



**Workforce Innovation and Opportunity Act
Equal Opportunity Compliance Technical Assistance Guide
State of Oklahoma**



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The Oklahoma Office of Workforce Development/Oklahoma Works is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

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Introduction

The United States Department of Labor (USDOL) in Section 188 of the Workforce Investment and Opportunity Act (WIOA) and 29 CFR Part 38 requires each Governor to establish a Nondiscrimination Plan to ensure compliance with nondiscrimination and equal opportunity provisions of WIOA. Compliance includes a system for periodically monitoring the of recipients to determine if they are conducting their WIOA Title I-financially assisted program in a nondiscriminatory manner.

The Oklahoma Office of Workforce Development (OOWD) is administrative entity for Workforce Innovation Opportunity Act (WIOA), and Title I as designated by the Governor of the State of Oklahoma. Working in conjunction with the Oklahoma Employment Security Commission for Title III, Oklahoma Department of Rehabilitation Services for Title IV Vocational Rehabilitation, and Oklahoma Department of Career and Technology Education for Title II Adult Education and Family Literacy Act.

Compliance with the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR 38 is denoted in the States Nondiscrimination plan reviewed and filed every two (2) years with the U.S. Department of Labor, Civil Rights Center. This plan is due August 31 of each year the plan is filed.

Monitoring and Review includes:

- a statistical or quantifiable analysis of the records and data kept by the recipient, including analyses by race/ethnicity, sex, age, and disability status; 29 CFR 38.41
- an investigation of any significant differences found across groups in participation in the programs, activities, and employment as a result of the analysis; 29 CFR 38.51
- an assessment to determine if administrative obligations have been fulfilled, including recordkeeping, notice and communication; 29 CFR 38.51
- a review of policies to ensure they are nondiscriminatory;
- a system for reviewing job training plans, contracts, assurances and similar agreements to ensure they are nondiscriminatory and they contain the required language;
- procedures for ensuring compliance with Section 504;
- a system to ensure that individuals assigned responsibility for carrying out nondiscrimination requirements can do so effectively;
- procedures for obtaining prompt corrective action when noncompliance is found; and,

- supporting documentation to show that commitments made in the MOA are carried out.

Supporting documentation includes but is not limited to:

- the issuing of policies and procedures required by various elements of the MOA;
- copies of monitoring instruments and instructions;
- the development and communication of nondiscrimination policies;
- the extent to which Equal Opportunity training is planned and carried out;
- reports of monitoring reviews; and,
- reports of follow-up actions (where violations are found).

This technical assistance is advisory in nature and is not intended to supersede any other applicable laws or regulations. While this guide does provide options for developing a monitoring system adherence alone may not allow recipients to demonstrate compliance with Title VI, Section 188, or Section 504.

WIOA Section 188 Monitoring Requirements

Each Local Workforce Development Board will be monitored annually for compliance with Oklahoma’s Nondiscrimination Plan and WIOA Section 188. Each Local Workforce Development Board will be monitored for compliance on the following components:

- Sections 38.25 through 38.27 (Assurances);
- Sections 38.28 through 38.33 (Equal Opportunity Officers);
- Sections 38.34 through 38.39 (Notice and Communication);
- Sections 38.41 through 38.45 (Data and Information Collection and Maintenance);
- Section 38.40 (Affirmative Outreach);
- Section 38:53 (Governor's Oversight Responsibility Regarding Recipients' Recordkeeping);
- Sections 38.72 and 38.73 (Complaint Processing Procedures); and
- Sections 38.51 and 38.53 (Governor's Oversight and Monitoring Responsibilities for State Programs).

