

**WIOA Title I
Template Equal Opportunity Monitoring
Guide**

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Introduction

The National Association of State Workforce Agencies' Equal Opportunity Committee has developed this guide to help states conduct Equal Opportunity monitoring in accordance with the equal opportunity and nondiscrimination provisions of the Workforce Innovation and Opportunity Act (WIOA) of 2014. This is a template which can provide a basis for states as they develop monitoring processes for their individual states.¹

The purpose of monitoring entities receiving WIOA Title I funding is to ensure compliance with WIOA section 188 and 29 CFR 38, including a determination as to whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way. Section 188 of WIOA prohibits discrimination by recipients of federal financial assistance against any individual in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of WIOA, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity. Any entity that receives federal financial assistance, either directly or indirectly, to administer a program or activity under WIOA Title I is a recipient.

Programs and activities funded in whole or in part by WIOA are subject to the following equal opportunity (EO) laws, regulations and policies:

- Title VI, Civil Rights Act of 1964
- Age Discrimination Act of 1975
- Rehabilitation Act of 1973, Section 504
- Title IX, Education Amendment Act of 1972
- 29 Code of Federal Regulations Part 38
- State Nondiscrimination Plan

Other federal laws impacting the operations of state and local-level WIOA programs include, but are not limited to, the following:

- Title VII, Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act of 1990, as amended
- Rehabilitation Act of 1973, Section 501 and 503

I. Requirements of Monitoring Guidance

Most review processes include two types of reviews, desk review and onsite review. A full review would include an initial desk review followed by an onsite review. A review may also include just a desk review. Federal law requires each entity receiving WIOA title I funding to be reviewed annually. It is up to each state to develop a review process that defines frequency and types of reviews. Here are a couple examples:

1. The EO officer will conduct a full review (desk and onsite) of every entity receiving WIOA Title I funding on an annual basis.

¹ This Guide is informational only and may not be relied on as legal advice.

2. The EO Officer will schedule desk reviews of each one-stop center and subrecipient on an annual basis. A full desk and on-site review will be conducted once every three (3) years, unless a complaint is received or a desk audit indicates the need of an immediate on-site review.

When determining the process for monitoring, consider resources available to the State and the risk level of each entity receiving WIOA Title I funding.

A. Minimum Elements for Each Review

At minimum, each monitoring review will include:

1. A statistical or other quantifiable analysis of records and data kept by the recipient under 29 CFR 38.51 (b) (1), including analyses by race/ethnicity, limited English proficiency, preferred language, sex, age, and disability status;
2. An investigation of any significant differences identified in paragraph 1. of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and
3. An assessment to determine whether the recipient has fulfilled its administrative obligations under section 188 or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the NDP.

B. EO Monitoring Requirements

1. Each EO monitoring review shall include a review of each one-stop center and subrecipient:
 - a. Compliance with its administrative obligations under WIOA section 188 and 29 CFR 38;
 - b. Compliance with responsibilities it has been assigned through the NDP;
 - c. Programs and activities to determine whether discrimination is occurring.
2. Such monitoring review shall include a statistical or other quantifiable analysis of data and records collected by the recipient and subrecipients, including analyses by race/ethnicity, sex, age, and disability status, pursuant to 29 CFR 38.51. The monitoring must also include an investigation of any significant differences identified in participation in the programs, activities, or employment provided by the recipient to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means.
3. Both desk and on-site monitoring reviews will assess each recipient's compliance with 29 CFR 38 related to:
 - (i) Assurances (Sections 38.25 through 38.27);
 - (ii) Equal Opportunity Officers (Sections 38.28 through 38.33);
 - (iii) Notice and Communication (Sections 38.34 through 38.39);
 - (iv) Data and Information Collection and Maintenance (Sections 38.41 through 38.45);
 - (v) Affirmative Outreach (Section 38.40);
 - (vi) Governor's Oversight Responsibility Regarding Recipients' Recordkeeping (Section 38.53);
 - (vii) Complaint Processing Procedures (Sections 38.72 and 38.73); and
 - (viii) Governor's Oversight and Monitoring Responsibilities for State Programs (Sections 38.51 and 38.53).

C. EO Monitoring Tools

Each state should develop a monitoring tool to assist in all reviews. The tool should cover the elements listed in part B. 3. of this section. Example templates of these tools can be found in Appendix I a. and b. Appendix I a. Monitoring tool from South Dakota, which is a single service State, is prepared by changing all the text to part B of each Element

to white and restricting editing to just fillable prior to sending to the entity under review. Appendix I b. is from Washington State, which is a multi-service State.

