive equipment for individuals with disabilities is available? Please list:

5.10) Does the LWDA/OSP website state that it is ADA accessible and show the federal tagline required?

5.11) Describe any reasonable accommodations that have been provided for applicants, participants, or employees with disabilities in that past 12 months?

a. Describe how you meet the obligation of a recipient to operate programs or activities so that, when viewed in their entirety, they are readily accessible to qualified individuals with disabilities?

b. Does the LWDA have a written reasonable accommodation policy? Yes No

5.12) Describe how medical condition information is maintained separate from other files and secured.

Element 6: Data Information Collection and Maintenance
29 CFR Part 38.41 thru 38.45

6.1) Please explain how EO data has been collected (*race, ethnicity, sex, age, and where known, disability status and Limited English Proficiency (LEP)*) within the LWDA/OSP?

6.2) Are recipients collecting and maintaining for a minimum of three years, the analytical data on applicants, registrants, eligible applicants/registrants, participants terminated participants, employees and applicants for employment? Yes No

6.3) Provide the results you are receiving using the 80% rule? Have there been noticeable discrepancies? (Provide a recent report)

6.4) Where is this data maintained and are there safeguards that will restrict access to unauthorized personnel? (Brief description)

6.5) What are staff informed of concerning the data that is collected on race, sex, age, LEP, and disability?

6.6) Are Staff made aware of the requirements of confidentiality of grant applicants and recipients information? What is done to keep that information confidential?

6.7) Are grant applicants and recipients directed to notify the Director of the Civil Rights Center, USDOL, of administrative enforcement and lawsuits? Yes No

Element 8: Complaint Processing Procedures
29 CFR 38.54

- 8.1) Has the recipient adopted the Arizona Discrimination Complaint Processing and Procedures outlined in the WGLS? Yes No
If no, what discrimination policies and procedures are used?

- 8.2) Please explain how customers and employees obtain a copy of the discrimination complaint policy and procedures? How do they obtain the discrimination complaint form?

- 8.3) Please list any formal complaints that have been filed with the LWDA or OSP's in the past 12 months?

(Continue only if you have had a Complaint filed in the past 12 months, otherwise proceed to #8.5)

- 8.4) Please respond to the following questions concerning a filed complaint:

- Was the complaint filed within 180 days? Yes No
- Was the complainant provided a written notification of receipt of the complaint within 10 days? Yes No
- Was the complainant provided a written statement of each of the issues raised in the complaint and whether you would accept or reject each issue? Yes No
- Was the complainant sent a written notice of lack of jurisdiction when the LWIA determined that it did not have jurisdiction over a complaint? Yes No
- Was the complainant notified that they have the right to representation in the complaint process? Yes No
- Was the complainant offered Alternative Dispute Resolution as an effort to resolve the complaint? Yes No
- Was the complainant provided a written Notice of Final Action within 90 days of the date the complaint was filed? Yes No
- Did the Notice of Final Action inform the complainant that he/she has a right to file a complaint with CRC within 30 days of the date in which the Notice of Final Action is issued if he/she is dissatisfied with your final action on the complaint? Yes No
- Has the State EO Officer been advised of the complaint? Yes No

8.5) Please describe the process established to keep the discrimination complaint records for a period of three years?

8.6) Can you describe the process for keeping the identity of the complainant or any individual who furnishes information relating to, or assisting in, an investigation confidential to the extent possible, consistent with a fair determination of the issues?

8.7) How is an individual who filed a complaint protected from discharge, intimidation, retaliation, threat or coercion?

8.8) Can you describe the policy for handling discrimination complaints from the contractors, vendors or service providers regarding participants?

Element 9: Corrective Actions/Sanctions
29 CFR 38.110

9.1) Are timeframes established to correct violations of WIOA, Title 1, Section 188 or 29 CFR, Part 38? What are they and how are they documented?

9.2) Are procedures in place to conduct follow up monitoring to ensure that commitments are fulfilled? Yes No

9.3) How are service/training providers informed of corrective actions and sanctions?

9.4) Can you describe any corrective action/sanctions taken against the LWDA/OSP in the last 12 months?

9.5) Have you had any corrective action/sanctions taken against contractors, vendors or service providers in the last 12 months? What was the result?

Best Practices

Request for Technical Assistance?

End of (DESK Review)

PLEASE MAKE SURE THAT ALL QUESTIONS HAVE A RESPONSE, IF NOT THEN PLEASE PUT “N/A” IF IT DIDN’T APPLY. THE BALANCE OF THE REVIEW IS DONE AT LOCATION ON THE DATE SCHEDULED.

THANK YOU FOR YOUR PARTICIPATION AND PROVIDING THE COMPLETED REVIEW IN A TIMELY MANNER.

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*State of Arizona
Department of Economic Security*



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(LWDA Name)

Program Year ____

(ONSITE REVIEW SECTION)

Equal Opportunity Employer/Program
Auxiliary aids and services are available upon request to individuals with disabilities.

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ENTRANCE MEETING

Date of Visit:

State WIOA EO
Officer/Compliance
Program Manager:

LWDA/One-Stop Provider

Name:

Address:

Phone:

Representatives

Director/One-Stop Operator:

Local EO Officer/Manager:

Items Covered

- Introduction
- Reason/Purpose for the review

Elements of the Review:

- Review Desk Monitoring Tool
 - Review Employee Files
 - Review Participant Files
 - Facility ADA Inspection
 - Reception Interview for Discrimination Complaint knowledge
 - Client Interview(s)
 - Employee Interview(s)
 - One-Stop Partners Interview
-
- Exit Meeting
 - Questions

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PARTICIPANT FILE REVIEW WORKSHEET

Date of Review:

LWDA/One-Stop Partner:

Monitor: Lynn Nedella, State WIOA EO Officer

#	Participants' Name	Last Four	Program	Gender Male/Female	Ethnicity/ Race	LEP	Disability	Medical Condition Information	Inappropriate comments	EO Notice in File
1			Adult		/					
2			Adult		/					
3			Adult		/					
4			Adult		/					
5			Adult		/					
6			Youth		/					
7			Youth		/					
8			Youth		/					
9			Youth		/					
10			Youth		/					
11			DLW		/					
12			DLW		/					
13			DLW		/					
14			DLW		/					
15			DLW		/					
16			Emp		/					
17			Emp		/					
18			Emp		/					
19			Emp		/					
20			Emp		/					

Key

- **Last Four:** Last four digits of the Social Security #
- **Disability:** Is the participant registered as a person with a disability on the registration sheet?
- **Medical Condition Information:** Is there any medical condition information in the file that could be construed as revealing a disability or relating to a disability? This includes information in case notes.
- **Inappropriate Comments:** Subjective or Derogatory language?
- **EO Notice:** Is a signed copy of the “Equal Opportunity is the Law” notice (29 CFR 38.30) retained in the participant’s file?

Comments

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EMPLOYEE/STAFF/ INTERVIEW

Assure the employee that his/her name will not be a part of the review record, only the nature of his/her response.

Employee's function in the office:

Interviewer:

Location:

Date: / /

1) When was the last training you received regarding EO and Nondiscrimination policy? (Date & Location)

.....
.....
.....

2) Does your supervisor or manager discuss equal opportunity or nondiscrimination with employees during staff meetings? Yes No

3) Tell me what aides are available to help when providing services to Limited English Proficient (LEP) individuals?

.....
.....

4) Do you know what languages are spoken by customers in this area? Yes No
Can you name them?

.....
.....
.....

5) Can you explain where the office's policies, procedures regarding Limited English Proficiency are located?

.....
.....
.....

6) Can you tell me what the process is when helping an LEP individual? Yes No
(Please explain)

.....
.....
.....

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7) Do you know what aides are made available to provide services to the

- a. visually impaired;
- b. deaf clients;
- c. Non-ambulatory clients?

a.

b.

c.

8) Can you tell me the procedure if a customer where to ask for an American Sign Language interpreter?

9) Tell me who you can ask when you have a question on “How to serve an individual with a disability?”

10) Where are the local policies and procedures regarding individuals with disabilities? (Provide a location)

11) Do you have any questions on how to serve individuals with disabilities? If so, what are they?

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12) Do you know what process to follow if a client tells you that they feel they have been discriminated against by someone in your office?

13) Do you know what to do if you feel that you have been discriminated against? Are you aware of your right to file a complaint?

14) Do you have any questions or comments?

EMPLOYMENT SERVICES STAFF INTERVIEW

1) Do you receive or take job orders for the office? Yes No
If so, what is your understanding of nondiscriminatory job orders?

2) What do you look for in the Job Description that may be discriminatory?

3) How do you advise your clientele of their rights to file a discrimination complaint?

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-
- 4) Tell me where you would look for the process and procedure to assist a individual that needs an interpreter.

- 5) Who would you contact if your participant asked for an accommodation for their disability?

- 6) Can you tell me where you would find the procedures for taking a complaint from a client?

- 7) If you feel that you have been discriminated against, do you know what rights you have?

- 8) Does your supervisor discuss equal opportunity when conducting your staff meetings?

- 9) When was that last time you attended a training on equal opportunity procedures?

- 10) Do you have any questions or comments?

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1) What organization are you employed by?

2) Are you aware of the Equal Opportunity (EO) Complaint policy and/or procedures your employer has?

3) When is your clientele informed of their EO rights? How is this done?

4) Do you know where to locate the procedures if you need to assist an individual that doesn't speak English or Spanish?

5) Are your documents that are provided to new clients in other languages? What other languages are offered?

6) Have you ever attended a training for Equal Opportunity?

7) Who is the local Equal Opportunity Officer for this office?

8) How does your organization outreach to individuals with disabilities or Limited English Proficient individuals? (Explain)

9) Do you know your discrimination rights as an employee?

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ONE-STOP PARTNER STAFF INTERVIEW (Cont'd)

10) Where can you file a discrimination complaint and who with?

11) Where are the “EO is the Law” posters located in the office?

12) What are the requirements of storing medical information that has been received from a customer?

13) Do you partner with other agencies to provide services to individuals with disabilities? Who are they?

14) Where are the procedures for assisting an individual with a disability?

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Client Interview

Interview should be conducted in a location that ensures privacy.

Sample introduction: “I am conducting a monitoring review of this office. I would like to ask a few questions regarding your experiences with this office. Your participation is completely voluntary. Neither your participation nor your responses will in any way affect the services you receive from this office. Absolutely none of the information will be recorded in any files pertaining to you. Do you have any questions regarding this?” *(Provide a business card.)*

Interviewer: ... Lynn Nedella, State EO Compliance Manager

Location:

Date:

City of Residence:

The following is strictly ***voluntary*** and will be treated confidentially. It will not affect your status in receiving benefits or services:

Please indicate the following:

Gender: Male Female

Ethnic Origin: Hispanic or Latino Not Hispanic or Latino

Race *(check all that apply):*

- American Indian or Alaskan Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White
- Other: _____

Are you an individual with a disability? Yes No

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CLIENT INTERVIEW

- 1) What program are you participating in currently? Are you receiving the services needed to assist you getting employed or trained?

- 2) Do you feel this office's personnel are helpful, friendly and personable when interacting with their customers?

- 3) In your opinion is this office accessible to individuals with disabilities or individuals that may not speak English?

- 4) What is your opinion of the services provided here?

- 5) What is your opinion of the staff that provides these services?

- 6) Did anyone inform or explain your equal opportunity/nondiscrimination rights as a participant in the program?

Did you sign the document and were you provided a copy of those rights?

- 7) What is your opinion of the program? Do you have any suggestions how to improve the services?

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Introduce yourself to the participant and provide a business card for contact information for any questions that may arise at a later date.

“Would you like to be contacted regarding your concerns or suggestions?”

Yes No

Name: _____

Phone: _____

Email Address: _____

**Upon completion of interview:
*“I appreciate your
cooperation and thank you for
participating!”***

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INTERVIEW RESULTS

Interview with Staff: Expert – Knowledgeable - Training needed – Not Applicable

Number of One-Stop staff interviewed:

Overall knowledge of discrimination rights:

Overall understanding of illegal job orders:

Overall understanding of LEP person’s needs:

Overall understanding of individuals with disabilities accommodations:

Interview with Clients

Number of clients interviewed:

Race:

Gender:

Overall client responses regarding services:

Client suggestions or concerns:

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EXIT MEETING/EXIT CONFERENCE

Monitor(s):

Local Office Representative(s):

PRELIMINARY FINDINGS

Comments:

PRELIMINARY OBSERVATIONS

INITIAL AREAS OF CONCERN

SUGGESTIONS TO MAINTAIN COMPLIANCE

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MONITORING REPORT

Date of Report: _____

LWDA/One-Stop Service Provider:

Date of Monitoring Review:

EO Officer:

Note / Comments:

Recommended Corrective Actions:

NDP Element	Discrepancy	Recommended Corrective Action

Technical Assistance Requested:

NDP Element	Request	Response

PURPOSE:

The State of Arizona (State) addresses how the State and its recipients comply with the disability related requirements of the Workforce Innovation and Opportunity Act (WIOA) Section 188; Section 504 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, including, but not limited to, 29 CFR 38.12 to 38.17.

NARRATIVE:

The State is committed to making all services, facilities, and information accessible for individuals with disabilities. This applies to all programs, activities, and services provided by or made available to potential employees, volunteers, contractors, service providers, licensees, clients, and potential clients within the One-Stop system or receiving Federal funding through the Department of Labor. To reinforce this commitment, all recipients and service providers are required to provide written assurance in their agreements, grants and contracts that they are committed to and will comply with the requirements of the WIOA Section 188, Americans with Disabilities Act (ADA), Rehabilitation Act of 1973, and with 29 CFR Part 31, 32 and 38.

Meet their obligation not to discriminate on the basis of disability.

The Department of Economic Security (DES) has designated DES ADA Coordinators to implement the ADA as required by 28 CFR 35.107. There are separate ADA Coordinators for DES employees and for clients. The DES ADA Coordinators:

1. Coordinate with the DES's Training Unit for the development and delivery of basic training on ADA matters;
2. Facilitate implementation of and compliance with DES's policies and procedures within all programs, activities, and services provided by or made available to potential employees, volunteers, contractors, service providers, licensees, clients, and potential clients within the One-Stop system;
3. Coordinate the implementation of all aspects of ADA within all programs, activities, and services provided by or made available to potential employees, volunteers, contractors, service providers, licensees, clients, and potential clients within the One-Stop system; and
4. Monitor and assess the implementation of ADA policies within all programs, activities, and services provided by or made available to potential employees, volunteers, contractors, service providers, licensees, clients, and potential clients within the One-Stop system.

The State has written policies and procedures requiring that WIOA One-Stop system Partners (OSPs) meet requirements not to discriminate based on disability. When applicable, the recipients must have established policies and procedures addressing reasonable accommodations, auxiliary aids and services, effective communication, and site selection assuring accessibility. To comply with 28 CFR 35.105, these recipients must also conduct self-evaluations which include corrective action plans when necessary that are developed to ensure compliance with obligations to not discriminate based on disability and the provision of reasonable accommodation.

In addition, the State's contractual agreements with WIOA recipients require compliance with program-specific laws and regulations regarding nondiscrimination on the basis of disability. These agreements

require any sub-recipients to comply as well. Ongoing monitoring ensures that the Local Workforce Development Areas (LWDAs) and One-Stop Partners (OSPs), Wagner-Peyser Employment Services (WP), and Unemployment Insurance Administration (UIA) continue to meet their obligations not to discriminate. DES has conducted site assessments in accordance with the ADA Checklist for Existing Facilities (ADA 2010 Standards). The State's contracts incorporate the Arizona State Uniform Terms and Conditions, which require all contractors meet the requirements of the ADA. *(See Element 3, Attachment 2)*

The Rehabilitation Services Administration (RSA) is committed to providing services to individuals with disabilities and are continually improving those services.

The Rehabilitation Act of 1973 (as amended) authorizes programs for individuals with disabilities under Title VI of the Act. The purposes of this Act are to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society and maximize opportunities for individuals with disabilities, including individuals with significant disabilities, for competitive employment, through the statewide workforce development systems.

The State ensures that all recipient's facilities are ADA compliant. The EO Officers are trained and made aware of ADA regulations and implementation processes. The State's monitoring procedures for the recipients include documentation where all areas are reviewed. If any area(s) of noncompliance findings are noted the local EO Officer must submit a corrective action plan to ensure compliance. The monitoring includes structural, programmatic accommodations and technical assistance if requested.

Provide reasonable accommodation for individuals with disabilities. (29 CFR Part 32 and 29 CFR 38.12 through 38.14)

DES Americans with Disabilities Act – Title 2 Policy and Procedures (DES-1-01-12 and DES 1-01-12-01) detail the DES responsibility for providing oversight in “reasonable accommodations.” Included are procedures for making a request for accommodations, evaluating the request, procedures for denial of a request, along with other areas pertaining to the accommodation requested. *(Documentation Section – Attachment 1)*

Provide reasonable modification of policies, practices, and procedures as required. (29 CFR 38.14(b))

Title II of the ADA requires that programs, services, and activities of State and local governments are accessible to and usable by individuals with disabilities. DES program manuals provide specific policy and procedures for providing reasonable accommodation for program participants.

Provide architectural accessibility for individuals with disabilities. (29 CFR 32.28 and 29 CFR 38.13)

Arizona has in place and follows strict statutory guidelines for architectural accessibility for individuals with disabilities. *(Documentation Section - Attachment 2)* One of the most effective means of providing integrated program services is through the development of a welcoming and inclusive environment. Furthermore, the State WIOA EO Officer performs annual site visits to ensure a facility remains in compliance, unless compliance problems require more frequent visits.

Provide programmatic accessibility for persons with disabilities. (29 CFR 32.27 and 29 CFR 38.12 through 38.14)

The State and Local plans provide for communication and program accessibility for individuals with disabilities. Local areas construct Memorandums of Understanding (MOUs) with their One-Stop partners to ensure that they provide such communication and program accessibility that is as effective for disabled individuals as it is for those who are not disabled. The State does utilize auxiliary aids and a telephone system (7-1-1) that meets this “equally effective” requirement. These aids include, but are not limited to, wi-fi service for those individuals that rely on their smart phones and tablets as aides.