Other elements include:

- Eligible Training Providers Compliance
- Compliance with Federal Disability Nondiscrimination Laws
- Recipient Language Assistance Plan (LEP Plan): Promising Practices
- Training for Compliance under WIOA Section 188

- Corrective Actions and Sanctions (policy)

Requirements Sections 38.25 through 38.27: Assurances

- 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.
- The required assurance is incorporated into each grant, cooperative agreement, contract, or other arrangement whereby Federal financial assistance under Title I of WIOA is made available.
- Each grant applicant, and each training provider seeking eligibility, is able to provide programmatic and architectural accessibility for individuals with disabilities. (See subpart C of 29 CFR Part 32.)
- 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.
- State and local level policy issuances, or issuances of other recipients, are not discriminatory either in intent or effect.
- WIOA Title I nondiscrimination and equal opportunity policies are developed and implemented in a timely manner.

The Law (click triangle to the left to expand)

§38.25 A grant applicant's obligation to provide a written assurance.

(a) Grant applicant's obligation to provide a written assurance.

(1) Each application for financial assistance, under Title I of WIOA, as defined in §38.4, must include the following assurance:

(i) As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the **ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:**

(A) Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I- financially assisted program or activity;

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

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

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

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

(ii) The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

(2) The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of WIOA is made available, whether it is explicitly incorporated in such document and whether there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated in such grants, cooperative agreements, contracts, or other arrangements by reference.

(b) Continuing State Programs. Each Strategic Four-Year State Plan submitted by a State to carry out a continuing WIOA financially assisted program or activity must provide the text of the assurance in paragraph

(a)(1) of this section, as a condition to the approval of the Four-Year Plan and the extension of any WIOA Title I assistance under the Plan. The State also must certify that it has developed and maintains a Nondiscrimination Plan under §38.54.

§38.26 Duration and scope of the assurance.

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

(1) The period during which the property is used either: (i) For a purpose for which WIOA Title I financial assistance is extended; or (ii) For another purpose involving the provision of similar services or benefits; or

(2) The period during which either:

(i) The recipient retains ownership or possession of the property; or

(ii) The transferee retains ownership or possession of the property without compensating the Departmental grant making agency for the fair market value of that ownership or possession.

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

§38.27 Covenants.

(a) Where WIOA Title I financial assistance is provided in the form of a transfer of real property, structures, or improvements on real property or structures, or interests in real property or structures, the instrument effecting or recording the transfer must contain a covenant assuring nondiscrimination and equal opportunity for the period described in §38.25(a)(1).

(b) Where no Federal transfer of real property or interest therein from the Federal Government is involved, but real property or an interest therein is acquired or improved under a program of WIOA Title I financial assistance, the recipient must include the covenant described in paragraph (a) of this section in the instrument effecting or recording any subsequent transfer of such property.

(c) When the property is obtained from the Federal Government, the covenant described in paragraph (a) of this section also may include a condition coupled with a right of reverter to the Department in the event of a breach of the covenant.

Focal Points/Terms

[Ability to Comply](#)

[Duration/Scope](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- A copy of each directive that instructs individuals at the local level who are responsible for reviewing assurances, job training plans, contracts, and policies and procedures as to the requirements of, and their duties under WIOA Section 188 and 29 CFR Part 38.
- Copies of assurance pages of plans, contracts, and other agreements.
- Copies of memos or directives to contract managers advising them to include the required assurance in the appropriate documents.
- Copies of checklists or other guidelines used by contract specialists, attorneys, or others who review contracts and agreements that indicate that nondiscrimination and equal opportunity are considered in the evaluation of such documents.
- A copy of procedures developed to review the ability of grant applicants, and training providers seeking eligibility, to comply with the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38.
- A copy of each WIOA EO issuance (e.g., the general EO policy statement, the policy statement on sexual harassment and the policy statement on religious accommodation).

Best Practices

Separate signature pages that include the assurance can be used to include and incorporate the language for compliance.

Assurances are included by operation of law in grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under title I of WIOA is made available. It is still best practice and recommended to include to prevent an oversight for the obligation.

Incorporation by reference is allowed. A best practice would be to review the document for complexity and parties to determine if a reference is appropriate versus full assurances although either would be appropriate.