The purpose of developing a tool is to standardize the process of the review by having a set of question developed to gather information from the entity under review. It also helps determine the area the reviewer should focus more on during the desk and/or on-site review.

D. Elements of the Monitoring

Below is an example how a desk and onsite review can be structured.

1. Desk monitoring review:

- i. Notification Letter – Including Monitoring Tools
- ii. Statistical Analysis – Desk Review
- iii. Exiting Conference – Review any concerns, findings, or promising practices
- iv. Monitoring Report – Report of results
- v. Follow-up – Corrective Actions/Sanctions and resolution

2. On-site monitoring review:

- i. Notification Letter – Including Monitoring Tools
- ii. Statistical Analysis – Desk Review
- iii. Onsite Review
- iv. Exiting Conference
- v. Monitoring Report – Report of results
- vi. Follow-up – Corrective Actions/Sanctions and resolution

II. Components of the Monitoring Process

A. Notification Letter and Monitoring Tools

The notification letter announces the details and scope of the review and should include the monitoring tool for the entity to complete and return. Each State should have a standard timeframe established when the letter should be sent to the entity under review to allow adequate time to prepare for review and complete the monitoring tool. Examples of time frames would be 30 days prior and 40 days prior to the on-site review. The letter should include instructions for the monitoring tool(s) and all applicable supporting documents requested, including when the tool and documents are due.

B. Desk Review

The desk review should include reviewing case files, the completed monitoring tool and submitted support documents, conducting a data analysis, and reviewing any other pertinent information available. During a full review, the desk review helps identify areas of focus for the on-site review. When the desk review is the stand-alone review process, it is used to determine compliance and formulate the report as well as determine if additional actions/efforts are needed (e.g., need to further review and conduct an on-site review).

C. On-Site Review

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

The following are areas of emphasis during the on-site review:

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

D. Exit Conference

Immediately following the review, the reviewer may conduct an exit meeting with the appropriate EO Coordinator/Administrator or designee to discuss the findings and clarify areas in question. A preliminary compliance status may be given at this time, and corrective action(s) may be suggested. This gives the entity under review an opportunity to hear the initial findings, concerns, or promising practices and provide any additional information relevant to making the final decision.

E. Initial Determination Letter

At the conclusion of the monitoring review process, an "Initial Determination Letter" shall be written by the EO Officer conducting the review. Each State should establish an adequate timeframe for when the report should be completed and sent to the entity under review from the date of the On-Site review. An example would be 30 days or 40 days from the date of the on-site review. Copies of the report shall be distributed to the recipient's management. A copy shall be maintained by the local EO Officer conducting the review.

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

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

Each State should establish a timeframe for entities to respond – example: thirty (30) days of the date recommendations are received.

States should establish a process for the scenario where an entity disagrees with the findings and/or corrective action. An example would be:

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

- a. Where an informal resolution is reached, an implementation plan shall be forwarded to the reviewer within thirty (30) days of the date recommendations are received.
- b. Where an informal resolution is not reached, the entity shall note their comments in their response and resolution will follow the Appeals Process.

F. Follow-up – Findings of Noncompliance

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

G. Final Determination

Each state should outline a Final Determination process. Below is an example.

- a. If compliance cannot be secured by voluntary means, the EO Officer must either:
 - i. Issue a Final Determination;
 - ii. Refer the matter to a Staff Attorney with a recommendation that an appropriate civil action be instituted; or
 - iii. Take such other action as may be provided by law.
- b. A Final Determination must contain the following information:
 - i. A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
 - ii. A statement of those matters upon which the parties continue to disagree;
 - iii. A list of any modifications to the findings of fact or conclusions set forth in the Initial Determination, Notice to Show Cause, or Letter of Findings;
 - iv. A statement of the subrecipients, contractors, and other service providers' (such as eligible training providers) liability, and, if appropriate, the extent of that liability;
 - v. A description of the corrective or remedial actions the grant applicant or recipient must take to come into compliance;
 - vi. A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
 - a) After the subrecipients, contractors, and other service providers (such as eligible training providers) are given the opportunity for a hearing, its WIOA funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
 - b) The agency may refer the case to an attorney with a request to file suit against the subrecipients, contractors, and other service providers; or
 - c) The agency may take any other actions against the subrecipients, contractors, and other service providers provided by law.
 - vii. A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in 29 CFR 38.111.
 - viii. A determination of DLR, entity's authorized signatory, and the violating subrecipient, contractors, and other service provider's liability, if any.

H. Sanctions

Each State should have a process for Sanctions. Below is an example.