Provide for and adhere to a schedule to evaluate job qualifications to ensure that the qualifications do not discriminate on the basis of disability. (29 CFR 32.14)

The DES Central Human Resources Department reviews the Position Descriptions (PDs) to ensure that the qualifications for each job fit the job requirements as depicted by the supervisor or manager of that administration. This includes reviewing the duties, so the requirements don't allow for discrimination in the hiring process. For the employers utilizing the Arizona Job Connection (AJC) to enter a job, the WP staff ensure job listings comply. WP staff review each employer's documentation and job descriptions to ensure that the employer's requirements are not discriminatory.

Limit pre-employment/employment medical inquiries to those permitted by and in accordance with WIOA Section 188 and Section 504, the Americans with Disabilities Act of 1990, and their implementing regulations. (29 CFR 32.15)

Pre-employment and employment medical inquiries are limited to those permitted by and in accordance with WIOA Section 188, Section 504 of the Americans with Disabilities Act, and State guidance. All questions regarding the nature and severity of any disability are generally prohibited. The U.S. Equal Employment Opportunity Commission (EEOC) has issued an ADA Enforcement Guidance paper on *Pre-employment Disability Related Questions and Medical Examinations* (<https://www.eeoc.gov/policy/docs/guidance-inquiries.html#4>). The EEOC guidance states there are only two exceptions where a recipient is permitted to conduct a pre-employment medical examination or inquire about an applicant's disability:

- 1.) A recipient may invite applicants to reveal details about a disability where the inquiry is part of a voluntary affirmative-action plan to increase the number of employees with disabilities, or as part of remedial action to correct the effects of past discrimination; or
- 2.) Where a recipient requires every applicant (disabled or not) for employment to participate in an employment-related medical examination as part of its standard selection procedure. Any medical examination made under this exception must be made only as a separate, second step of the selection process and is allowed only after a conditional offer of employment has been made to the applicant.

The State will utilize this guidance and encourage all LWDA's to utilize this guidance to help ensure compliance with 29 CFR 32.15

Ensure the confidentiality of medical information provided by registrants, applicants, eligible applicants/registrants, participants, employees, and applicants for employment. (29 CFR 32.15 and 29 CFR 38.41(b)(3))

Medical information obtained during a post-offer medical examination or inquiry may be provided to and used by appropriate decision-makers involved in the hiring process to make employment decisions consistent with the ADA.

Staff are allowed access to confidential information on a need-to-know basis including supervisors and managers, first aid and safety personnel, and employers (once a conditional offer of employment has been made). When medical information is needed for program eligibility or affects participation activities, it is kept in a sealed confidential envelope separate from the files of eligible applicants, registrants, and participants.

Administer their WIOA Title I financially assisted programs and activities so that each individual with a disability participates in the most integrated setting appropriate to that individual. (29 CFR 38.12(d))

In the Department of Economic Security Workforce Administration “Equal Opportunity (EO) Monitoring Review Guide,” all EO Officers are asked annually about their access obligations with the following question as part of the State ensuring ADA compliance:

- How does the recipient ensure that each individual with a disability participates in the most integrated setting appropriate to that individual?

The Rehabilitation Services Administration (RSA) works closely with all LWDA's to ensure that individuals with disabilities participate in the most integrated setting appropriate to each individual. The Vocational Rehabilitation (VR) program is co-located or provides services on an itinerate basis within the ARIZONA@WORK Job Centers. Those recipients that are unable to provide accommodations to individuals with disabilities by reason of affordability or architectural cost have developed procedures to use community or state agency aids and equipment to ensure all accommodations can be met.

Are able to communicate with persons with disabilities as effectively as with others. (29 CFR 38.9 and 38.15)

In the Office of Equal Opportunity's “EO Monitoring Review Guide,” all EO Officers are asked annually about their ability to communicate with persons with disabilities as effectively as with others as part of the State ensuring ADA compliance:

- How does the recipient ensure that communication with persons with disabilities is as effective as communication with others? (*Element 4 – Attachment 1*)

RSA is a core partner with ARIZONA@WORK Job Centers in Arizona to ensure effective communication with persons with disabilities by assessing an individual's needs. At least one workstation at each location is equipped with software and hardware tools and equipment to facilitate communication with persons with disabilities. In addition, One-Stop Centers have bilingual staff and access to sign language services.

ARIZONA REVISED STATUTES

A.R.S. § 41-1492.01. Prohibition of discrimination by public entities

A. All buildings and facilities that are used by public entities and that are leased or constructed in whole or in part with the use of state or local monies, the monies of any political subdivision of this state or any combination of these monies shall conform to title II of the Americans with disabilities act.

B. This article applies to permanent buildings, additions to buildings, temporary buildings and emergency construction.

A.R.S. § 41-1492.02. Prohibition of discrimination by public accommodations and commercial facilities

A. No individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases, leases to others or operates a place of public accommodation.

B. It is discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of that individual or class, directly or through contractual, licensing or other arrangements:

1. To a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, advantages, privileges or accommodations of an entity.

2. To the loss of an opportunity to participate in or benefit from goods, services, facilities, privileges, advantages or accommodations that are not equal to those afforded to other individuals.

3. To a good, service, facility, privilege, advantage or accommodation that is different or separate from that provided to other individuals, unless the action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, accommodation or other opportunity that is as effective as that provided to others. For the purposes of this subsection, "individual" or "individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

C. Goods, services, facilities, privileges, advantages and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

D. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in programs or activities that are not separate or different. Nothing in this article shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit that the individual chooses not to accept.

ARIZONA REVISED STATUTES

E. An individual or entity, directly or through contractual or other arrangements, shall not utilize standards or criteria or methods of administration that:

1. Have the effect of discriminating on the basis of disability.
2. Perpetuate the discrimination of others who are subject to common administrative control.

F. It is discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

G. For the purposes of subsection A of this section, "discriminated against" includes:

1. The imposition or application of 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 goods, services, facilities, privileges, advantages or accommodations, unless these criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered.
2. A failure to make reasonable modifications in policies, practices or procedures, if these modifications are necessary to afford these goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making these modifications would fundamentally alter the nature of these goods, services, facilities, privileges, advantages or accommodations.
3. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of reasonable modifications in policies, practices or procedures or auxiliary aids and services, unless the entity can demonstrate that taking these steps would fundamentally alter the nature of the goods, service, facility, privilege, advantage or accommodation being offered or would result in an undue burden.
4. A failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift if the removal is readily achievable.
5. If an entity can demonstrate that the removal of a barrier under paragraph 4 of this subsection is not readily achievable, a failure to make these goods, services, facilities, privileges, advantages or accommodations available through alternative methods if these methods are readily achievable.

ARIZONA REVISED STATUTES

H. It is discriminatory for a private entity that operates a fixed route system and that is not subject to section 304 of the Americans with disabilities act to purchase or lease a vehicle with a seating capacity in excess of sixteen passengers, including the driver, for use on this system, for which a solicitation is made after September 30, 1992, that is not readily accessible to and usable by individuals with disabilities including individuals who use wheelchairs. If a private entity that operates a fixed route system and that is not subject to section 41-1492.04 purchases or leases a vehicle with a seating capacity of sixteen passengers or less, including the driver, for use on such system after September 30, 1992 that is not readily accessible to or usable by individuals with disabilities, it is discriminatory for this entity to fail to operate this system so that, if viewed in its entirety, this system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. Fixed route and demand response systems do not apply to over-the-road buses. For the purposes of this subsection, "discriminatory" includes:

1. A failure of a private entity that operates a demand responsive system and that is not subject to section 41-1492.04 to operate the system so that, if viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.
2. The purchase or lease by the entity for use on the system of a vehicle with a seating capacity in excess of sixteen passengers, including the driver, for which solicitations are made after September 30, 1992, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that the system, if viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.
3. The purchase or lease of an over-the-road bus that does not comply with section 306(a)(2) of the Americans with disabilities act by a private entity that provides transportation of individuals and that is not primarily engaged in the business of transporting people and any other failure of the entity to comply with section 306(a)(2) of the Americans with disabilities act.

I. Nothing in this article requires an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the entity if the individual poses a direct threat to the health or safety of others. For the purposes of this subsection, "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by modification of policies, practices or procedures or by the provision of auxiliary aids or services.



DES Administrative Policy

Chapter: 1 Department of Economic Security
Article: 01 Director
Subject: 12 Americans with Disabilities Act-Title II: Non-Discrimination on the Basis of Disability for Programs, Services, and Activities
Process Owner: Office of the Director
Effective Date: 02/05/2021
Expiration Date: 02/05/2024
Revision Number: 3

DES 1-01-12

Americans with Disabilities Act – Title II:

Non-Discrimination on the Basis of Disability for Programs, Services, and Activities

I. POLICY STATEMENT

This policy provides information on the Department of Economic Security's (DES or Department) policy of non-discrimination on the basis of disability in its programs, services, and activities under Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

This policy communicates to the public and to all DES employees, volunteers, trainees, and other persons who are part of the DES workforce that individuals with disabilities shall not be excluded from participation in, be denied the benefit of, or be subjected to discrimination in any of DES's programs, services, and activities.

II. APPLICABILITY

This policy applies to all DES employees, volunteers, trainees, and other persons who are part of the DES workforce. Additional requirements are outlined in this policy for DES managers to resolve complaints and to address contractors and grantees that provide DES programs, services, or activities.

Title II of the ADA applies to the programs and services of all state and local governments and their agencies and departments. It applies when programs and services are being provided directly by DES or its Divisions or are being provided by grantees or contractors. DES shall ensure that grantees and contractors understand their obligations under the ADA, inform individuals about their rights under the ADA, and comply with the ADA and this ADA policy

Section 504 applies to all of the operations of a department or agency of a state or local government that receives federal financial assistance. As DES receives federal funds for its cash assistance, SNAP, Medicaid, child care, and other programs, all DES programs, services, and activities shall comply with Section 504. DES grantees and

contractors whose services are funded with federal financial assistance shall also comply with Section

504. Because of the nearly identical language and requirements in these two laws, this policy shall treat them the same, and a reference to the ADA shall include a reference to Section 504.

This policy supersedes those sections of Division program manuals when they are inconsistent with this policy. However, this policy does not supersede policies or manuals which, pursuant to other federal or state laws, provide rights or benefits greater than those required by Title II of the ADA or Section 504. Where multiple laws apply, DES shall apply whichever law provides the most rights or benefits.

Failure to comply with this policy may result in disciplinary action up to and including dismissal and/or legal action.

III. PROCEDURES

This policy is supported by Departmental procedures, which identify how action related to this policy will be conducted, including responsibilities, time frames, and required actions. To view this procedure, access the link below.

DES 1-01-12-01 Americans with Disabilities Act (ADA) Title II Procedures

IV. AUTHORITY

Americans with Disabilities Act (ADA) of 1990

Americans with Disabilities Act Amendments Act of 2008 (eff. January 1, 2009) Section 504 of the Rehabilitation Act of 1973

45 CFR Part 84, Nondiscrimination on the basis of handicap in programs or activities receiving Federal financial assistance

28 CFR Part 35, Nondiscrimination on the basis of disability in state and local government services (as amended by the final rule published on September 15, 2010)

V. DEFINITIONS

Americans with Disabilities Act (ADA): A comprehensive Federal law passed in 1990 that prohibits discrimination on the basis of disability in employment, programs, and services provided by state and local governments; goods and services provided by private companies; commercial facilities; telecommunications and transportation.

Auxiliary Aids and Services: Includes:

1. Qualified interpreters on-site or through video remote interpreting (VRI) services; note-takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with

hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

2. Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

Companion: A family member, friend, or associate of the individual seeking access to a DES service, program, or activity, who along with the individual is an appropriate person with whom the program should communicate.

Customer: Any person who applies for, receives, or participates in a DES program, service, or activity.

DES Report of Discrimination: A complaint by anyone alleging an act of disability discrimination by the Department in violation of Title II or Section 504 including the failure to provide a reasonable modification and retaliation for exercising rights under the ADA and Section 504. The investigation of these complaints is conducted by the Department ADA Coordinator or Division-level Coordinator or designee and is resolved internally to the Department.

Direct Threat: A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

Disability: The term “disability” means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. A record of such impairment; or
3. Being regarded as having such impairment.

An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. The term “being regarded as having

such impairment” does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

“Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

“Physical or mental impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. It also means any mental or psychological disorder. It also includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase “physical or mental impairment” does not include homosexuality or bisexuality.

The term “disability” does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders, compulsive gambling, kleptomania, or pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable modifications or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. The positive effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

Existing Facility: A facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under the ADA regulations.

Facility: All or any portion of buildings, structures, sites, complexes, equipment, rolling

stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fundamental Alteration: A change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

Grantee: A person or entity who has received a grant from the Department to provide services to individuals.

Individual with a Disability: Means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Oral Presentation: A verbal presentation by an individual who reads written text out loud and interprets a document to an individual or member of the public. The reader is familiar with the content of the document and is able to effectively answer questions about the document.

Other Power-Driven Mobility Device: Any mobility device powered by batteries, fuel, or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts, electronic personal assistance mobility devices (EPAMDs), such as the Segway®PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of the ADA.

Program: Means an administrative area within the Department including areas designated as “programs” and any program, service, or activity administered by or operated by DES contractors and grantees.

Programs, Services, or Activities: Sometimes collectively referred to as “program” or “programs” used in this policy, include any DES program, service, or activity whether within DES or administered or operated by a contractor or grantee.

Qualified Individual with a Disability: An individual with a disability who, with or without reasonable modifications or modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs, services, or activities provided by a public entity, including DES.

Qualified Interpreter: An interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Qualified interpreters include, for example, sign language interpreters, oral translators, and cued-language translators.

Qualified Reader: A person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Reasonable Modification: DES will make reasonable modifications in the policies, practices, or procedures of a program, service, or activity when the modifications are necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service, or activity. A modification of policies, practices, or procedures made to a program, service, or activity is one that allows an individual with a disability the opportunity to participate equally in the program, service, or activity or benefit from the service. An example of a reasonable modification includes, but is not limited to, modifying a Department policy or procedure such as allowing a Jobs participant with a disability to engage in work activities that are not countable in the federal work participation rate. The term “reasonable modification” in this Policy includes “modification.”

Rehabilitation Act – Section 504: Federal law passed in 1973 that states “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under any program, service, or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.”

Service Animal: Any dog, and in some instances a miniature horse, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Teletext Typewriters (TTY): A freestanding piece of equipment that runs over a telephone line or through a computer modem to communicate with deaf or hard of hearing individuals. The person with a TTY can communicate by typing a message that is transmitted in text format to another TTY. If the caller and the call recipient both have a TTY, they can communicate directly. If only one party has a TTY, the parties communicate through a voice relay operation, which has a TTY, and reads the typed messages to the party without a TTY, and types into a TTY for the party without a TTY. Relay operator services are free and can be accessed by dialing 7-1-1.

Video Remote Interpreting (VRI) Service: An interpreting service that uses video conferencing technology over dedicated lines or wireless technology offering high-

speed, wide-bandwidth video connection that delivers high-quality video images.

Wheelchair: A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.

VI. STANDARDS

A. General

1. No qualified individual with a disability shall, on the basis of disability, be discriminated against, be excluded from participation in, or be denied the benefits of the services, programs, or activities of the Department. DES shall provide reasonable modifications when necessary to avoid discrimination.
2. DES shall not, directly or through contractual, licensing, or other formal or informal arrangements, on the basis of disability: deny a qualified person with a disability the opportunity to participate in a service, program, or activity to receive the benefits or services offered in accordance with law.
 - a. DES shall not use methods of program administration that have a discriminatory effect on individuals with disabilities.
 - b. DES shall not use eligibility criteria that unlawfully screen out individuals with disabilities.
3. DES shall not assess a charge or fee to an individual with a disability to cover the cost of measures required to provide the individual with the non-discriminatory treatment required by this policy.
4. DES may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, DES must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
5. Nothing in this policy prohibits the Department from providing benefits or services to individuals with disabilities beyond those required by law.

B. Who Is Protected?

1. Individuals with Disabilities
The ADA and Section 504 protect an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs provided by DES or its contractors.

An individual need not meet the definition of a disability under the Social Security Supplemental Security Income (SSI), Social Security Disability Income (SSDI), or Veterans Administration (VA) programs, or other disability benefits programs to qualify as an individual with a disability under the ADA or Section 504.

2. Individuals with Substance Abuse Problems

- a. Alcoholism is an impairment under the ADA. If it substantially limits a major life activity, it is a disability under the ADA.
- b. An individual with a past history of engaging in the illegal use of drugs or alcohol, who is not currently engaged in the illegal use of drugs or alcohol and who (i) has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully, (ii) is participating in a supervised rehabilitation program, or (iii) is erroneously regarded as engaging in such alcohol or drug use, is protected by the ADA.
- c. "Current use" is the illegal use of controlled substances that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.
- d. The Department shall not exclude an individual from a program, provide lesser treatment, or deny an equal opportunity to participate in and benefit from programs on the basis that the individual has a history of illegal use of drugs, if the individual is currently participating in or has successfully completed a supervised drug rehabilitation program and is not currently engaging in illegal drug use. This policy statement is not intended to preclude program staff from developing and/or carrying out case plans designed to protect children or vulnerable adults.

3. Other Individuals Protected

- a. The ADA protects people who have a past history of a disability, if they are being discriminated against based on that past history.
- b. The ADA protects people who are wrongfully perceived as having disabilities, if the program, service, or activity makes decisions on the basis of that perception.
- c. In addition, the ADA prohibits discrimination against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members or friends.

C. Who Shall Comply with the ADA and Section 504?

1. Title II of the ADA applies to the programs and services of all state and local

governments and their agencies and departments, such as DES. It applies when programs and services are being provided directly by DES or its Divisions, and when those programs and services are being provided by contractors or grantees, such as employment services contractors, and contractors providing Child Protective Services, HCBS Waiver Services, and Developmental Disability Division services. When DES programs are provided by contractors, it is the responsibility of the Department to ensure that contractors understand their obligations under the ADA, inform individuals about their rights under the ADA, and comply with the ADA.