Requirements of Sections 38.28 through 38.33: Designation of Equal Opportunity Officers

- Each individual designated as a State-level Equal Opportunity Officer and each individual designated as a local level Equal Opportunity Officer are identified by name, position title, business address (including e-mail address if applicable) and telephone number (including 711 Relay Services/TDD/TTY number).
- The level within the organization of the position occupied by the EO Officer(s) is described in terms of the individual's authority and reporting level to the top official (e.g. senior level, etc.).

- The EO Officer's duties/responsibilities do not appear to constitute a conflict of interest or the appearance of such. The EO Officer reports to the top official of the organization.
- The duties of the EO Officer(s) are described sufficiently including the manner in which those duties are carried out. The individual to whom the EO Officer reports on EO matters by name, job title, and organization is included.

The Law – Equal Opportunity Officers (click on the triangle on the left to view)

§38.28 Designation of Equal Opportunity Officers.

(a) Governors. Every Governor must designate an individual as a State-level Equal Opportunity Officer (State-level EO Officer), who reports directly to the Governor and is responsible for State Program–wide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA and this part, including but not limited to §§38.51, 38.53, 38.54, and 38.55 for State Programs. The State-level EO Officer must have staff and resources sufficient to carry out these requirements.

(b) All recipients. Every recipient except small recipients and service providers, as defined in §38.4(hhh) and (ggg), must designate a recipient-level Equal Opportunity Officer (recipient- level EO Officer), who reports directly to the individual in the highest-level position of authority for the entity that is the recipient, such as the Governor, the Administrator of the State Department of Employment Services, the Chair of the Local Workforce Development Board, the Chief Executive Officer, the Chief Operating Officer, or an equivalent official. The recipient- level EO Officer must have staff and resources sufficient to carry out the requirements of this section and §38.31. The responsibilities of small recipients and service providers are described in §§38.32 and 38.33.

§38.29 Recipients’ obligations regarding Equal Opportunity Officers.

All recipients have the following obligations related to their EO Officers:

- (a) Ensuring that the EO Officer is a senior-level employee reporting directly to the individual in the highest-level position of authority for the entity that is the recipient, such as the Governor, the Administrator of the State Department of Employment Services, the Chair of the Local Workforce Development Board, the Chief Executive Officer, the Chief Operating Officer, or an equivalent official;
- (b) Designating an individual who can fulfill the responsibilities of an EO Officer as described in §38.31;
- (c) Making the EO Officer’s name, position title, address, and telephone number (voice and TDD/TTY) public;
- (d) Ensuring that the EO Officer’s identity and contact information appear on all internal and external communications about the recipient’s nondiscrimination and equal opportunity programs;
- (e) Assigning sufficient authority, staff, and resources to the EO Officer, and support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part; and

(f) Ensuring that the EO Officer and the EO Officer's staff are afforded the opportunity to receive (at the recipient's expense) the training necessary and appropriate to maintain competency.

§38.30 Requisite skill and authority of Equal Opportunity Officer.

The EO Officer must be a senior level employee of the recipient who has the knowledge, skills and abilities necessary to fulfill the responsibilities competently as described in this subpart. Depending upon the size of the recipient, the size of the recipient's WIOA Title I-financially assisted programs or activities, and the number of applicants, registrants, and participants served by the recipient, the EO Officer may, or may not, be assigned other duties. However, the EO Officer must not have other responsibilities or activities that create a conflict or the appearance of a conflict with the responsibilities of an EO Officer.

§38.31 Equal Opportunity Officer responsibilities.

An Equal Opportunity Officer is responsible for coordinating a recipient's obligations under this part. Those responsibilities include, but are not limited to:

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

§38.32 Small recipient Equal Opportunity Officer Obligations.

Although small recipients, as defined in §38.4(hhh), do not need to designate EO Officers who have the full range of responsibilities listed in §38.31, they must designate an individual who will be responsible for adopting and publishing complaint procedures, and processing complaints, as explained in §§38.72 through 38.75.

§38.33 Service provider Equal Opportunity Officer Obligations.

Service providers, as defined in §38.4(ggg), are not required to designate an EO Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part rests with the Governor or LWDA grant recipient, as specified in the State's Nondiscrimination Plan.