- a. If compliance has not been achieved after issuance of a Final Determination or a Notification of Breach of Conciliation Agreement, the Agency may apply sanctions or judicial enforcement as follows:

- i. After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA financial assistance, in whole or in part;
 - ii. Refer the matter to the a staff attorney or CRC with a recommendation that an appropriate civil action be instituted; or
 - iii. Take such action as may be provided by law.
- b. In addition to sanctions and judicial enforcement, if there is no voluntary compliance there may be a deferral of new grants. When the applicable hearing procedures have been initiated against a recipient, the Agency or the CRC may defer action on that recipient's applications for new WIOA financial assistance until a Final Decision as required has been rendered. Deferral is not appropriate when WIOA financial assistance is due and payable under a previously approved application. The following criteria are applied to determine New WIOA financial assistance:
- i. New WIOA financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.
 - ii. New WIOA financial assistance does not include assistance approved before the beginning of proceedings, or increases in funding because of changed computations of formula awards.

I. Appeals

Each State should have an appeals process. Below is an example.

If an entity under review disagrees with the Final Determination letter, they must appeal in writing to the (Governors designee for EO) requesting a hearing within 30 days of the date of the final determination. The appeal letter must identify the issue(s) in dispute and must contain a full statement of the entities' position with respect to such issue(s) and the pertinent facts and reasons in support of their position. In addition to the required written statement, the entity must also provide copies of any documents supporting its claim. A copy of the request must also be sent the EO Officer who signed the final determination. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

When no timely request for a hearing is made, the final determination shall constitute final action. The request for a hearing shall be accompanied with a copy of the final determination, if issued. The (Governors designee for EO) will review the appeal letter and determine whether the dispute is reviewable and will promptly notify the subrecipient and the reviewer responsible for the final determination of the decision.

If the (Governors designee for EO) determines the dispute is reviewable, a meeting will be set up to allow both parties to discuss the pertinent issues of the dispute and provide any additional statements and documentation not provided in the appeal letter. Based on the review, the (Governors designee for EO) will prepare a written decision to send to the subrecipient. The decision made by the (Governors designee for EO) shall be final.

III. Component Guidance

This section provides additional guidance on key components of the review including data analysis, employee interviews, file review, and ADA review

A. Data Analysis

29 CFR 38.51 (b) (1) states in part that each annual monitor must include a statistical or other quantifiable analysis of records and data kept by the recipient under 29 CFR 38.51 (b) (1), including analyses by race/ethnicity, limited English proficiency, preferred language, sex, age, and disability status.

Each State must develop a process for conducting a data analysis. Below is an example process for meeting this requirement.

This example process involves two analyses. The first is Appendix II – Service Area Demographic to Served Analysis, which focuses on the effectiveness of getting the protected classes to participate in the services provided – outreach. The second is Appendix III –Enrolled in Wagner Peyser (WP) versus WIOA Analysis, which focuses on foot traffic and the effectiveness of getting protected classes the favored result – enrolled in WIOA. Both analyses are revised versions of the Statistical Analysis Workbook provided by the CRC during the December 03, 2017 EO Training and use standard deviation to determine the probability of discrimination by each category.

Notes about standard deviations:

- a. The standard deviation analysis looks at the probability that the difference in rates is due to chance.
- b. Technically, this is a two independent sample binomial test.
- c. Differences greater than 2.0 standard deviations is generally what suggests possible discrimination.
- d. The 2.0 standard deviation represents a less than 5.0% chance that the difference in rates is due to chance.
- e. Another way to think about it is that if the SD is greater than 2.0, there is something that is controlling the process because there is less than 5% chance that the difference was caused by chance.

1. Statistical Analysis Process

Each of these statistical analyses do a standard deviation of two groups. The first group is the non-protected class and the second group is the protected class. You will need to collect data by each category (race, sex, disability status, LEP, and age) and fill in the blanks for each sheet in the Data Analysis Workbook. A result of 2 or greater would indicate a probability discrimination is present and you would need to do some further investigation to make the final determination. Below is a breakdown of how to collect and use the data both analyses.

2. Service Area Demographic to Demographic Served Analysis

The purpose of this analysis is to determine if there is any indication of discrimination by race, sex, disability status, LEP, and age by comparing population demographic to population served. For this report, the reviewer will need two sources of data. The first is the Census data showing the population demographic and the second is the State’s data collection source showing the population served. Both sources of data will need to collect information by race, sex, disability status, LEP, and age.

a. Collecting Census Data

The census data comes from American Fact Finder and there are three reports needed to collect the data by race, sex, disability status, LEP, and age. For each report you will need to select “Add/Remove Geographies” to add the service area you are reviewing (by county). You can save the report by selecting “Bookmark/Save” and copy the URL (recommendation is to create a word document table with all your entities and hyperlink each report into the documents for future use). The reports are:

- i. [Profile of General Population and Housing Characteristics: 2010 more information 2010 Demographic Profile Data](#) This report is to collect data by age, race, and sex.
- ii. [DISABILITY CHARACTERISTICS more information 2013-2017 American Community Survey 5-Year Estimates](#) This report is to collect disability status data.
- iii. [NATIVITY BY LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER Universe: Population 5 years and over more information 2012-2016 American Community Survey 5-Year Estimates](#) This report is to collect LEP data.

b. Organizing Census Data

You will need to download each report as an Excel document (Recommendation – save all reports in one Excel file as separate sheets – see appendix IV for an example. Below are the general steps for each report.

i. 2010 Demographic Profile Data:

1. Download each county for the service area as a “View” MS Excel file.
2. Move all the sheets to one Excel file.
3. Combine the data into one sheet.
4. Create a sum column and sum all the totals for each category.
5. Create a Table for Age (group 15-39 and 40-64 and sum both groups)
6. Create table for Male and Female (sum each group with ages 15-64)
7. Create a table for race (group 1 is White (non-protected class) and group 2 is the largest minority class in the serving area.

ii. Disability Characteristics:

1. Download data as “View” MS Excel document.
2. Create a table summing the total disabled and non-disabled from age 18 to 64.

iii. Nativity by Language Spoken

1. Download as Excel file
2. Delete all columns with margin of error.
3. Highlight all numbers, in top left should be a small box with a ‘!’– click drop down and select “Convert to number”
4. Create a total column and total all the amounts.
5. To the right, create a table with the categories: LEP and Non LEP.
6. Sum all “Not well” and “Not at all” in the LEP
7. Sum all “speak only English”, “very well”, and “well” in the non-LEP

c. Collecting Demographic Served Data

Each State should have a method for collecting data by race, sex, disability status, LEP, and age. Generate these reports for individuals who have been enrolled and receiving or received benefits. Save these reports as a PDF.

d. Completing the Data Analysis Workbook

The Service Area Demographic to Served Analysis workbook has a separate sheet for each category (race, sex, disability status, LEP, and age). Input the data in the highlighted Excel cells (blue is the non-protected class; yellow is the protected class). Review the results of the standard deviation in the gray cell. If it is two or higher, there is a probability discrimination exists and you will need to do further investigation.

3. Registered to Enrolled Statistical Analysis

The purpose of this analysis is to determine if there is any indication of discrimination by race, sex, disability status, and age by comparing registered only participants (unfavored result) to enrolled participants (favored result). For this analysis, a reviewer would need to be able to pull reports for registered only and enrolled by each category (race, sex, disability status, LEP, and age). Use the data collected to complete the Registered to Enrolled Statistical Analysis Workbook (See appendix III).

B. On-Site Employee Interviews

The purpose of the onsite interviews is to evaluate employee’s knowledge and understanding of meeting the requirements of a State’s Non-Discrimination Plan, 29 CFR 38, and other applicable laws and regulations governing WIOA Title I programs. Each State EO reviewer should develop interview questions to ask staff during on-site

reviews (see Appendix V a. and Appendix V b. for example templates). The questions should focus on testing the knowledge and understanding of implementing the requirements outlined in the Non-Discrimination Plan. Results from the interviews will help the reviewer determine areas of weakness and training opportunities. Areas to focus on include:

- i. Providing equal services to LEP
- ii. Providing equal services to individuals who are deaf, hard-of-hearing, deaf-blind, and or speech disabled
- iii. Discrimination Complaint Process
- iv. Collecting Required EO data
- v. File Review (cover any concerns discovered during the file review)

C. Participant File Review

The goal of EO file review is to review a sample of files to ensure:

- i. 29 CFR 38.41 (b) (2) Required data is collected including:
 - Race/ethnicity
 - Sex
 - Age
 - Disability status, if known
 - Limited English proficiency and preferred language
- ii. 29 CFR 38.41 (b) (3) Medical or disability-related information obtained is collected on a separate form, is maintained in a separate file, apart from any other information about the individual, and secured (i.e., password protected).
- iii. 29 CFR 38.36 (4) The Equal Opportunity notice is part of each participant's file (both paper and electronic files, if both are maintained).

Appendix VI provides an example file review form.

D. ADA Physical Access Review

Each State should have a review process to ensure each LWIOA building is compliant with WIOA section 188, Section 504 of the Rehabilitation Act, and 29 CFR 38.7-9 and Subparts B and C of 29 CFR 32. Appendix VII is the ADA Checklist for Existing Facilities as a recommended process for meeting these requirements.