2. Section 504 of the Rehabilitation Act (“Section 504”) applies to all of the operations of a department or agency of a state or local government that receives federal financial assistance. As DES receives federal funds for its TANF, SNAP, Medicaid, child care, and other programs, all DES programs and services shall comply with Section 504. DES contractors whose services are funded with federal financial assistance shall also comply with Section 504. Section 504 also applies to federal agencies such as the Social Security Administration, Veteran’s Administration, and other federal agencies.
3. The ADA and Section 504 have overlapping requirements. For the sake of simplicity, this policy shall refer to the ADA, but Section 504 has similar requirements.

D. Administrative Responsibilities

The Department shall have an agencywide Department ADA Coordinator and Division-level ADA Coordinators.

1. Department ADA Coordinator
 - a. The Director or designee shall appoint an agencywide Department ADA Coordinator responsible for administering Departmentwide compliance with the ADA, Section 504, and other state and federal disability discrimination laws.
 - b. The Department ADA Coordinator shall:
 - i. Oversee ADA compliance in all DES Divisions;
 - ii. Oversee Division-level ADA Coordinators;
 - iii. Assist and oversee the resolution of ADA grievances. This oversight shall include ensuring that written results of any grievance are provided to the person with a disability;
 - iv. Review all ADA grievances filed regarding DES programs to identify trends that require changes in policies and practices, and ensure that such changes are made;
 - v. Assist Division-level ADA Coordinators in developing Division

and program-specific training on the ADA; and

- vi. Have the authority to require those within DES programs, services, or activities and Divisions to modify policies and practices to accommodate the individual with a disability.

2. Division-level ADA Coordinators

Division-level ADA Coordinators shall:

- a. Oversee ADA compliance in all programs, services, or activities in their Division;
- b. Assist DES programs, services, or activities within their Division in meeting their obligations under the ADA;
- c. Assist DES programs, services, or activities in their Division to review written rules and policies as well as practices to identify and modify those that may have a discriminatory effect, or adopt specific procedures for modifying those rules, policies, and practices for people with disabilities when necessary;
- d. Investigate and review any proposed denial of a reasonable modification request by a Department employee or supervisor prior to issuance of the written decision. Upon confirmation of the denial decision, the Division-level ADA Coordinator is responsible for ensuring a written notice of denial of reasonable modification is sent to the individual with a disability in a format to ensure effective communication is accomplished;
- e. Review all ADA grievances filed regarding Division programs, services, or activities to identify trends that require changes in policies and practices, and ensure that such changes are made;
- f. Assist Division programs, services, or activities in developing program-specific training on the ADA; and
- g. Have the authority to require those within the DES Division to make changes in policies and practices, and to accommodate individuals with a disability.

3. Division Responsibilities

In addition to program requirements identified in the policy, specific Divisional responsibilities include, but are not limited to:

- a. The Division of Business and Finance Office of Procurement shall ensure that all DES contracts to provide services to individuals, and all contracts for programs, services, or activities receiving federal financial assistance, require the party with whom DES is contracting to comply with the ADA and Section 504 as required by law;

- b. The Division of Business & Finance Operations Support Services shall facilitate obtaining forms and publications in alternative formats when requested by or on behalf of individuals with disabilities, or by a DES Program or Division;
- c. The Office of Communications shall assist Division-level ADA Coordinators, DES programs, services, or activities, and the Department ADA Coordinator to ensure that materials are provided in alternative formats that are accessible to people with disabilities when needed;
- d. The Training and Development Administration (TDA) shall work with all DES Divisions and programs, services, or activities to develop ADA training materials that are tailored to the particular DES program, service, or activity, and review any training materials developed by the program, service, or activity;
- e. The Division of Business and Finance Office of Facilities Management shall be responsible for oversight of physical accessibility of program sites in which DES programs, services, or activities are delivered. This oversight includes:
 - i. Ensuring new construction complies with accessibility guidelines;
 - ii. Ensuring building modifications are made in compliance with the ADA; and
 - iii. Negotiating accessibility issues when renewing leases, including assigning responsibility for accessibility matters between the landlord and tenant, as appropriate.

E. Eligibility Criteria: Programs, Services, or Activities May Not Exclude or Screen Out Individuals with Disabilities

1. DES shall not exclude qualified individuals with disabilities from DES programs, services, or activities on the basis of disability if they meet the program's essential eligibility requirements, with or without Reasonable Modification of rules, policies, or procedures, or the provision of auxiliary aids and services. DES shall apply nonessential program, service, or activity rules in a flexible manner for people with disabilities when necessary to avoid denial of equal and meaningful access to programs.
2. DES shall not apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities from fully and equally enjoying any goods or services, unless such criteria can be shown to be necessary for the provisions of goods and services. Anyone with questions as to this criteria should consult their Division-level ADA coordinator.
3. When there is a barrier to eligibility or participation that is related to the

applicant's disability and the program, service, or activity's eligibility criteria, the program, service, or activity should apply the reasonable modification provisions of this policy. See Section VI.I.

4. DES programs, services, and activities for individuals with a particular type of disability cannot exclude individuals simply because they have an additional disability.
5. DES may not exclude persons with disabilities from activities based solely on the preference of other participants.
6. DES may impose legitimate safety requirements even if they screen out individuals with disabilities.
 - a. Safety standards shall be applied to all individuals or participants.
 - b. The safety screening requirements shall be based on actual risk, not on speculation, stereotypes, or generalizations about individuals with disabilities or on presumptions about what a class of individuals with disabilities can or cannot do.
 - c. DES inquiries about particular disabilities shall be limited to matters necessary to implement the safety standards.

F. Individuals with Disabilities Shall Be Given Services in the Most Integrated Settings

DES shall provide services, programs, and activities to individuals with disabilities in the most integrated setting appropriate to meet their needs within the context of the program, service, or activity being administered.

Unnecessary segregation of people with disabilities violates the ADA and this policy.

1. The Department shall ensure that alternative methods of providing program access do not result in unnecessary segregation.
2. Programs that provide for placement and levels of care including institutional and community placements providing programs in integrated settings requires consideration of the range of facilities that are available and the individual's care and treatment needs.
3. Providing program and placement services in integrated settings shall take into account the individual's preferences, and the type of services that shall best fit the individual's needs that are then available, and shall be consistent with the access, reasonable modification, and communication requirements in this policy.
4. DES will allow a qualified individual with a disability the opportunity to participate in services, programs, or activities, despite the existence of permissibly separate or different programs or activities.

G. Ensuring Access to Programs, Services, or Activities to Individuals with Disabilities

1. DES shall ensure that each program, service, or activity when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.
2. Nonessential program rules shall be applied in a flexible manner for individuals with disabilities when necessary to avoid denial of equal and meaningful access to programs, services, or activities.
3. If an individual with a disability meets the essential requirements of a program (such as income, resource, or immigration requirements), reasonable modifications in other program rules and procedures shall be made to ensure an equal and meaningful opportunity to participate and benefit.
4. Regarding existing facilities, new constructions and alterations, DES shall comply with applicable law and this policy.
 - a. The Department may comply with program accessibility requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its services, programs, and activities readily accessible to and usable by individuals with disabilities.
 - b. DES is not required to make each of its existing facilities accessible to and usable by individuals with disabilities, DES is also not required to take actions regarding existing facilities that would result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, DES shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services.

H. Identifying Individuals with Disabilities

1. Many DES customers have some type of disability. In some cases, these disabilities have not yet been diagnosed. Although the relevance of an individual's disability depends on the nature of the program, service, or activity and nature and severity of the individual's limitations, disability shall often be relevant to one or more of the following:
 - a. Eligibility for the program, service, or activity itself;
 - b. Content of the individual's service plan;
 - c. Applicability of different program rules or benefits;

- d. Need for reasonable modifications in programs and services.
2. Programs, services, or activities in which having a disability is a program requirement shall ensure that the needed information is gathered in a manner that ensures the individual an opportunity to participate in the program with no unnecessary delays or unneeded burdensome activities.
3. Programs, services, or activities in which having a disability is not a program requirement, but having a disability may impact the person's ability to effectively participate in the program, service, or activity, shall offer individuals the opportunity to voluntarily disclose disabilities.
4. DES programs, services, or activities cannot require an individual to disclose a disability even though the decision to not disclose a disability may have consequences for the individual.
 - a. If an individual wants to apply for a benefit, program, or service in which a disability is an eligibility requirement, the individual shall disclose, and to the extent required by the program, document the existence, nature, and severity of the disability. If an individual refuses to provide this information, the program can find the individual ineligible for benefits or services;
 - b. For programs, services, or activities in which a disability is not an eligibility requirement, employees cannot require an individual to disclose or document a disability as a condition of receiving benefits. Nor can the program, service, or activity deny benefits or services to the individual on the basis that a person failed or refused to disclose a disability or provide documentation of a disability.
5. The individual's case record shall include, but is not limited to:
 - a. Identification of any known physical or mental impairment that affects or that may affect the ability to comply with program requirements;
 - b. Data that includes if a determination was made that an individual has a physical or mental disability and if a modification is needed on an ongoing basis.
 - c. An individual's request for a reasonable modification (even if the individual did not refer to the ADA or to reasonable modifications when making the request); whether the modification request was granted or denied; and the appropriate reasons;
 - d. Offers of reasonable modification made by employees and the outcome of the offers;
 - e. The anticipated duration that the modification will be needed;
6. If the record indicates that a disability may exist, employees shall review the individual's case record and case notes for more information, including the

type of disability that the individual has and the type of modification needed.

I. Reasonable Modification

1. Right to Reasonable Modification

DES shall provide individuals with disabilities with reasonable modifications when necessary to have an equal and meaningful opportunity to participate in and benefit from DES programs, services, or activities.

DES shall make reasonable modifications to policies, practices, or procedures of a program, service, or activity at no cost to the individual with a disability when the modifications are necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service, or activity, or create an undue administrative or financial burden. Fundamental alteration or alteration or undue burden are discussed in Section N. of this policy.

2. Requesting Modifications

Individuals with disabilities have a right to ask DES programs, services, or activities for reasonable modifications.

- a. Requests for reasonable modifications may be made verbally or by completing a *Request for Effective Modification to Participate in a Program, Service or Activity* (J-930-A) form. The employee receiving a verbal request shall document the request by completing a Reasonable Modifications form. Programs, services, or activities cannot require individuals to use or sign forms to make requests or waive a right for reasonable modifications.
- b. When a Department employee becomes aware that an individual has a disability that is causing the individual to have difficulty accessing services or participating in a program, service, or activity, the employee shall advise the individual that he or she may request a reasonable modification and shall offer assistance, as appropriate.
- c. Individuals with disabilities have the right to accept or request a reasonable modification that was previously offered and declined.

3. Granting Modification Requests

Employees who interact with individuals shall have the responsibility and the authority to provide reasonable modifications to individuals with disabilities and shall be trained in applicable procedures to ensure requests are resolved in a reasonable and timely manner.

4. Documentation and Disability for Modifications and Interim Modifications

- a. Department employees shall not require documentation of an obvious disability unless:

- i. The modification sought is a deferral from a programmatic requirement;
 - ii. The program and the individual with a disability disagree about what type of modification would meet the needs of the individual with a disability, and documentation from the individual would explain why a modification offered by a program would not meet the needs of the individual; or;
 - iii. There is a question of what modification is appropriate.
- b. The requested documentation shall verify the disability and its relationship to the barrier to eligibility or participation, and how the requested modification would reduce or eliminate the barrier to permit the individual to meet essential eligibility or participation requirements.
- c. Documentation of the existence of a disability is considered sufficient if it confirms the existence of the disability, the permanent or temporary nature of the disability, and the functional limitations caused by the disability.
- d. Only the information related to the disability generating the need for accommodation may be requested.

5. Time Frame to Provide Reasonable Modifications

- a. Modifications shall be provided in time to avoid discrimination. The time period depends on factors, including but not limited to, the type of modification requested and the consequences to the individual of failing to provide it immediately.
- b. Where feasible, Department staff should encourage persons who may need modification to request them in advance. This encouragement may include advising persons how to request needed modification.
- c. DES shall begin to accommodate the individual with a disability while gathering documentation when the individual with a disability:
 - i. Is unlikely to have such documentation with him or her because it is an initial appointment to apply for benefits and the individual with a disability had no reason to know that he or she should bring documentation;
 - ii. Does not have documentation for disability-related reasons (e.g., the individual with a disability has severe mental disability, and as a result of the disability, denies that a disability exists);
 - iii. Does not have a regular treatment provider and has no

present means to obtain medical or mental health appointments, examinations, and tests necessary to obtain documentation (e.g., the individual with a disability is not yet receiving Medicaid);

- iv. Needs a modification immediately, and failure to provide the modification immediately shall result in discrimination or would result in denial of an equal opportunity to obtain benefits or services;
- v. Needs a modification to participate in a program, but has not been evaluated for a disability.

6. Modifications Needed on an Ongoing Basis

DES programs, services, or activities shall ensure that modifications needed on an ongoing basis are provided on that basis, so that a person with a disability does not have to request the same modifications each time it is needed.

7. Individuals with Disabilities Cannot Be Required to Accept Modifications

Individuals with a disability shall not be required to accept a modification, service, opportunity, or benefit provided under this policy and cannot be excluded from programs, services, or activities because they refused a modification. If, however, as a result of refusing it, an individual with a disability does not fulfill program, service, or activity requirements, the program, having advised the individual with a disability of the consequences of the refusal and the continued refusal of the individual with a disability, can take action against the individual with a disability on the basis that the individual with a disability does not comply with program requirements.

8. Reasonable Modification Available Regardless of Whether a Disability is Apparent

The appearance or lack of appearance of a disability shall not be a factor in determining whether the Department shall provide a reasonable modification. Department employees not trained in determining disability modification or modification shall not make determinations on the need of clients requesting these services.

9. Denial of Requests for Reasonable Modification

Divisions and programs shall only make a determination to deny a request for reasonable modification after consulting with the Division-level Coordinator. If the division or program area denies a request for a modification, the Division-level Coordinator shall ensure that a written notice is sent to the individual. This notification, the Reasonable Accommodation/Modification Decision, OEO-1003A, shall include in the denial notice an explanation for why the modification request is being denied, or why the program decided to offer a modification other than the

one that was requested. The notice should also identify any alternative modifications that are offered. The written notice of denial shall also inform the individual how to file an ADA grievance.

10. No Requirement to Provide Personal Devices

This policy does not require a program, service, or activity to provide individuals with disabilities with any personal devices unless they are customarily provided to the individuals participating in the program, service, or activity. In some instances, the Department may choose to provide equipment or services of a personal nature as an alternative to providing another type of modification.

J. Communications (Including Auxiliary Aids and Services and Telecommunications)

DES shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

1. Auxiliary Aids and Services

- a. DES programs, services, or activities shall provide appropriate auxiliary aids and services, including, but not limited to, sign language interpreters, where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a DES service, program, or activity.
- b. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.
- c. In determining the type of auxiliary aid or service necessary, DES shall give primary consideration to the request of the individual with a disability. To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in a way that protects the privacy and independence of the individual with a disability.
- d. DES shall not require an individual with a disability to bring another individual to interpret for him or her.
- e. DES shall not rely on a person accompanying an individual with a disability to interpret or facilitate communication except (1) in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or (2) where the person accompanying the individual is an adult and the individual with a disability specifically requests that the

accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

- f. Programs, services, or activities may either have qualified interpreters on staff or use contract service providers that interpret on an as-needed basis.
- g. Video Remote Interpreting (VRI) Services. Department staff may choose to provide qualified interpreters via VRI services but only if the VRI provides (1) real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; (3) a clear, audible transmission of voices; and (4) adequate set-up and operation without unduly delay.

2. Telecommunications

- a. DES may use several options for communicating by telephone with deaf and hard of hearing individuals, including Teledex typewriters (TTY), Video Relay Services, and Video Interpreting Services. The ADA Title II Procedures (DES 1-01-12-01) provide guidance on the use of each of these services.
- b. DES shall respond to telephone calls from a telecommunications relay services in the same manner that it responds to other telephone calls.
- c. As DES develops and installs automated-attendant systems, including, but not limited to, voice mail and messaging, or an interactive voice response system for receiving and directing incoming telephone calls, those systems shall take into account the needs of persons who may use auxiliary aids and services.
- d. Department staff shall take into account the needs of persons with hearing or hearing impairments when program guidelines require participants to make telephone calls.

3. E-mail Communications

E-mail may be an effective way to communicate with individuals with disabilities. Programs that use e-mail to communicate with clients must ensure that employees check and respond to such messages within strict time frames.

4. Notice to Individuals and the Public about Effective Communication with Individuals with Disabilities

DES shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities, and about the methods by which the program, service, or activity communicates with individuals with disabilities, the fact that auxiliary aids and services are available, and how to request them. For example, information is provided in posters at DES program sites, as well as consumer education materials that individuals can take home with them. Programs can meet the obligation to provide this notice by including information about effective communication in consumer education materials that provide information about other ADA rights. If the program has a TTY number, the number shall be included in notices, brochures, and other written materials that include a voice telephone number for the program.

5. Web Site Accessibility

DES will provide access to DES material to individuals with disabilities that is as effective as access provided to individuals without disabilities.

6. Scope of DES Duties

DES is not required to take any action relating to this section on Communications that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where DES personnel believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, DES has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the DES Director or designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this Communications policy would result in such an alteration or such burdens, DES shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services DES provides.

K. Disability-Related Non-Compliance with Program, Service, or Activity Requirements

Department employees shall take into account the potential impact of known disabilities when making a finding of willfulness or intent to refuse to comply with programmatic requirements. The Department shall offer reasonable modification when the modification will allow the individual with a disability to comply.

1. Department staff shall be sensitive to the conditions that some individuals

with disabilities have that make it difficult to meet DES program, service, or activity requirements, including attending appointments, complying with program notices, gathering documents, engaging in work activities, or complying with other program, service, or activity requirements.

2. Department staff shall take into account the needs of participants who, although do not have disabilities, may be caring for a family member who is disabled. Reasonable modification may be required in these instances to enable an individual to participate in program activities and still be able to provide required care for the disabled family member.

L. Service Animals

1. Generally, DES shall permit the use of a service animal by an individual with a disability.
2. DES staff may ask an individual with a disability to remove a service animal from the premises if either of the following exist:
 - a. The animal is out of control and the animal's handler does not take effective action to control it. To be under control, a service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).
 - b. The animal is not housebroken.
3. If DES excludes a service animal, DES shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.
4. DES is not responsible for the care or supervision of a service animal.
5. DES staff may make two inquiries to determine whether an animal qualifies as a service animal. DES may ask (1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform. DES shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, DES may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
6. Individuals with disabilities shall be permitted, without related fees or charges, to be accompanied by their service animals in all areas of DES's facilities where members of the public, participants in services, programs or

activities, or invitees, as relevant, are allowed to go. Where DES normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

7. DES shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. In determining whether reasonable modifications can be made to allow a miniature horse into a specific facility, DES shall consider: the type, size, and weight of the miniature horse and whether the facility can accommodate these features; whether the handler has sufficient control of the miniature horse; whether the miniature horse is housebroken; and whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

M. Mobility Devices

Where and when building and personal safety concerns are not raised, the following shall be adhered to:

1. DES shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.
2. DES shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility devices, unless DES can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that DES has adopted.
3. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under section (2) above, the Department shall consider such factors as the type, size, weight, dimensions, and speed of the device; the facility's volume of pedestrian traffic; the facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if required by the user); whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the facility, or poses a conflict with other existing laws or regulations.
4. Department staff shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.
5. Department staff may ask a person using another power-driven mobility

device to provide a credible assurance that the mobility device is required because of the person's disability, such as a valid, state-issued, disability parking placard or card, or other state-issued proof of disability. In lieu of a valid, state-issued disability parking placard or card, or state-issued proof of disability, DES shall accept a reasonable verbal statement from the individual or their companion.

N. Fundamental Alteration or Undue Administrative or Financial Burden

1. When a fundamental alteration of a program, service, or activity, or undue financial or administrative burden would occur by providing program access, the Department shall take such action to provide program access that will not result in a fundamental alteration of the program, service, or activity, or result in an undue financial or administrative burden. DES may achieve access by:
 - a. Providing services, activities, and programs in facilities that are accessible to individuals with disabilities.
 - b. Transferring programs, services, and activities from any building that becomes temporarily or permanently inaccessible to an alternate location that is accessible.
 - c. Modifying when reasonable, the structure of a facility to ensure that individuals with disabilities have access to programs, services, and activities.
 - d. Making a reasonable modification of the policies and procedures, or providing auxiliary aids and services within available resources.
2. Any denial of a request for access, auxiliary aids, or services, or request for reasonable modification of policy due to a finding of fundamental alteration or undue administrative or financial burden, shall be in writing with the reason for denial provided by the responsible division. Notice of denials resulting from a grievance review shall be provided by the Department ADA Coordinator.

O. Direct Threat

1. DES is not required to permit an individual to participate in or benefit from its services, programs, or activities when that individual poses a direct threat to the health or safety of others.
2. In determining whether an individual poses a direct threat to the health or safety of others, DES must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

P. Illegal Drug Use

1. DES shall not discriminate on the basis of illegal drug use against an individual who is not currently engaging in illegal drug use.
2. DES shall not deny health services or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current use of drugs, if the individual is otherwise entitled to such services. However, a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.
3. Department programs, services, or activities may adopt reasonable policies related to drug testing, that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs.
4. An individual with a psychoactive substance use disorder resulting from current illegal use of drugs is not considered to have a disability under this policy unless the individual has a disability due to another condition. However, the Department reserves both the right and the responsibility to develop prudent service plans and to implement applicable decisions regarding the safety and welfare of vulnerable children and adults.

Q. Discrimination on the Basis of Association

1. DES shall not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members, friends, or any other individual.
2. An individual who experiences discrimination by association has the right to file a report of discrimination or a grievance with DES, file a discrimination complaint with the appropriate federal or state designated agency, or to file a lawsuit.

R. Protection against Retaliation

1. The ADA protects individuals who exercise their rights under the ADA or assist others in exercising their rights under the ADA from retaliation. "Exercising rights" under the ADA include requesting reasonable modifications. An individual who has filed a complaint, testified, or participated in any manner in the investigation of any complaint shall not be intimidated, threatened, coerced, discriminated, or retaliated against in any way.
2. Individuals who believe they have experienced retaliation after exercising their rights under the ADA, including those who exercise their rights by requesting a reasonable modification have the right to file a discrimination complaint and/or a lawsuit.

3. The Department ADA Coordinator or designee shall investigate allegations of retaliation against individuals with disabilities or others protected under this policy.

S. Release of Information

If a DES Division believes there is a need to share information about an individual's disability with any entity outside of the Division, the program shall follow applicable federal and state law and Department policy regarding any such disclosure.

T. Notice of Rights

DES programs and services shall provide individuals, and members of the public with information about their rights under the ADA:

1. DES offices in which individuals are served shall display an approved poster or flyers that highlight individual rights under the ADA, and a "We Can Help You" notice;
2. The Department shall provide information to explain rights of applicants and recipients in relation to services for those with disabilities. The information shall be made available where information about DES programs and services are available.
3. Employees shall read and explain the information to the individual whenever an applicant or recipient for DES programs or benefits has a disability that interferes or may interfere with the ability to read and/or understand written material.

U. Grievance Policy and Procedures

1. Right to File a Grievance

Persons who feel they or someone in their care has been discriminated against in violation of Title II of the ADA or Section 504, or discriminated against on the basis of disability regarding DES programs, services, or activities, may file an ADA grievance by contacting the Department ADA Coordinator.

2. Notice of Right to File a Grievance

- a. Individuals shall be informed of their right to file such grievances by posters or flyers in program waiting rooms and fliers distributed to individuals.
- b. Posters or fliers shall include contact information (name, address, and phone and fax numbers) for the Department ADA Coordinator.
- c. Notices informing individuals that the request for a reasonable modification or modifications has been denied shall contain

information about how to file an ADA grievance with DES.

3. Methods of Filing a Grievance

Individuals may file a grievance by phone, in writing, or on a grievance form. Programs shall inform anyone seeking to file a grievance that they are entitled to help with completing the form, if needed. Grievants who wish to file by phone should be directed to the Department ADA Coordinator who will take down the information over the phone and provide the person filing the grievance with a copy of the form or other document describing the grievance, so that the person filing the grievance can review it and make changes if necessary. Alternate formats shall be provided if needed as a modification regarding the grievance process.

4. Deadline for Deciding ADA Grievances

The Department ADA Coordinator, as applicable, shall investigate and resolve a grievance as soon as possible and in any event within 15 business days after receipt of the grievance. A decision shall be provided to the grievant in writing.

5. Appeal

The Department ADA Coordinator shall notify any grievant who indicates they are not satisfied with the grievance decision that they may appeal to the federal entity responsible for the program from which the action originated. The Department ADA Coordinator shall offer assistance in identifying the appropriate federal entity.

6. Record Keeping Requirements for ADA Grievances

All ADA grievances shall be documented to include: the name of the grievant, the grievance, the date of the grievance, the investigation, and resolution of the grievance, and any documents concerning the grievance.

V. Monitoring

All DES programs, services, or activities monitor compliance with the ADA in DES or contracted programs, services, and activities. Monitoring shall take place on a regular and ongoing basis, including, but not limited to:

1. A review of a sample of case records of individuals with disabilities to determine whether disabilities were properly identified, modification requests recorded, and modifications provided in a timely fashion;
2. A periodic review of all of the ADA grievances filed with a DES Division regarding the program, service, or activity, to identify patterns of problems that may need to be addressed through policy changes, and ensure that grievances were resolved in a timely fashion;
3. Analysis of customer data to identify trends that may indicate a need for

policy and program changes (e.g., to see whether individuals with disabilities are losing or being denied benefits and services to a greater extent than others);

- a. Interviews with front line employees to test their familiarity with ADA obligations and modification procedures;
- b. Customer interviews to see whether they are satisfied that their disabilities were accommodated.

W. Training

DES will provide training to employees to facilitate their understanding of DES responsibilities under the ADA, this policy, its supporting procedure and where appropriate, program-specific guidance.

X. Contractors and Grantees

1. When DES procures services by contract, grant, or intergovernmental agreement (IGA), DES shall include requirements in contracts and IGAs that contractors, grantees, or governmental entities under IGA shall comply with Title II and Section 504, in addition to other applicable civil rights laws.
2. All procured contracts, grants, or IGAs shall also include provisions for DES to periodically review contractors for compliance with Title II and Section 504.
3. Primary responsibility for adopting policies and procedures to provide non-discriminatory access by an individual or the public to a service, program, or activity administered by DES lies with DES.



DES Administrative Policy

Chapter: 1 Department of Economic Security
Article: 01 Director
Subject: 12 Americans with Disabilities Act-Title II: Non-Discrimination on the Basis of Disability for Programs, Services, and Activities
Process Owner: Office of the Director
Effective Date: 02/05/2021
Expiration Date: 02/05/2024
Revision Number: 3

DES 1-01-12

Americans with Disabilities Act – Title II:

Non-Discrimination on the Basis of Disability for Programs, Services, and Activities

I. POLICY STATEMENT

This policy provides information on the Department of Economic Security's (DES or Department) policy of non-discrimination on the basis of disability in its programs, services, and activities under Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

This policy communicates to the public and to all DES employees, volunteers, trainees, and other persons who are part of the DES workforce that individuals with disabilities shall not be excluded from participation in, be denied the benefit of, or be subjected to discrimination in any of DES's programs, services, and activities.

II. APPLICABILITY

This policy applies to all DES employees, volunteers, trainees, and other persons who are part of the DES workforce. Additional requirements are outlined in this policy for DES managers to resolve complaints and to address contractors and grantees that provide DES programs, services, or activities.

Title II of the ADA applies to the programs and services of all state and local governments and their agencies and departments. It applies when programs and services are being provided directly by DES or its Divisions or are being provided by grantees or contractors. DES shall ensure that grantees and contractors understand their obligations under the ADA, inform individuals about their rights under the ADA, and comply with the ADA and this ADA policy

Section 504 applies to all of the operations of a department or agency of a state or local government that receives federal financial assistance. As DES receives federal funds for its cash assistance, SNAP, Medicaid, child care, and other programs, all DES programs, services, and activities shall comply with Section 504. DES grantees and

contractors whose services are funded with federal financial assistance shall also comply with Section

504. Because of the nearly identical language and requirements in these two laws, this policy shall treat them the same, and a reference to the ADA shall include a reference to Section 504.

This policy supersedes those sections of Division program manuals when they are inconsistent with this policy. However, this policy does not supersede policies or manuals which, pursuant to other federal or state laws, provide rights or benefits greater than those required by Title II of the ADA or Section 504. Where multiple laws apply, DES shall apply whichever law provides the most rights or benefits.

Failure to comply with this policy may result in disciplinary action up to and including dismissal and/or legal action.

III. PROCEDURES

This policy is supported by Departmental procedures, which identify how action related to this policy will be conducted, including responsibilities, time frames, and required actions. To view this procedure, access the link below.

DES 1-01-12-01 Americans with Disabilities Act (ADA) Title II Procedures

IV. AUTHORITY

Americans with Disabilities Act (ADA) of 1990

Americans with Disabilities Act Amendments Act of 2008 (eff. January 1, 2009) Section 504 of the Rehabilitation Act of 1973

45 CFR Part 84, Nondiscrimination on the basis of handicap in programs or activities receiving Federal financial assistance

28 CFR Part 35, Nondiscrimination on the basis of disability in state and local government services (as amended by the final rule published on September 15, 2010)

V. DEFINITIONS

Americans with Disabilities Act (ADA): A comprehensive Federal law passed in 1990 that prohibits discrimination on the basis of disability in employment, programs, and services provided by state and local governments; goods and services provided by private companies; commercial facilities; telecommunications and transportation.

Auxiliary Aids and Services: Includes:

1. Qualified interpreters on-site or through video remote interpreting (VRI) services; note-takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with

hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

2. Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

Companion: A family member, friend, or associate of the individual seeking access to a DES service, program, or activity, who along with the individual is an appropriate person with whom the program should communicate.

Customer: Any person who applies for, receives, or participates in a DES program, service, or activity.

DES Report of Discrimination: A complaint by anyone alleging an act of disability discrimination by the Department in violation of Title II or Section 504 including the failure to provide a reasonable modification and retaliation for exercising rights under the ADA and Section 504. The investigation of these complaints is conducted by the Department ADA Coordinator or Division-level Coordinator or designee and is resolved internally to the Department.

Direct Threat: A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

Disability: The term “disability” means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. A record of such impairment; or
3. Being regarded as having such impairment.

An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. The term “being regarded as having

such impairment” does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

“Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

“Physical or mental impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. It also means any mental or psychological disorder. It also includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase “physical or mental impairment” does not include homosexuality or bisexuality.

The term “disability” does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders, compulsive gambling, kleptomania, or pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable modifications or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. The positive effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

Existing Facility: A facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under the ADA regulations.

Facility: All or any portion of buildings, structures, sites, complexes, equipment, rolling

stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fundamental Alteration: A change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

Grantee: A person or entity who has received a grant from the Department to provide services to individuals.

Individual with a Disability: Means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Oral Presentation: A verbal presentation by an individual who reads written text out loud and interprets a document to an individual or member of the public. The reader is familiar with the content of the document and is able to effectively answer questions about the document.

Other Power-Driven Mobility Device: Any mobility device powered by batteries, fuel, or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts, electronic personal assistance mobility devices (EPAMDs), such as the Segway®PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of the ADA.

Program: Means an administrative area within the Department including areas designated as “programs” and any program, service, or activity administered by or operated by DES contractors and grantees.

Programs, Services, or Activities: Sometimes collectively referred to as “program” or “programs” used in this policy, include any DES program, service, or activity whether within DES or administered or operated by a contractor or grantee.

Qualified Individual with a Disability: An individual with a disability who, with or without reasonable modifications or modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs, services, or activities provided by a public entity, including DES.

Qualified Interpreter: An interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Qualified interpreters include, for example, sign language interpreters, oral translators, and cued-language translators.

Qualified Reader: A person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Reasonable Modification: DES will make reasonable modifications in the policies, practices, or procedures of a program, service, or activity when the modifications are necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service, or activity. A modification of policies, practices, or procedures made to a program, service, or activity is one that allows an individual with a disability the opportunity to participate equally in the program, service, or activity or benefit from the service. An example of a reasonable modification includes, but is not limited to, modifying a Department policy or procedure such as allowing a Jobs participant with a disability to engage in work activities that are not countable in the federal work participation rate. The term “reasonable modification” in this Policy includes “modification.”

Rehabilitation Act – Section 504: Federal law passed in 1973 that states “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under any program, service, or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.”

Service Animal: Any dog, and in some instances a miniature horse, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Teletext Typewriters (TTY): A freestanding piece of equipment that runs over a telephone line or through a computer modem to communicate with deaf or hard of hearing individuals. The person with a TTY can communicate by typing a message that is transmitted in text format to another TTY. If the caller and the call recipient both have a TTY, they can communicate directly. If only one party has a TTY, the parties communicate through a voice relay operation, which has a TTY, and reads the typed messages to the party without a TTY, and types into a TTY for the party without a TTY. Relay operator services are free and can be accessed by dialing 7-1-1.

Video Remote Interpreting (VRI) Service: An interpreting service that uses video conferencing technology over dedicated lines or wireless technology offering high-

speed, wide-bandwidth video connection that delivers high-quality video images.

Wheelchair: A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.

VI. STANDARDS

A. General

1. No qualified individual with a disability shall, on the basis of disability, be discriminated against, be excluded from participation in, or be denied the benefits of the services, programs, or activities of the Department. DES shall provide reasonable modifications when necessary to avoid discrimination.
2. DES shall not, directly or through contractual, licensing, or other formal or informal arrangements, on the basis of disability: deny a qualified person with a disability the opportunity to participate in a service, program, or activity to receive the benefits or services offered in accordance with law.
 - a. DES shall not use methods of program administration that have a discriminatory effect on individuals with disabilities.
 - b. DES shall not use eligibility criteria that unlawfully screen out individuals with disabilities.
3. DES shall not assess a charge or fee to an individual with a disability to cover the cost of measures required to provide the individual with the non-discriminatory treatment required by this policy.
4. DES may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, DES must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
5. Nothing in this policy prohibits the Department from providing benefits or services to individuals with disabilities beyond those required by law.

B. Who Is Protected?

1. Individuals with Disabilities
The ADA and Section 504 protect an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs provided by DES or its contractors.

An individual need not meet the definition of a disability under the Social Security Supplemental Security Income (SSI), Social Security Disability Income (SSDI), or Veterans Administration (VA) programs, or other disability benefits programs to qualify as an individual with a disability under the ADA or Section 504.

2. Individuals with Substance Abuse Problems

- a. Alcoholism is an impairment under the ADA. If it substantially limits a major life activity, it is a disability under the ADA.
- b. An individual with a past history of engaging in the illegal use of drugs or alcohol, who is not currently engaged in the illegal use of drugs or alcohol and who (i) has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully, (ii) is participating in a supervised rehabilitation program, or (iii) is erroneously regarded as engaging in such alcohol or drug use, is protected by the ADA.
- c. "Current use" is the illegal use of controlled substances that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.
- d. The Department shall not exclude an individual from a program, provide lesser treatment, or deny an equal opportunity to participate in and benefit from programs on the basis that the individual has a history of illegal use of drugs, if the individual is currently participating in or has successfully completed a supervised drug rehabilitation program and is not currently engaging in illegal drug use. This policy statement is not intended to preclude program staff from developing and/or carrying out case plans designed to protect children or vulnerable adults.

3. Other Individuals Protected

- a. The ADA protects people who have a past history of a disability, if they are being discriminated against based on that past history.
- b. The ADA protects people who are wrongfully perceived as having disabilities, if the program, service, or activity makes decisions on the basis of that perception.
- c. In addition, the ADA prohibits discrimination against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members or friends.

C. Who Shall Comply with the ADA and Section 504?

1. Title II of the ADA applies to the programs and services of all state and local

governments and their agencies and departments, such as DES. It applies when programs and services are being provided directly by DES or its Divisions, and when those programs and services are being provided by contractors or grantees, such as employment services contractors, and contractors providing Child Protective Services, HCBS Waiver Services, and Developmental Disability Division services. When DES programs are provided by contractors, it is the responsibility of the Department to ensure that contractors understand their obligations under the ADA, inform individuals about their rights under the ADA, and comply with the ADA.

2. Section 504 of the Rehabilitation Act (“Section 504”) applies to all of the operations of a department or agency of a state or local government that receives federal financial assistance. As DES receives federal funds for its TANF, SNAP, Medicaid, child care, and other programs, all DES programs and services shall comply with Section 504. DES contractors whose services are funded with federal financial assistance shall also comply with Section 504. Section 504 also applies to federal agencies such as the Social Security Administration, Veteran’s Administration, and other federal agencies.
3. The ADA and Section 504 have overlapping requirements. For the sake of simplicity, this policy shall refer to the ADA, but Section 504 has similar requirements.

D. Administrative Responsibilities

The Department shall have an agencywide Department ADA Coordinator and Division-level ADA Coordinators.

1. Department ADA Coordinator
 - a. The Director or designee shall appoint an agencywide Department ADA Coordinator responsible for administering Departmentwide compliance with the ADA, Section 504, and other state and federal disability discrimination laws.
 - b. The Department ADA Coordinator shall:
 - i. Oversee ADA compliance in all DES Divisions;
 - ii. Oversee Division-level ADA Coordinators;
 - iii. Assist and oversee the resolution of ADA grievances. This oversight shall include ensuring that written results of any grievance are provided to the person with a disability;
 - iv. Review all ADA grievances filed regarding DES programs to identify trends that require changes in policies and practices, and ensure that such changes are made;
 - v. Assist Division-level ADA Coordinators in developing Division

and program-specific training on the ADA; and

- vi. Have the authority to require those within DES programs, services, or activities and Divisions to modify policies and practices to accommodate the individual with a disability.

2. Division-level ADA Coordinators

Division-level ADA Coordinators shall:

- a. Oversee ADA compliance in all programs, services, or activities in their Division;
- b. Assist DES programs, services, or activities within their Division in meeting their obligations under the ADA;
- c. Assist DES programs, services, or activities in their Division to review written rules and policies as well as practices to identify and modify those that may have a discriminatory effect, or adopt specific procedures for modifying those rules, policies, and practices for people with disabilities when necessary;
- d. Investigate and review any proposed denial of a reasonable modification request by a Department employee or supervisor prior to issuance of the written decision. Upon confirmation of the denial decision, the Division-level ADA Coordinator is responsible for ensuring a written notice of denial of reasonable modification is sent to the individual with a disability in a format to ensure effective communication is accomplished;
- e. Review all ADA grievances filed regarding Division programs, services, or activities to identify trends that require changes in policies and practices, and ensure that such changes are made;
- f. Assist Division programs, services, or activities in developing program-specific training on the ADA; and
- g. Have the authority to require those within the DES Division to make changes in policies and practices, and to accommodate individuals with a disability.

3. Division Responsibilities

In addition to program requirements identified in the policy, specific Divisional responsibilities include, but are not limited to:

- a. The Division of Business and Finance Office of Procurement shall ensure that all DES contracts to provide services to individuals, and all contracts for programs, services, or activities receiving federal financial assistance, require the party with whom DES is contracting to comply with the ADA and Section 504 as required by law;

- b. The Division of Business & Finance Operations Support Services shall facilitate obtaining forms and publications in alternative formats when requested by or on behalf of individuals with disabilities, or by a DES Program or Division;
- c. The Office of Communications shall assist Division-level ADA Coordinators, DES programs, services, or activities, and the Department ADA Coordinator to ensure that materials are provided in alternative formats that are accessible to people with disabilities when needed;
- d. The Training and Development Administration (TDA) shall work with all DES Divisions and programs, services, or activities to develop ADA training materials that are tailored to the particular DES program, service, or activity, and review any training materials developed by the program, service, or activity;
- e. The Division of Business and Finance Office of Facilities Management shall be responsible for oversight of physical accessibility of program sites in which DES programs, services, or activities are delivered. This oversight includes:
 - i. Ensuring new construction complies with accessibility guidelines;
 - ii. Ensuring building modifications are made in compliance with the ADA; and
 - iii. Negotiating accessibility issues when renewing leases, including assigning responsibility for accessibility matters between the landlord and tenant, as appropriate.

E. Eligibility Criteria: Programs, Services, or Activities May Not Exclude or Screen Out Individuals with Disabilities

1. DES shall not exclude qualified individuals with disabilities from DES programs, services, or activities on the basis of disability if they meet the program's essential eligibility requirements, with or without Reasonable Modification of rules, policies, or procedures, or the provision of auxiliary aids and services. DES shall apply nonessential program, service, or activity rules in a flexible manner for people with disabilities when necessary to avoid denial of equal and meaningful access to programs.
2. DES shall not apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities from fully and equally enjoying any goods or services, unless such criteria can be shown to be necessary for the provisions of goods and services. Anyone with questions as to this criteria should consult their Division-level ADA coordinator.
3. When there is a barrier to eligibility or participation that is related to the

applicant's disability and the program, service, or activity's eligibility criteria, the program, service, or activity should apply the reasonable modification provisions of this policy. See Section VI.I.

4. DES programs, services, and activities for individuals with a particular type of disability cannot exclude individuals simply because they have an additional disability.
5. DES may not exclude persons with disabilities from activities based solely on the preference of other participants.
6. DES may impose legitimate safety requirements even if they screen out individuals with disabilities.
 - a. Safety standards shall be applied to all individuals or participants.
 - b. The safety screening requirements shall be based on actual risk, not on speculation, stereotypes, or generalizations about individuals with disabilities or on presumptions about what a class of individuals with disabilities can or cannot do.
 - c. DES inquiries about particular disabilities shall be limited to matters necessary to implement the safety standards.

F. Individuals with Disabilities Shall Be Given Services in the Most Integrated Settings

DES shall provide services, programs, and activities to individuals with disabilities in the most integrated setting appropriate to meet their needs within the context of the program, service, or activity being administered.

Unnecessary segregation of people with disabilities violates the ADA and this policy.

1. The Department shall ensure that alternative methods of providing program access do not result in unnecessary segregation.
2. Programs that provide for placement and levels of care including institutional and community placements providing programs in integrated settings requires consideration of the range of facilities that are available and the individual's care and treatment needs.
3. Providing program and placement services in integrated settings shall take into account the individual's preferences, and the type of services that shall best fit the individual's needs that are then available, and shall be consistent with the access, reasonable modification, and communication requirements in this policy.
4. DES will allow a qualified individual with a disability the opportunity to participate in services, programs, or activities, despite the existence of permissibly separate or different programs or activities.

G. Ensuring Access to Programs, Services, or Activities to Individuals with Disabilities

1. DES shall ensure that each program, service, or activity when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.
2. Nonessential program rules shall be applied in a flexible manner for individuals with disabilities when necessary to avoid denial of equal and meaningful access to programs, services, or activities.
3. If an individual with a disability meets the essential requirements of a program (such as income, resource, or immigration requirements), reasonable modifications in other program rules and procedures shall be made to ensure an equal and meaningful opportunity to participate and benefit.
4. Regarding existing facilities, new constructions and alterations, DES shall comply with applicable law and this policy.
 - a. The Department may comply with program accessibility requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its services, programs, and activities readily accessible to and usable by individuals with disabilities.
 - b. DES is not required to make each of its existing facilities accessible to and usable by individuals with disabilities, DES is also not required to take actions regarding existing facilities that would result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, DES shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services.

H. Identifying Individuals with Disabilities

1. Many DES customers have some type of disability. In some cases, these disabilities have not yet been diagnosed. Although the relevance of an individual's disability depends on the nature of the program, service, or activity and nature and severity of the individual's limitations, disability shall often be relevant to one or more of the following:
 - a. Eligibility for the program, service, or activity itself;
 - b. Content of the individual's service plan;
 - c. Applicability of different program rules or benefits;

- d. Need for reasonable modifications in programs and services.
2. Programs, services, or activities in which having a disability is a program requirement shall ensure that the needed information is gathered in a manner that ensures the individual an opportunity to participate in the program with no unnecessary delays or unneeded burdensome activities.
3. Programs, services, or activities in which having a disability is not a program requirement, but having a disability may impact the person's ability to effectively participate in the program, service, or activity, shall offer individuals the opportunity to voluntarily disclose disabilities.
4. DES programs, services, or activities cannot require an individual to disclose a disability even though the decision to not disclose a disability may have consequences for the individual.
 - a. If an individual wants to apply for a benefit, program, or service in which a disability is an eligibility requirement, the individual shall disclose, and to the extent required by the program, document the existence, nature, and severity of the disability. If an individual refuses to provide this information, the program can find the individual ineligible for benefits or services;
 - b. For programs, services, or activities in which a disability is not an eligibility requirement, employees cannot require an individual to disclose or document a disability as a condition of receiving benefits. Nor can the program, service, or activity deny benefits or services to the individual on the basis that a person failed or refused to disclose a disability or provide documentation of a disability.
5. The individual's case record shall include, but is not limited to:
 - a. Identification of any known physical or mental impairment that affects or that may affect the ability to comply with program requirements;
 - b. Data that includes if a determination was made that an individual has a physical or mental disability and if a modification is needed on an ongoing basis.
 - c. An individual's request for a reasonable modification (even if the individual did not refer to the ADA or to reasonable modifications when making the request); whether the modification request was granted or denied; and the appropriate reasons;
 - d. Offers of reasonable modification made by employees and the outcome of the offers;
 - e. The anticipated duration that the modification will be needed;
6. If the record indicates that a disability may exist, employees shall review the individual's case record and case notes for more information, including the

type of disability that the individual has and the type of modification needed.

I. Reasonable Modification

1. Right to Reasonable Modification

DES shall provide individuals with disabilities with reasonable modifications when necessary to have an equal and meaningful opportunity to participate in and benefit from DES programs, services, or activities.

DES shall make reasonable modifications to policies, practices, or procedures of a program, service, or activity at no cost to the individual with a disability when the modifications are necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service, or activity, or create an undue administrative or financial burden. Fundamental alteration or alteration or undue burden are discussed in Section N. of this policy.

2. Requesting Modifications

Individuals with disabilities have a right to ask DES programs, services, or activities for reasonable modifications.

- a. Requests for reasonable modifications may be made verbally or by completing a *Request for Effective Modification to Participate in a Program, Service or Activity* (J-930-A) form. The employee receiving a verbal request shall document the request by completing a Reasonable Modifications form. Programs, services, or activities cannot require individuals to use or sign forms to make requests or waive a right for reasonable modifications.
- b. When a Department employee becomes aware that an individual has a disability that is causing the individual to have difficulty accessing services or participating in a program, service, or activity, the employee shall advise the individual that he or she may request a reasonable modification and shall offer assistance, as appropriate.
- c. Individuals with disabilities have the right to accept or request a reasonable modification that was previously offered and declined.

3. Granting Modification Requests

Employees who interact with individuals shall have the responsibility and the authority to provide reasonable modifications to individuals with disabilities and shall be trained in applicable procedures to ensure requests are resolved in a reasonable and timely manner.

4. Documentation and Disability for Modifications and Interim Modifications

- a. Department employees shall not require documentation of an obvious disability unless:

- i. The modification sought is a deferral from a programmatic requirement;
 - ii. The program and the individual with a disability disagree about what type of modification would meet the needs of the individual with a disability, and documentation from the individual would explain why a modification offered by a program would not meet the needs of the individual; or;
 - iii. There is a question of what modification is appropriate.
- b. The requested documentation shall verify the disability and its relationship to the barrier to eligibility or participation, and how the requested modification would reduce or eliminate the barrier to permit the individual to meet essential eligibility or participation requirements.
- c. Documentation of the existence of a disability is considered sufficient if it confirms the existence of the disability, the permanent or temporary nature of the disability, and the functional limitations caused by the disability.
- d. Only the information related to the disability generating the need for accommodation may be requested.

5. Time Frame to Provide Reasonable Modifications

- a. Modifications shall be provided in time to avoid discrimination. The time period depends on factors, including but not limited to, the type of modification requested and the consequences to the individual of failing to provide it immediately.
- b. Where feasible, Department staff should encourage persons who may need modification to request them in advance. This encouragement may include advising persons how to request needed modification.
- c. DES shall begin to accommodate the individual with a disability while gathering documentation when the individual with a disability:
 - i. Is unlikely to have such documentation with him or her because it is an initial appointment to apply for benefits and the individual with a disability had no reason to know that he or she should bring documentation;
 - ii. Does not have documentation for disability-related reasons (e.g., the individual with a disability has severe mental disability, and as a result of the disability, denies that a disability exists);
 - iii. Does not have a regular treatment provider and has no

present means to obtain medical or mental health appointments, examinations, and tests necessary to obtain documentation (e.g., the individual with a disability is not yet receiving Medicaid);

- iv. Needs a modification immediately, and failure to provide the modification immediately shall result in discrimination or would result in denial of an equal opportunity to obtain benefits or services;
- v. Needs a modification to participate in a program, but has not been evaluated for a disability.

6. Modifications Needed on an Ongoing Basis

DES programs, services, or activities shall ensure that modifications needed on an ongoing basis are provided on that basis, so that a person with a disability does not have to request the same modifications each time it is needed.

7. Individuals with Disabilities Cannot Be Required to Accept Modifications

Individuals with a disability shall not be required to accept a modification, service, opportunity, or benefit provided under this policy and cannot be excluded from programs, services, or activities because they refused a modification. If, however, as a result of refusing it, an individual with a disability does not fulfill program, service, or activity requirements, the program, having advised the individual with a disability of the consequences of the refusal and the continued refusal of the individual with a disability, can take action against the individual with a disability on the basis that the individual with a disability does not comply with program requirements.

8. Reasonable Modification Available Regardless of Whether a Disability is Apparent

The appearance or lack of appearance of a disability shall not be a factor in determining whether the Department shall provide a reasonable modification. Department employees not trained in determining disability modification or modification shall not make determinations on the need of clients requesting these services.

9. Denial of Requests for Reasonable Modification

Divisions and programs shall only make a determination to deny a request for reasonable modification after consulting with the Division-level Coordinator. If the division or program area denies a request for a modification, the Division-level Coordinator shall ensure that a written notice is sent to the individual. This notification, the Reasonable Accommodation/Modification Decision, OEO-1003A, shall include in the denial notice an explanation for why the modification request is being denied, or why the program decided to offer a modification other than the

one that was requested. The notice should also identify any alternative modifications that are offered. The written notice of denial shall also inform the individual how to file an ADA grievance.

10. No Requirement to Provide Personal Devices

This policy does not require a program, service, or activity to provide individuals with disabilities with any personal devices unless they are customarily provided to the individuals participating in the program, service, or activity. In some instances, the Department may choose to provide equipment or services of a personal nature as an alternative to providing another type of modification.

J. Communications (Including Auxiliary Aids and Services and Telecommunications)

DES shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

1. Auxiliary Aids and Services

- a. DES programs, services, or activities shall provide appropriate auxiliary aids and services, including, but not limited to, sign language interpreters, where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a DES service, program, or activity.
- b. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.
- c. In determining the type of auxiliary aid or service necessary, DES shall give primary consideration to the request of the individual with a disability. To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in a way that protects the privacy and independence of the individual with a disability.
- d. DES shall not require an individual with a disability to bring another individual to interpret for him or her.
- e. DES shall not rely on a person accompanying an individual with a disability to interpret or facilitate communication except (1) in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or (2) where the person accompanying the individual is an adult and the individual with a disability specifically requests that the

accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

- f. Programs, services, or activities may either have qualified interpreters on staff or use contract service providers that interpret on an as-needed basis.
- g. Video Remote Interpreting (VRI) Services. Department staff may choose to provide qualified interpreters via VRI services but only if the VRI provides (1) real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; (3) a clear, audible transmission of voices; and (4) adequate set-up and operation without unduly delay.

2. Telecommunications

- a. DES may use several options for communicating by telephone with deaf and hard of hearing individuals, including Teledex typewriters (TTY), Video Relay Services, and Video Interpreting Services. The ADA Title II Procedures (DES 1-01-12-01) provide guidance on the use of each of these services.
- b. DES shall respond to telephone calls from a telecommunications relay services in the same manner that it responds to other telephone calls.
- c. As DES develops and installs automated-attendant systems, including, but not limited to, voice mail and messaging, or an interactive voice response system for receiving and directing incoming telephone calls, those systems shall take into account the needs of persons who may use auxiliary aids and services.
- d. Department staff shall take into account the needs of persons with hearing or hearing impairments when program guidelines require participants to make telephone calls.

3. E-mail Communications

E-mail may be an effective way to communicate with individuals with disabilities. Programs that use e-mail to communicate with clients must ensure that employees check and respond to such messages within strict time frames.

4. Notice to Individuals and the Public about Effective Communication with Individuals with Disabilities

DES shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities, and about the methods by which the program, service, or activity communicates with individuals with disabilities, the fact that auxiliary aids and services are available, and how to request them. For example, information is provided in posters at DES program sites, as well as consumer education materials that individuals can take home with them. Programs can meet the obligation to provide this notice by including information about effective communication in consumer education materials that provide information about other ADA rights. If the program has a TTY number, the number shall be included in notices, brochures, and other written materials that include a voice telephone number for the program.

5. Web Site Accessibility

DES will provide access to DES material to individuals with disabilities that is as effective as access provided to individuals without disabilities.

6. Scope of DES Duties

DES is not required to take any action relating to this section on Communications that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where DES personnel believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, DES has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the DES Director or designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this Communications policy would result in such an alteration or such burdens, DES shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services DES provides.

K. Disability-Related Non-Compliance with Program, Service, or Activity Requirements

Department employees shall take into account the potential impact of known disabilities when making a finding of willfulness or intent to refuse to comply with programmatic requirements. The Department shall offer reasonable modification when the modification will allow the individual with a disability to comply.

1. Department staff shall be sensitive to the conditions that some individuals

with disabilities have that make it difficult to meet DES program, service, or activity requirements, including attending appointments, complying with program notices, gathering documents, engaging in work activities, or complying with other program, service, or activity requirements.

2. Department staff shall take into account the needs of participants who, although do not have disabilities, may be caring for a family member who is disabled. Reasonable modification may be required in these instances to enable an individual to participate in program activities and still be able to provide required care for the disabled family member.

L. Service Animals

1. Generally, DES shall permit the use of a service animal by an individual with a disability.
2. DES staff may ask an individual with a disability to remove a service animal from the premises if either of the following exist:
 - a. The animal is out of control and the animal's handler does not take effective action to control it. To be under control, a service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).
 - b. The animal is not housebroken.
3. If DES excludes a service animal, DES shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.
4. DES is not responsible for the care or supervision of a service animal.
5. DES staff may make two inquiries to determine whether an animal qualifies as a service animal. DES may ask (1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform. DES shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, DES may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
6. Individuals with disabilities shall be permitted, without related fees or charges, to be accompanied by their service animals in all areas of DES's facilities where members of the public, participants in services, programs or

activities, or invitees, as relevant, are allowed to go. Where DES normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

7. DES shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. In determining whether reasonable modifications can be made to allow a miniature horse into a specific facility, DES shall consider: the type, size, and weight of the miniature horse and whether the facility can accommodate these features; whether the handler has sufficient control of the miniature horse; whether the miniature horse is housebroken; and whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

M. Mobility Devices

Where and when building and personal safety concerns are not raised, the following shall be adhered to:

1. DES shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.
2. DES shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility devices, unless DES can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that DES has adopted.
3. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under section (2) above, the Department shall consider such factors as the type, size, weight, dimensions, and speed of the device; the facility's volume of pedestrian traffic; the facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if required by the user); whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the facility, or poses a conflict with other existing laws or regulations.
4. Department staff shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.
5. Department staff may ask a person using another power-driven mobility

device to provide a credible assurance that the mobility device is required because of the person's disability, such as a valid, state-issued, disability parking placard or card, or other state-issued proof of disability. In lieu of a valid, state-issued disability parking placard or card, or state-issued proof of disability, DES shall accept a reasonable verbal statement from the individual or their companion.

N. Fundamental Alteration or Undue Administrative or Financial Burden

1. When a fundamental alteration of a program, service, or activity, or undue financial or administrative burden would occur by providing program access, the Department shall take such action to provide program access that will not result in a fundamental alteration of the program, service, or activity, or result in an undue financial or administrative burden. DES may achieve access by:
 - a. Providing services, activities, and programs in facilities that are accessible to individuals with disabilities.
 - b. Transferring programs, services, and activities from any building that becomes temporarily or permanently inaccessible to an alternate location that is accessible.
 - c. Modifying when reasonable, the structure of a facility to ensure that individuals with disabilities have access to programs, services, and activities.
 - d. Making a reasonable modification of the policies and procedures, or providing auxiliary aids and services within available resources.
2. Any denial of a request for access, auxiliary aids, or services, or request for reasonable modification of policy due to a finding of fundamental alteration or undue administrative or financial burden, shall be in writing with the reason for denial provided by the responsible division. Notice of denials resulting from a grievance review shall be provided by the Department ADA Coordinator.

O. Direct Threat

1. DES is not required to permit an individual to participate in or benefit from its services, programs, or activities when that individual poses a direct threat to the health or safety of others.
2. In determining whether an individual poses a direct threat to the health or safety of others, DES must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

P. Illegal Drug Use

1. DES shall not discriminate on the basis of illegal drug use against an individual who is not currently engaging in illegal drug use.
2. DES shall not deny health services or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current use of drugs, if the individual is otherwise entitled to such services. However, a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.
3. Department programs, services, or activities may adopt reasonable policies related to drug testing, that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs.
4. An individual with a psychoactive substance use disorder resulting from current illegal use of drugs is not considered to have a disability under this policy unless the individual has a disability due to another condition. However, the Department reserves both the right and the responsibility to develop prudent service plans and to implement applicable decisions regarding the safety and welfare of vulnerable children and adults.

Q. Discrimination on the Basis of Association

1. DES shall not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members, friends, or any other individual.
2. An individual who experiences discrimination by association has the right to file a report of discrimination or a grievance with DES, file a discrimination complaint with the appropriate federal or state designated agency, or to file a lawsuit.

R. Protection against Retaliation

1. The ADA protects individuals who exercise their rights under the ADA or assist others in exercising their rights under the ADA from retaliation. "Exercising rights" under the ADA include requesting reasonable modifications. An individual who has filed a complaint, testified, or participated in any manner in the investigation of any complaint shall not be intimidated, threatened, coerced, discriminated, or retaliated against in any way.
2. Individuals who believe they have experienced retaliation after exercising their rights under the ADA, including those who exercise their rights by requesting a reasonable modification have the right to file a discrimination complaint and/or a lawsuit.

3. The Department ADA Coordinator or designee shall investigate allegations of retaliation against individuals with disabilities or others protected under this policy.

S. Release of Information

If a DES Division believes there is a need to share information about an individual's disability with any entity outside of the Division, the program shall follow applicable federal and state law and Department policy regarding any such disclosure.

T. Notice of Rights

DES programs and services shall provide individuals, and members of the public with information about their rights under the ADA:

1. DES offices in which individuals are served shall display an approved poster or flyers that highlight individual rights under the ADA, and a "We Can Help You" notice;
2. The Department shall provide information to explain rights of applicants and recipients in relation to services for those with disabilities. The information shall be made available where information about DES programs and services are available.
3. Employees shall read and explain the information to the individual whenever an applicant or recipient for DES programs or benefits has a disability that interferes or may interfere with the ability to read and/or understand written material.

U. Grievance Policy and Procedures

1. Right to File a Grievance

Persons who feel they or someone in their care has been discriminated against in violation of Title II of the ADA or Section 504, or discriminated against on the basis of disability regarding DES programs, services, or activities, may file an ADA grievance by contacting the Department ADA Coordinator.

2. Notice of Right to File a Grievance

- a. Individuals shall be informed of their right to file such grievances by posters or flyers in program waiting rooms and fliers distributed to individuals.
- b. Posters or fliers shall include contact information (name, address, and phone and fax numbers) for the Department ADA Coordinator.
- c. Notices informing individuals that the request for a reasonable modification or modifications has been denied shall contain

information about how to file an ADA grievance with DES.

3. Methods of Filing a Grievance

Individuals may file a grievance by phone, in writing, or on a grievance form. Programs shall inform anyone seeking to file a grievance that they are entitled to help with completing the form, if needed. Grievants who wish to file by phone should be directed to the Department ADA Coordinator who will take down the information over the phone and provide the person filing the grievance with a copy of the form or other document describing the grievance, so that the person filing the grievance can review it and make changes if necessary. Alternate formats shall be provided if needed as a modification regarding the grievance process.

4. Deadline for Deciding ADA Grievances

The Department ADA Coordinator, as applicable, shall investigate and resolve a grievance as soon as possible and in any event within 15 business days after receipt of the grievance. A decision shall be provided to the grievant in writing.

5. Appeal

The Department ADA Coordinator shall notify any grievant who indicates they are not satisfied with the grievance decision that they may appeal to the federal entity responsible for the program from which the action originated. The Department ADA Coordinator shall offer assistance in identifying the appropriate federal entity.

6. Record Keeping Requirements for ADA Grievances

All ADA grievances shall be documented to include: the name of the grievant, the grievance, the date of the grievance, the investigation, and resolution of the grievance, and any documents concerning the grievance.

V. Monitoring

All DES programs, services, or activities monitor compliance with the ADA in DES or contracted programs, services, and activities. Monitoring shall take place on a regular and ongoing basis, including, but not limited to:

1. A review of a sample of case records of individuals with disabilities to determine whether disabilities were properly identified, modification requests recorded, and modifications provided in a timely fashion;
2. A periodic review of all of the ADA grievances filed with a DES Division regarding the program, service, or activity, to identify patterns of problems that may need to be addressed through policy changes, and ensure that grievances were resolved in a timely fashion;
3. Analysis of customer data to identify trends that may indicate a need for

policy and program changes (e.g., to see whether individuals with disabilities are losing or being denied benefits and services to a greater extent than others);

- a. Interviews with front line employees to test their familiarity with ADA obligations and modification procedures;
- b. Customer interviews to see whether they are satisfied that their disabilities were accommodated.

W. Training

DES will provide training to employees to facilitate their understanding of DES responsibilities under the ADA, this policy, its supporting procedure and where appropriate, program-specific guidance.

X. Contractors and Grantees

1. When DES procures services by contract, grant, or intergovernmental agreement (IGA), DES shall include requirements in contracts and IGAs that contractors, grantees, or governmental entities under IGA shall comply with Title II and Section 504, in addition to other applicable civil rights laws.
2. All procured contracts, grants, or IGAs shall also include provisions for DES to periodically review contractors for compliance with Title II and Section 504.
3. Primary responsibility for adopting policies and procedures to provide non-discriminatory access by an individual or the public to a service, program, or activity administered by DES lies with DES.



DES Administrative Procedures

Associated Policy Title: Americans with Disabilities Act-Title II: Non-Discrimination on the Basis of Disability for Programs, Services, and Activities
Procedures Number: DES 1-01-12-01
Process Owner: Office of the Director
Effective Date: 02/05/2021
Expiration Date: 02/05/2024
Revision Number: 3

DES 1-01-12-01
Americans with Disabilities Act (ADA) Title II Procedures

I. PURPOSE

The purpose of these procedures is to provide instruction on how the Department shall comply with the provisions of the Americans with Disability Act (ADA) - Title II (DES 1-01-12) policy.

II. DEFINITIONS

Assigned Department Staff: The Department employee who is assigned to provide a specific program service to the person who makes an ADA request for reasonable modification.

Days: For this procedure, all references to days are Department business days, unless otherwise specified.

Disability: Refer to DES 1-01-12, Section III, Definitions.

Division-Level Coordinator: The individual or their backup who is assigned to oversee ADA activities within a specific Division.

Individual with a Disability: Refer to DES 1-01-12, Section III.

III. PROCESS

A. Notifying Department Customers of Availability of Services

1. The Department Offices of Facilities Management (OFM) shall, no less than every six months, contact offices to ensure the following information is available in all significantly used languages. (See Limited English Proficiency, DES 1-01-34) in the area where customers enter

2. the office to receive services.)
 - a. Department ADA Poster, We Will Give You Help (DES-1049A and DES-1049AS).
 - b. Department ADA Poster Americans with Disabilities Act Notice (POX-248 and POS-248-S).
 - c. Division-level Coordinators will ensure ADA related information specific to Division program services is available.
3. When the above supplies need to be replenished, the Division-level Coordinator shall order through the Office of Graphics and Design.
4. The Department Public Information Office shall ensure that from each Department Web page, the following information is available:
 - a. A statement that the Department prohibits discrimination in admissions, programs, services, activities, and employment based upon disability;
 - b. Contact information, including phone numbers, for Division-level Coordinators; and
 - c. Methods the Department may utilize to accommodate those who have speech, hearing, vision, learning, or other impairments; at no cost to the customer.

B. Requests for Reasonable Modification

1. All Department employees shall accept requests for reasonable modification from Department customers.
 - a. Requests made either verbally or in writing shall be accepted. The request need not reference ADA.
 - b. The Department employee that receives a request (verbal or written) shall incorporate the information on to a *Request for Effective Modification to Participate in a Program, Service or Activity* (J-930-A), within twenty-four hours of the request. This request shall be maintained in the customer's case record.

NOTE: If the necessary modification is available at the time of the request, it should be provided at that time.

- c. If the person receiving the request is not the assigned Department staff, the person completing the form shall deliver the request to the assigned Department staff within the same

24-hour period (as noted in III.B.1.b.).

2. Assigned Department staff who believe a customer may need a modification to fully participate in a Department program or activity shall make the customer an offer for consideration of a reasonable modification.
 - a. The offer for modification shall be recorded in the case record, including the perceived disability, the date of the offer, and the response, if any, from the customer.
 - b. Department customers are under no obligation to accept an offered modification and may decline a request at any time.

C. Disposition of Request for Reasonable Modification

1. Upon review of the completed J-930-A, the assigned Department staff shall determine if any additional information is necessary in order to decide if the reasonable modification request is appropriate. Additional information may include medical information to determine the limitation of a disability and/or the modification needed.
2. The assigned Department staff shall request the necessary information from the customer and document the request on the J-930-
 - A. The customer may either choose to provide the information or sign an Authority to Release Information (DES-1059A). This allows the Department to obtain the necessary information to use to complete the J-930-A.
 - a. Only the information necessary to determine if a modification is required will be collected.
 - b. When the disability is obvious, no verification shall be requested.
3. The assigned Department staff may authorize an interim modification (pending receipt of required documentation).
 - a. Pending a final determination on the modification request, an interim modification shall be provided in order to ensure the customer is able to access the requested services as appropriate.
 - b. When a decision is made to provide an interim modification, the assigned Department staff shall enter the information on the J-930-A, and request signature from the customer. This will confirm their understanding and acceptance of the modification, pending a final determination.

4. Once all necessary information is received, the assigned Department staff shall make a determination on the modification request. The assigned Department staff must determine if:
 - a. There is a need for a modification to enable the customer to receive the Department service; and
 - b. The modification can be provided without a fundamental alteration to the nature of the program or an undue burden to the Department, as described in DES 1-01-12, Section J.
5. If the assigned Department staff believes that the modification is not necessary or that it would create an undue burden on the Department or would fundamentally alter the nature of the program, they must consult with their supervisor.
 - a. They may contact the Division-level Coordinator for assistance. The Division-level Coordinator may also contact the Department Office of Equal Opportunity (DOEO) for assistance in making the determination.
 - b. If the modification would require a substantial alteration to a Department-occupied building, the Office of Facilities Management must approve the modification.
 - c. If the modification would require purchase of equipment or software, the appropriate Assistant Director or their designee must approve the modification.
 - d. Decisions must follow the provisions in DES 1-01-12.
6. Once a determination is made, the assigned Department staff shall:
 - a. Document the decision on the J-930-A, and
 - b. Request the customer to sign acknowledgement of the determination.
7. The assigned Department staff shall advise the customer that they may sign the J-930-A and indicate they agree with the determination or wish to grieve the determination.
 - a. If the customer wishes to grieve the determination, any interim modification must be continued pending resolution of the grievance.
 - b. Refer to DES 1-01-12-01 for grievance procedures.

D. Provision of Services - Communication

1. Division-level Coordinator shall ensure that the offices in which its customers are served display the following, which can be printed from the DES Documents Center.
 - a. We Will Give You Help (DES-1049A and DES-1049AS) poster.
 - b. Americans with Disabilities Act Notice (POX-248 and POS-248-S) flyer.
2. When the reasonable modification involves the use of auxiliary aids and services, the assigned Department staff must give primary consideration on the particular service to the customer.
 - a. Refer to DES 1-01-12 Section G.1 and G.3.
 - b. Procedures for accessing and using auxiliary aids and services can be found on AZRelay.org.
3. When reasonable modification involves the use of sign language interpreters, the assigned Department staff may access services from the list of available sign language interpreter services.
4. When reasonable modification involves the use of email, the assigned Department staff must establish a process to ensure prompt response. This shall include at least the following:
 - a. A reminder process to ensure that emails are responded to.
 - b. A designated back-up will access and respond to email when the primary contact is out.

E. Provision of Services – Other

DES 1-01-12 provides the standards and guidelines for providing reasonable modification.

F. Allegations of Retaliation

1. Any Department employee that receive a complaint from a customer involving alleged retaliation for exercising their rights under ADA, shall forward the information to the DES ADA Coordinator in the Director's Office of Equal Opportunity for investigation.
2. The DES ADA Coordinator shall contact the customer who has allegedly been retaliated against to confirm that an investigation is being conducted.

3. The DES ADA Coordinator shall work with the appropriate persons to conduct the investigation. This may include Department executives, staff, and/or federal ADA officials.
4. The DES ADA Coordinator shall advise the appropriate Assistant Director at the conclusion of the investigation to report the findings and any action necessary to resolve the situation.
5. The appropriate Assistant Director shall use the ADA Coordinator findings and recommendation when making a decision on the resolution to be pursued.

G. Release of Information

1. When it is necessary to share information regarding a customer disability or modification with any entity outside of the division, prior to release of the information, the assigned Department staff shall secure the customer's authorization for the release of the information.
2. The assigned Department staff shall utilize the DES-1059A to secure the customer's authorization for release of the information.

H. Grievances

1. Division-level Coordinators shall ensure that notices to Division customers contain a statement advising them of their grievance rights in relation to ADA reasonable modification. This shall include at a minimum
 - a. All notices of adverse action taken on the customer's case.
 - b. All notices regarding a decision on a request for a reasonable modification.
2. Assigned Department staff shall provide customers wishing to file a grievance, the contact information for the Department ADA Coordinator, should they need assistance with their grievance.
3. Any Department employee shall accept a grievance by phone, in person, or in writing.
 - a. If the grievance is received in person or by phone, the employee receiving the grievance shall write the information regarding the grievance and provide the customer with a copy of the information for their review.
 - b. Written grievance information shall be available to the customer in alternate formats, when needed or requested.

4. The employee receiving the grievance shall forward all grievance filings with the Department ADA Coordinator.
 - a. All grievances shall be documented to include the name of the grievant, the issue grieved, and the date of the grievance.
 - b. The employee shall forward the grievance information within twenty-four hours of the grievance being filed.
 - c. The employee forwarding the grievance may provide the Department ADA Coordinator with recommended actions for resolution.

5. The **Department ADA Coordinator** shall receive all ADA related grievances.
 - a. Grievances must be received by the ADA Coordinator within ten days of the grievant being filed.
 - b. The Department ADA Coordinator shall issue their decision within 30 days of receipt of the grievance.
 - c. The notification of the grievance decision shall be provided to the grievant, the Division-level ADA Coordinator, and the appropriate Assistant Director.
 - d. The Department ADA Coordinator shall maintain a record of all grievances appeals. The record shall include the grievance package and the information received and issued concerning the resolution of the appeal.
 - e. The decision of the Department ADA Coordinator is final.
 - f. The Department ADA Coordinator shall follow up with the Division-level ADA Coordinator and the appropriate Division Assistant Director to ensure the provisions of the appeal determination are implemented in a timely and efficient manner.

I. Monitoring

1. The **Division-level Coordinator**, with support from the Department ADA Coordinator, shall review a sample of cases on an annual basis to ensure that the following occurred.
 - a. Disabilities were identified in a timely and effective manner.
 - b. Disabilities requiring modification were addressed timely and

effectively.

- c. Records were maintained in a manner that ensured that customers did not need to repeat requests for modification once they had been established.
2. The Division-level Coordinator shall forward trends indicating the Department activity is not meeting the needs of ADA eligible customers to the Department ADA Coordinator and the appropriate division Assistant Director.
3. The Department ADA Coordinator shall ensure corrective action is established as needed to ensure that Department ADA activity is taken in a timely and effective manner.
4. The Department ADA Coordinator shall report to the Administrator of DOEO when a division or divisions fail to take appropriate corrective actions to resolve the issues.

J. Contracts

1. Division contract managers shall monitor contracts that serve Department customers to ensure that contractors are compliant with ADA requirements.
2. Division contract managers may seek assistance from the Division-level Coordinators, the Department ADA Coordinator, and the Office of Procurement to resolve issues concerning ADA compliance with contractors.

Element Six

Data and Information Collection and Maintenance

(29 CFR 38.41 to 38.45)

PURPOSE:

This element addresses how the State of Arizona (State) and its recipients comply with the requirements of 29 CFR 38.41 through 38.45 related to data and information collection and maintenance. The Arizona Job Connection (AJC) ensures that all data is collected, and the system is maintained for all its recipients and federal financially assisted programs. This data system is designed to allow the Governor and the Civil Rights Center (CRC) to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIOA.

NARRATIVE:

The State's data and information collection system AJC complies with the requirements of the Participant Individual Record Layout (PIRL) as published by the U.S. Department of Labor (DOL). All recipients are responsible for collecting and maintaining client and potential client information. The State is responsible for reporting the information to DOL via the PIRL. The Unemployment Insurance Administration (UIA) collects the information when the initial claims are filed in the General Unemployment Insurance Development Effort (GUIDE) system. All recipients are monitored annually by the State EO Officers and the UI EO Officer to ensure compliance with record keeping and other contractual obligations, to assess recipients' equal opportunity performance, to identify instances or areas of discrimination, and to identify individuals or groups of individuals who may have been discriminated against on a basis prohibited by WIOA Section 188 and 29 CFR Part 38.

All recipients collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. (29 CFR 38.43)

Recipients collect information such as name, address, birthdate, last four of SS#, last date worked (etc.) from an applicant, registrant, or participant during the eligibility process and update as needed throughout the individual's participation in federal programs and activities. Recipients must maintain records on applicants for employment as well enter and maintain the applicants' information in the AJC database system. The State WIOA EO Officer checks the AJC data via a desk review of the records for a recipient prior to an on-site visit to compare the paper files against the database records for data validity. UIA staff create a file with claimants' information when the claimants initially file a claim and then maintain the claimants' information in the UI GUIDE System. The collected data is available in a data warehouse where the data can be queried at any time.

Recipients record the race/ethnicity, sex, age, and disability status of each applicant, registrant, eligible applicant/registant, participant, employee, and applicant for employment. (29 CFR 38.41(b)(2))

Recipients collect the demographic information (race, ethnicity, sex, age, and disability status) of each applicant, registrant, eligible applicant/registant, participant, employee, and applicant for employment. LWDA's and OSPs maintain either paper or electronic files for each applicant, employee, and applicant for employment, and paper and electronic records are kept for each registrant and participant for WIOA, LWDA, OSP services. An individual is considered an applicant when he/she submits personal information (e.g., name, address, social security number, etc.). The UIA collects demographic information as well. In Yuma County, paper claims are taken from claimants and scanned into the OnBase system, as well as entered and maintained in the UI payment system. All personal information is confidential.

Recipients treat records, particularly those containing medical information, in a manner that ensures their confidentiality. (29 CFR 32.15, 29 CFR 32.41(b)(2), and 29 CFR 38.45)

The State maintains the confidentiality of information collected and maintained regarding the disabilities of all individuals, including applicants, participants, and candidates for employment, in compliance with 29 CFR 32.15, 29 CFR 32.41(b)(2), and 29 CFR 38.45.

Medical information obtained in the course of a post-employment offer medical examination or inquiry may be provided to appropriate decision-makers involved in the hiring process to make employment decisions consistent with Americans with Disability Act (ADA). The following individuals are allowed access to this confidential information: supervisors and managers, first aid and safety personnel, and employers (once a conditional offer of employment is made).

When an applicant/participant for any federally funded service provides medical or psychological information to substantiate an eligibility determination or for reasonable accommodations for program participation, the information is kept in a confidential sealed envelope separate from the participant's record file and in a locked cabinet. Medical information when provided by a UI client in connection with the approval or denial of a claim connected with their ability to work can be accessed only by staff who need it for programmatic purposes.

Recipients maintain a log of complaints filed that allege discrimination on one or more of the bases prohibited by WIOA Section 188. (29 CFR 38.41(c))

Complaints filed alleging discrimination on one or more of the bases prohibited by WIOA Section 188 (race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, or participation in any federally funded program or activity) are kept in a log maintained by each EO Officer as required by the Civil Rights Center (CRC). Complaints may be filed at any of the One-Stop Center throughout the State and at any level of government whether local, State or Federal. The EO Officer records each complaint filed in a discrimination complaint log, and the log is forwarded quarterly to the State WIOA EO Officer for review. The complaint log contains the name and address of the complainant, the basis of the complaint, a description of the complaint, the date the complaint was filed, disposition, date of disposition and any other pertinent information. The EO Officers inform the State WIOA EO Officer about the complaints, investigations and submit complaint updates on an as-needed basis. The State WIOA EO officer maintains complaint logs for all LWDAs, Unemployment Insurance and Wagner-Peyser to be submitted to CRC upon request.

Recipients maintain such records for a period of three years. (29 CFR 38.43)

The Federal Regulations require that complaint forms, investigation notes, disposition letters and other pertinent information on each complaint filed, as well as complaint logs, must be maintained by recipients or sub-recipients for a period of three years from the close of the applicable program year, unless a complaint has been filed and is not yet resolved in which it would be three years from the date of the final action.

The LWDAs monitor sub-recipients' equal opportunity compliance by identifying areas and individuals or groups of individuals that appear to be discriminated against in order to take corrective action and assure compliance with WIOA Section 188 and 29 CFR Part 38. Records are maintained for a period of three years from the close of the applicable program year. The "applicable program year" is determined using the date of final action on a complaint.

Grant applicants and recipients notify the CRC Director of administrative enforcement actions and lawsuits brought against them that allege discrimination on one or more of the bases prohibited by WIOA Section 188. (29 CFR 38.42)

CRC requires the State, grant applicants, and grant recipients to promptly notify the CRC Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation, or belief. The policy requires recipients to notify the CRC Director and the State concurrently by hardcopy or electronically promptly.

The State uses the Arizona Job Connection (AJC) system to collect the equal opportunity information required by 29 CFR 38.41(b)(2). AJC system stores data in a way that allows the Governor and the Civil Rights Center to access reports and data when needed.

Element Seven
Monitoring Recipients for Compliance
(29 CFR 38.51 to 29 CFR 38.53)

PURPOSE:

The State of Arizona (State) addresses how the State Workforce Innovative and Opportunity Act (WIOA) Equal Opportunity (EO) Officer monitors recipients. The State has established procedures to monitor all aspects of recipients' compliance with WIOA Section 188 and 29 CFR Part 38. Every monitoring review by an EO Officer includes a review for compliance with the responsibilities that have been assigned through the State's Non-Discrimination Plan (NDP). A review of each recipient's programs and activities to determine whether discrimination is occurring is also included in the monitoring.

NARRATIVE:

The State ensures compliance with its administrative obligations under WIOA Section 188 and 29 CFR Part 38 through the monitoring process. Monitoring is conducted by the State EO Officer (or designee) and includes a desk and field review to determine a recipient's compliance with the provisions of WIOA Section 188. During these reviews, the EO Officer verifies that each recipient fulfills its obligations under the State's NDP in all contracts, agreements, notices, brochures, communications, programs, and activities. EO Officers also inspect facilities to ensure architectural accessibility as required by the Americans with Disabilities Act (ADA) (*Documentation Section – Attachment 1*).

EO Officers ensure that recipients' programs and activities are operating in a nondiscriminatory manner by performing the following tasks:

1. Analysis of the data and records collected by the recipient pursuant to 29 CFR 38.41 through 38.45 to determine whether any differences based upon race, ethnicity, sex, age and disability have practical or statistical significance, through the use of the 80 Percent Rule Report and/or the Two Standard Deviation Report.
2. Where significant differences are found, follow-up investigations are conducted to determine whether the differences are due to discrimination.
3. The system and format in which the records and data are kept are designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIOA.

In order to ensure that WIOA Title I financially assisted programs and/or activities are operating in a nondiscriminatory manner, the State's monitoring regimen includes a desk analysis of the data and records collected by the recipient. This analysis, conducted by the EO Officers, determines if any differences based upon race, ethnicity, sex, age, or disability exist and whether such differences have a practical or statistical significance. Recipients record the preferred language and, if applicable, limited English proficiency of each applicant, registrant, participant and trainees. This information is stored for confidentiality and is used only for purposes of recordkeeping and reporting or determining eligibility where appropriate.

Compliance with 29 CFR Part 38 is achieved by, among other things:

Assurances. (29 CFR 38.25 through 38.27)

Assurances are required to be provided by each recipient in their Local Business Plan. (*Refer to: Element 3 – Attachment 2*)

Equal Opportunity Officers. (29 CFR 38.28 through 29 CFR 38.32)

EO Officers are listed in Element One: Designation of State and local level Equal Opportunity Officers.

Notice and communication. (29 CFR 38.34 through 29 CFR 38.39)

The use of “Equal Opportunity Is the Law” notices is described in Two: Notice and Communication.

Affirmative outreach. (29 CFR 38.40)

Affirmative outreach is addressed in Element Four, which describes the means by which the State ensures that recipients provide equal access to their programs and activities.

The State utilizes the “Equal Opportunity Monitoring Review Guide” when facilitating on-site monitoring reviews for recipients’ programs and activities. The State also utilizes the American with Disabilities Act (ADA) Checklist to ensure that the State’s and recipients’ facilities are accessible to individuals with disabilities.

Data and information collection and maintenance. (29 CFR 38.41)

Data and information are kept in a database system. That system is designed to allow the governor and Civil Rights Center to conduct statistical analysis as described in Element Six: Data and Information Collection and Maintenance.

Complaint processing procedures. (29 CFR 38.72)

The State does provide for an additional level of appeal to the State WIOA EO Officer through the Alternate Dispute Resolution (ADR). All sub-recipients must comply with these procedures which meet the requirements of 29 CFR 38.70 through 29 CFR 38.80.

Conducting equal opportunity monitoring and evaluation, review of applicants for and recipients of WIOA Title I financial assistance, including assurance of programmatic and architectural accessibility.

The State, through a monitoring process, determines if the EO Officer or designee has reviewed applicants for and recipients of WIOA Title I financial assistance from or through the Local Workforce Development Areas (LWDA), including sub-recipient agencies. Monitoring includes review of:

1. Receipt of the right to file grievance information for applicants and recipients;
2. Records of local discrimination complaint reports and resolution.
3. Applicable equal opportunity notices and signage for individuals with disabilities and other special needs populations.
4. Appropriate signage and equal opportunity information presented in languages other than English.
5. A random sampling of employee and participant case files, both electronic and paper, to ensure they include all required notices, signatures, and other appropriate documentation;
6. The Local Plan for nondiscrimination and equal opportunity provisions of the WIOA Section 188;

7. Contractual assurances of compliance with the nondiscrimination and equal opportunity provisions of the WIOA.
8. Programmatic and physical accessibility for disabled individuals to appropriately receive WIOA services.
9. Staff and participant interviews.
10. Recipients' policies and procedures to ensure they are not discriminatory;
11. Procedures for obtaining prompt corrective action when applying sanction when noncompliance is found;
12. Follow-up actions taken where violations were found, including any sanctions.

The State provides an annual monitoring report identifying all discrepancies found and the actions required to address each specific discrepancy. Each EO Officer bears the responsibility for monitoring these same elements, not only in their internal service delivery system but also for all sub-recipients who provide WIOA Title I funded services or activities.

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

After a review, the State EO Officer issues an EO Monitoring Review Guide Report to any noncompliant recipient, with each discrepancy identified. The EO Officer for that recipient has 20 business days to provide a written response and the resolution to the discrepancies along with verifiable documentation. Then the State has ten business days to review the response for compliance and determine if the documentation provided is acceptable. If accepted, the State will issue a letter notifying the recipient that the review will be closed. If the State reviews the verifiable documentation or pertinent information and determines the documentation does not resolve the discrepancies, the State will send a letter to the recipient that the documentation is unacceptable, and they must provide a new resolution. The recipient, upon receipt of the letter, has a total of ten business days to correct the discrepancy and may request any technical assistance necessary to address the discrepancies. If the recipient fails to resolve the discrepancies then the State will notify the recipient by letter of noncompliance and that the State will start the sanctioning process.

Sanctions are considered only when the recipient fails to respond to technical assistance and does not agree to take voluntary corrective action. The ultimate sanction available is issuance of a Notice of Intent to revoke approval of all or part of the recipient's WIOA Title I financial assistance.

Ensuring policy development, communication, and training are implemented.

State WIOA policies and procedures are made available on the DES website through the WIOA Policy and Procedure Manual. Additionally, Policy Broadcasts or Informational Broadcasts are sent via email to all Local Workforce Development Areas and workforce staff to communicate changes to policy or provide immediate information that may affect Title I programs or activities.

The WIOA Policy and Procedure Manual and broadcasts direct recipients of Title I funds to develop local equal opportunity and nondiscrimination policies and procedures that include requirements to ensure sub-recipient agencies meet their legal obligations. Recipients' policies are in each Local Plan and are updated as needed. The section related to equal opportunity and nondiscrimination was currently revised and has been added to the WIOA Policy and Procedure Manual.

The State ensures the federal programs and activities are operating in a nondiscriminatory manner and provide equal opportunity by:

- Conducting a statistical or other quantifiable analysis of records and data kept by the recipients by

race/ethnicity, sex, age, limited English proficiency and disability status.

- Investigating any significant differences identified in participation in the programs, activities, or employment provided by the recipient that may be caused by discrimination.
- Conducting follow-up monitoring to determine the cause of any such differences through the analysis of the records of individual and eligible registrants, applicants, employees, and applicants for employment, as well as through interviews and other appropriate techniques.
- Ensuring that EO Officers are notified and aware of webinar trainings available to them from the Department of Labor/Civil Rights Center (DOL/CRC) as they are announced.
- Conducting quarterly meetings to discuss any issues and to ensure that updates to policies, procedures, and best practices are made available to all recipients.

The statewide internet-based workforce data reporting system called the Arizona Job Connection (AJC) allows staff to conduct a thorough analysis to determine if any discriminatory issues can be identified. The workforce data reporting system can provide the necessary reports to identify issues regarding equal opportunity and nondiscrimination. The State is requesting a process to be produced, which contains the number of participants by applicant characteristics and the services aggregated by applicant characteristic such as referrals to jobs, training provided, and employment workshops.

- Produce data of entered employment by applicant characteristics
- Produce wage data post services by applicant characteristics.
- Detail applicant characteristics by occupation including referral rates within each occupational group.
- Education level data by applicant characteristics.

The Unemployment Insurance Program (UI) collects participant data when initial unemployment claims are filed. Records are maintained on each claimant in a secure software system called General Unemployment Insurance Development Efforts (GUIDE). Data is stored in secure UI databases. Stored data is used to conduct analyses to determine if there are any discriminatory issues.

The procedure for reviewing recipients' policies and procedures, to ensure that the policies and procedures do not violate the prohibitions contained in 29 CFR 38.5 through 38.10.

The State-level EO Officer conducts a desk audit review prior to on-site reviews to analyze program materials and the Local Plan to ensure no discrimination is occurring in local program policies, sub-contracts, and procedures. Before a Local Plan can be approved by the Office of Equal Opportunity (OEO), it must include the following specific assurances:

1. The LWDA will provide a system that includes compliance with Title IV of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Title IX of the Education Act of 1972, Section 188 of WIOA and the current State of Arizona Non-Discrimination Plan (NDP);
2. The LWDA will describe how each access site identified in the NDP will ensure compliance with Equal Opportunity and Americans with Disabilities; and
3. The LWDA will provide contact information and identification of the Local, State and Federal EO Officers available in all facilities used to conduct WIOA Title I funded trainings, programs and activities.

Recipients are required to publish their Equal Opportunity and Nondiscrimination Complaint policy statement and procedure on their website.

The State EO Officer conducts staff interviews as a part of the monitoring process for each recipient. In the

interview, staff are asked questions that cover their knowledge of the local complaint process, location of policies, and the procedure followed to respond to a client complaint. The State-level EO Officer/designee inquires during an interview with a participant whether the office is accessible to them, how often they visit, whether they have been informed of their EO rights and whether their rights were explained thoroughly. These are just a few of the areas covered during the monitoring review done annually by the State-level EO Officer/designee.

The written reports prepared for each review must provide, among other things, that the results of the monitoring review will be made available to the recipient(s) reviewed.

At the conclusion of the review, the State WIOA EO Officer/designee conducts an exit interview with pertinent recipient staff and the local Program Director or designee. This conference is a brief discussion of issues or discrepancies identified during the monitoring review.

An EO Monitoring Review Guide Report of the review is written by the State WIOA EO Officer. The EO Monitoring Review Guide Report is then submitted for review to the Workforce Services Section Manager for approval before being distributed to the recipient's EO Officer and Program Director. The report identifies areas in which the LWDA is out or could be out of compliance (discrepancies) and any other areas of concern. The EO Monitoring Report includes recommendations for corrective actions needed to correct deficiencies.

The EO Officer maintains communication with the State-level EO Officer until all equal opportunity related discrepancies have been corrected.

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

The State WIOA, LWDA, and One-Stop Partners (OSP) EO Officers are the primary reviewers; the name of the State-level EO Officer and a list of LWDA EO Officers are contained in Element One of this NDP. The State WIOA EO Officer reviews certain equal opportunity items as a part of the annual reviews. Any issues identified during the annual EO monitoring reviews involving equal opportunity and nondiscrimination are discussed with the State WIOA EO Officer to ensure compliance with applicable regulations. The State WIOA EO Officer conducts the review to ensure that past identified issues were appropriately addressed and resolved.

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

In the State, each recipient is reviewed annually, or more frequently if needed, through desk and onsite reviews, requested reports (80 Percent Rule, Equity of Service, Staff Data Analysis) to track compliance issues. A review schedule is developed at the beginning of each program year identifying when each LWDA and OSP is scheduled for a desk and on-site review. Each recipient is provided with a copy of the review schedule along with a copy of the desk review guides that will be utilized during the review. LWDA Directors are sent a letter by the State EO Officer notifying them of the review 30 days prior to the review date. In addition to these scheduled monitoring reviews, the State reserves the right to conduct monitoring throughout the program year as issues arise or are identified that warrant additional monitoring, oversight or follow-up.

ONE-STOP CENTERS MONITORING CHECKLIST FOR ADA COMPLIANCE

Date: _____

Location: _____

-
1. Is the parking lot properly identified? Yes No
 - a. How many spaces are marked for *Accessible* parking? (*1 space for 25 spaces*) _____
 - b. How many are *Van-accessible*? (*1 space must be "Van Accessible"*) _____
 - c. Is the signage properly marked? Yes No
 - d. What height is the bottom of the sign to the ground? (*60 inches*) _____
 - e. Are spaces adjacent to an accessible entrance? Yes No
 - f. What is the width of the total accessible space? (*13' ft – car, 16' ft – van*) _____
 - g. Is the accessible entry have a route that has 36 inches wide from the parking lot to the entry door? Yes No

Comments/Discrepancy:

2. Does the parking lot have a ramp connected to the accessible route to the entrance? Yes No
 - a. Are handrails provided for the ramp and is there 36 inches space between the rails? Yes No
 - b. Does the ramp meet the 1:12 pitch? Yes No

3. Is the facility entrance accessible to individuals with disabilities? Yes No
 - a. Is there identifying signage for an accessible entry? Yes No
 - b. If there are auto-door openers are they operable? Yes No N/A
 - c. Is there signage at non-accessible entries to show where an accessible entry is? Yes No
 - d. Does the door have a handle that is operable with one hand? Yes No
 - e. Will the door open with a minimum of 5 lbs max force? Yes No

Comments:

4. Resource room support an "Accessible / Adjustable Station" for individuals with disabilities? Yes No
- a. What software is utilized at the station? _____
- b. What aides are available to the operator? _____
- c. What hardware is at the station? _____

Comments:

5. Is the Men's restroom identified as accessible to individuals with disabilities? Yes No
- a. Does the signage have the international symbol and Braille or raised letters? Yes No
- b. Is the signage located on the latch side of the door? Yes No
- c. Are the characters on the sign no more than 60 inches max off the floor? Yes No
- d. Does the door have a handle that is operable with one hand and doesn't require grasping, pinching or twisting?
 Yes No
- e. If there are auto-door openers are they operable? Yes No N/A
- f. Does the door remain open more than 5 seconds from a 90-degree position? Yes No
- g. Does the restroom have all the aides, fixtures and stalls to be accessible? Yes No

Comments:

6. Is the Women's restroom identified as accessible to individuals with disabilities? Yes No
- a. Does the signage have the international symbol and Braille or raised letters? Yes No
- b. Is the signage located on the latch side of the door? Yes No
- c. Are the characters on the sign no more than 60 inches max off the floor? Yes No
- d. Does the door have a handle that is operable with one hand and doesn't require grasping, pinching or twisting?
 Yes No
- e. If there are auto-door openers are they operable? Yes No N/A
- f. Does the door remain open more than 5 seconds from a 90-degree position? Yes No
- g. Does the restroom have all the aides, fixtures and stalls to be accessible? Yes No

Comments:

7. Are there accessible routes in the facility to office, meeting, orientation, or resource rooms that meet the 36-inch width requirement? Yes No

8. Is it convenient for customers (including those with barriers to employment)? Yes No

Comments/Discrepancy:

9. Is it accessible by public transportation (where available)? NOTE: add ADA requirement, for example: 200 feet from street, 60-inch wide sidewalk. Yes No

Comments/Discrepancy:

10. Does the facility have adequate parking? Yes No

Comments/Discrepancy:

11. Has internal signage to help customers easily navigate the center? Yes No

Comments/Discrepancy:

12. Has adequate safety and security precautions to protect customers and staff? Yes No

Comments/Discrepancy:

13. Has emergency evacuation procedures including for the needs of individuals with disabilities? Yes No

Comments/Discrepancy:

**Element Seven
Documentation Section**

Attachment (s)

1	ADA One-Stop Center Checklist for Compliance

Element Eight

Complaint Processing Procedures

(29 CFR 38.69 through 38.74)

PURPOSE:

The State of Arizona (State) and its recipients comply with the requirements of 29 CFR 38.69 through 29 CFR 38.74 regarding complaint processing procedures. The State has published procedures for processing complaints alleging discrimination by any program or activities funded under the Workforce Innovation and Opportunity Act (WIOA) Title I. These procedures allow complainants to file with the Local Workforce Development Area (LWDA) or Department of Economic Security (DES) Unemployment Insurance Administration (UIA) Equal Opportunity (EO) Officer, the State WIOA EO Officer, or directly with the Civil Rights Center (CRC) Director, U. S. Department of Labor (DOL). LWDAs and One-Stop Partners (OSPs) are required to include complaint and grievance procedures as part of their Local Plans and those procedures must comply with the requirements of 29 CFR 38.69 through 29 CFR 38.74. In addition, the UIA is required to certify, by signing the State Quality Service Plan Signature Page, that it will comply with developing and following procedures for handling complaints of discrimination covering all of the regulations applicable to it as a recipient of the Federal financial assistance.

NARRATIVE:

Recipients that are required to do so have developed and published complaint procedures. (29 CFR 38.69 and 38.73)

The State has issued a WIOA Grievance Procedures, Complaints, and State Appeals processes which sets forth the complaint procedures for all LWDA/OSPs and sub-recipients, and it includes the State's Discrimination Complaint form. All recipients must comply with these procedures, which meet the requirements of 29 CFR 38.69 through 29 CFR 38.74. These procedures provide an optional, additional level of appeal from the LWDA to the State WIOA EO Officer. Complaints may be filed at the federal, state or local level. The EO Officers document each complaint filed on a EO Discrimination Complaint Log, which is forwarded to the State WIOA EO Officer for review. The Discrimination Complaint Log contains the name and address of the complainant, the basis of the complaint, a description of the complaint, the date the complaint was filed, the disposition, the date of the disposition, and any other pertinent information relating to the complaint. LWDA EO Officers and One-Stop partners inform the State WIOA EO Officer about complaint investigations and submit the Discrimination Complaint Logs on a quarterly basis. Upon request from CRC the State WIOA EO Officer will provide the Discrimination Complaint Log.

Provide for the issuance of a written Notice of Final Action within 90 days of the date on which the complaint is filed. (29 CFR 38.72(b)(5))

The Arizona WIOA Equal Opportunity and Discrimination Complaint Policy states, "The EO Officer will provide a written Notice of Final Action to the complainant within 90 days of the date on which the complaint was filed" in accordance with 29 CFR 38.72(b)(5).

Initial, written notice to the complainant that contains an acknowledgment that the recipient has received the complaint, and a notice that the complainant has the right to be represented in the complaint process (29 CFR 38.72)

The Arizona WIOA Equal Opportunity and Discrimination Complaint Policy states, “The EO Officer will provide a written acknowledgment of receipt of the complaint to the complainant within five business days with notice that the complainant has the right to be represented in the complaint process,” in accordance with 29 CFR 38.72(b)(1)(ii).

A written statement provided to the complainant, that contains a list of the issues raised in the complaint and, for each issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection (29 CFR 38.72(b)(2))

The Arizona Equal Opportunity and Discrimination Complaint Policy states, “Upon receipt of a complaint or information alleging discrimination, the EO Officer will provide written notice to all parties of the specific issues raised in the complaint; (and) provide a statement for each issue, either accepting the issue for investigation or rejecting the issue, and the reasons for each rejection,” as required by 29 CFR 38.72(b)(2).

A period for fact-finding or investigation of the circumstances underlying the complaint (29 CFR 38.72(b)(3))

The Arizona Equal Opportunity and Discrimination Complaint Policy states, “Upon receipt of a complaint or information alleging discrimination, the EO Officer will...Initiate an investigation or fact-finding of the circumstances underlying the complaint that shall last at least 14 calendar days.” This meets the requirements of 29 CFR 38.72(b)(3).

A period during which the recipient attempts to resolve the complaint and the methods available to resolve the complaint must include Alternative Dispute Resolution (ADR). (29 CFR 38.72(b)(4))

The Arizona Equal Opportunity and Discrimination Complaint Policy states, “The EO Officer will contact the complainant in writing no later than 14 calendar days of receipt of the complaint to determine the complainant’s willingness to mediate using the Alternative Dispute Resolution (ADR) procedures.”

A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains, for each issue raised in the complaint, either a statement of the recipient’s decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue.

The Arizona Equal Opportunity and Discrimination Complaint Policy states, “The EO Officer will provide a written Notice of Final Action to the complainant within 90 days of the date on which the complaint was filed that contains the following information: for each issue raised in the complaint, a statement of either the decision on the issue and an explanation of the reasons underlying the decision or a description of the way the parties resolved the issue....” This language mirrors the requirements of 29 CFR 38.72.

Notice that the complainant has a right to file a complaint with the CRC Director, DOL, within 30 days of the date on which the Notice of Final Action is issued, if he or she is dissatisfied with the recipient’s final action on the complaint.

The Arizona Equal Opportunity and Discrimination Complaint Policy states, “If, during the 90-day period, the EO Officer issues its Notice of Final Action, but the complainant is dissatisfied with the decision on the

complaint, the complainant or his/her representative may file a complaint with the CRC Director within 30 days after the date on which the complainant receives the Notice of Final Action”. This language was taken directly from 29 CFR 38.72(b)(5)(ii) to ensure compliance on this issue.

Provide that, if the complainant is dissatisfied with the outcome of the investigation, or if there is no final resolution of the complaint within 90 days of the date the complaint is filed, the complainant is notified that he or she may file his or her complaint with the Civil Rights Center.

The Arizona Equal Opportunity and Discrimination Complaint Policy states, “If, during the 90day period, the EO Officer issues its Notice of Final Action, but the complainant is dissatisfied with the decision on the complaint, the complainant or his/her representative may file a complaint with the CRC Director within 30 days after the date on which the complainant receives the Notice of Final Action” or 120 days from the complaint filing date. (<https://des.az.gov/sites/default/files/media/wioaepolicy.pdf?time=1624498158244>)

Recipients follow the established procedures.

Consistent with 29 CFR 38.72, the State will maintain compliance according to the Arizona Equal Opportunity and Discrimination Complaint Policy which provides for prompt and equitable resolution of complaints and includes the following elements:

- Initial written notice;
- An acknowledgement of receipt;
- Notice of right to representation;
- Issues raised in complaint;
- A period for fact-finding that includes ADR; and
- A written notice of final action.

Each recipient is required to comply with the Equal Opportunity and Discrimination Complaint Policy process for resolving complaints in connection with WIOA Title I programs operated by recipients. Utilizing this complaint procedure, each WIOA Title I recipient shall provide for local level processing of complaints. Recipients will be monitored to ensure they are complying with this requirement. (29 CFR 38.73)

Element Nine

Corrective Actions/Sanctions

(29 CFR 38.54(c))

PURPOSE:

The State of Arizona (State) addresses how it and its recipients are complying with the requirements of 29 CFR 38.54(c)(2)(vii) in developing procedures for obtaining prompt corrective action or, as necessary, applying sanctions when instances of noncompliance with Workforce Innovative and Opportunity Act (WIOA) Section 188 or 29 CFR Part 38 are found.

NARRATIVE:

The State has established procedures for corrective and remedial actions to be applied when there is a violation of WIOA Section 188 and/or 29 CFR Part 38 by a recipient or sub-recipient.

The standards for corrective and remedial actions are to be applied when violations of WIOA Section 188 or 29 CFR part 38 are found. Corrective and remedial actions must be designed to completely correct each violation. For each corrective action, a time frame should be established that sets the minimum time necessary to completely correct the violation. In the case of a finding of discrimination, the procedures must provide, where appropriate, for retroactive relief (including but not limited to back pay) and prospective relief (e.g., training, policy development and communication) to ensure that the discrimination does not recur.

Corrective and remedial action will be sought when any deficiency is identified via a monitoring review or an employment opportunity complaint. Deficiencies can be technical violations, which are deficiencies that do not involve discrimination or require written assurance from the State, Unemployment Insurance (UIA), Local Workforce Development Areas and One-Stop Partners (LWDA/OSP). Technical violations may include but are not limited to: failure to post the required “Equal Opportunity is the Law” notice/poster, failure to include assurances in service plans, failure to include an “Equal Opportunity is the Law” notice/poster in an employee’s or a WIOA participant’s file, and failure to include an acknowledgement confirming a participant’s knowledge of complaint procedures and grievance procedures in their program file or in an electronic file.

Discrimination violations involve any complaint where discrimination is alleged. Discrimination violations may include but are not limited to: discrepancies of disparate treatment, disparate impact, and failure to provide reasonable accommodation. These discrepancies may require a conciliation agreement or assurance statement. Provisions of such an agreement or statement will include make-whole relief such as, where appropriate, retroactive relief (e.g. back pay, front pay, retroactive benefits, training, any service discriminatorily denied) or prospective relief, (e.g. change of policy, training, development of new policy, training on policy communication).

These actions must be designed to completely correct each violation. For each corrective action, a time frame must be established that sets the minimum time necessary to completely correct the violation. In the case of a finding of discrimination, the procedures must provide, where appropriate, for retroactive relief (including but not limited to back pay) and prospective relief (e.g., training, policy development and communication) to ensure that the discrimination does not recur.

For each corrective action identified, the recipient must submit their corrective action plans within 20 business days of receipt of the Monitoring Review Guide Report. Corrections to the discrepancies should be made within 20 business days of the Equal Opportunity (EO) Monitoring Review Report and designed to completely correct the violation and bring the recipient into compliance.

Recipients are required to complete all corrective actions in the monitoring report, and the recipient must submit a written assurance that the discrepancies have been corrected and will not recur. The assurance will list the deficiency and corrective action as specified in the written notification, describe the corrective actions taken and the dates of those actions, state that the recipient or sub-recipient is taking and will continue to take steps to assure that the deficiency does not recur, and certify that the assurance is signed by the highest level official of the recipient or sub-recipient. If the discrepancies involve discrimination, a conciliation agreement is required.

Remedial actions are designed to make whole an individual or individuals who have suffered injury or loss because of unlawful discrimination. A person or persons wronged by discriminatory acts or policies must be restored to the status they would have expected had the discrimination not occurred. In a finding of discrimination, the procedures must provide, where appropriate, for retrospective relief (including, but not limited to, back pay) and prospective relief (including, but not limited to, training, policy development and communication) to ensure the discrimination does not recur.

The procedures for follow-up monitoring to ensure that commitments to take corrective action and remedial action are fulfilled.

When a corrective or remedial action plan is established, the EO Officer overseeing the action plan will do a desk review and/or an onsite visit, as appropriate, to ensure that the commitments of the plan are satisfied and the violation will not recur. Any instances of noncompliance will be examined as a follow-up with an onsite visit or as part of the next scheduled monitoring review of the recipient.

Reports required from the violating recipient regarding actions to correct the violation(s).

The violating recipient will develop and submit a corrective or remedial action plan in writing to the EO Officer within 20 business days of receiving the EO Monitoring Review Report. The corrective or remedial action plan will identify the violating recipient's plan and require that follow-up reports be prepared and forwarded to the EO Officer on a periodic basis for all completed actions. The EO Officer will conduct a follow up to ensure that all the discrepancies have been resolved and will close out the monitoring review.

Sanction procedures to be followed where voluntary compliance cannot be achieved.

Sanctions penalize or censure a recipient and require the EO Officer to issue a final determination in writing and take such actions as allowable by law. The final determination must contain the following information:

- A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- A statement of those matters upon which the recipient and the EO Officer continue to disagree;
- A list of any modifications to the findings of fact or conclusions that were set forth in the initial determination;
- A statement of the recipient's liability and, if appropriate, the extent of that liability;
- A description of the corrective or remedial actions that the recipient must take to come into compliance; and

- A notice that if the recipient fails to come into compliance within ten calendar days of the date on which it receives the final determination, one or more of the following consequences may result:
 - WIOA funds may be withheld in whole or in part,
 - Applications for set-aside funds may be denied when the recipient is determined to be noncompliant with EO requirements,
 - The Arizona Department of Economic Security (DES) may refer the case to the Arizona State Attorney General or the U.S. Department of Justice with a request to file suit against the recipient; or
 - DES may take any other action against the recipient allowable by law.

A recipient has the right to appeal a final determination to the Director of the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, Northwest, Room N-4123, Washington D.C. 20210. The appeal must be in writing and made within 30 days after the complainant receives the final determination or 90 days from the date of the filed complaint. Such an appeal, however, will not forestall the initiation of sanctions unless the Director of the CRC extends the deadline.