Focal Points/Terms

[Authority](#)

[Responsibility/Duties](#)

[Small Recipient](#)

[Service Provider](#)

The Equal Opportunity Officer:

- Serves as the recipients' liaison with the State Level Equal Opportunity Officer and the CRC;
- Monitors and investigates the recipient's activities, and the activities of the entities that receive WIOA Title I funds from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I;
- Reviews the recipient's written policies to ensure that those policies are nondiscriminatory;
- Develops and publishes the recipient's procedures for processing discrimination and program complaints, and makes sure that those procedures are followed;
- Reports directly to the appropriate top level official about equal opportunity matters;
- Undergoes training (at the recipient's expense) to maintain competency, if the Director requires him or her, and/or his or her staff, to do so; and
- If applicable, oversees the development and implementation of the recipient's Nondiscrimination Plan
- Oversees the manner in which the recipient makes known the identity of the EO Officer(s) to applicants, registrants, eligible applicants/registrants, participants, employees, and applicants for employment, as well as interested members of the public.

- Describes the EO duties, responsibilities and activities associated with the implementation of 29 CFR Part 38, (i.e. handling complaints, monitoring, data collection and analysis, etc.) and all other duties, responsibilities and activities.
- Ensures adequate staffing and other resources are available to ensure that WIOA Title I; financially assisted programs and activities operate in a nondiscriminatory manner way are identified and deemed to be adequate.
- Ensuing that both EO Officer(s) and their staffs are sufficiently trained to maintain competency.

Sample of Documents that Support Compliance with WIOA Section 188:

- Examples of such document include (notices, directives, memoranda, letters to community groups, flyers, and relevant pages of handbooks and manuals) that communicates, either internally or externally, the EO Officer's name and other required information to registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and interested members of the public.
- Local EO Officer job position descriptions.
- Copies of the official organization chart(s) showing the organizational location of each EO Officer and the reporting relationship on EO matters.
- The identity of any staff who perform duties that support WIOA EO activities (e.g., clerical, data analysis) along with a position description for each such staff member, and the average hours per week spent on EO related activities by each such staff member (if positions are not devoted to WIOA equal opportunity activities on a fulltime basis).
- EO budget and source of funds for EO-related activities.
- Summary of EO related training that staff (EO staff and others) have received and a schedule of EO training delivered or to be delivered in the future. This may be training delivered by the State or level EO Officer to recipient staff, or training delivered to EO Officers or recipient staff by outside sources, such as CRC.

Best Practices

- Using the by reference or direct quote the language from 29 CFR 38.28
- Placing EO issues on the board agendas to ensure visibility and reporting on a scheduled basis so that EO is an expectation and not discussed only when there are issues.

Requirements of Sections 38.34 through 38.39: Notices and Communication

- A copy of the EO is The Law Notice that meets the wording requirements under 29 CFR part 38 is provided to all customers, applicants for employment, employees and the general public.
- The EO notice is made available to registrants/applicants/ and eligible applicants/registrants; participants, applicants for employment and employees/union or

professional organization that hold collective bargaining agreements or professional agreements with the recipient; subrecipients; and members of the public.

- The method and frequently for disseminating the EO Notice ensures nondiscrimination and equal opportunity based on:
 - Location (Posted is prominently in a reasonable number of places?)
 - Format (Is disseminated in internal memoranda and other written or electronic communication)
 - Is included in handbooks or manuals?
- A description of how the EO notice is provided for individuals with disabilities (both hearing and visually impaired) is sufficiently addressed in the Nondiscrimination Plan.
- A description of how the participants are provided Notice and the procedure for making the copy (signed) part of the participant's file is sufficiently addressed.
- Addresses where participant files are maintained electronically, a description of how the notice with participant signature is placed in participant's file.
- The State and Local Nondiscrimination Plans describes how each recipient ensures that WIOA system services and information are provided in languages other than English are provided. This should include:
 - A thorough annual assessment of the language needs of a significant number or proportion of the population to be served (documented results of analysis should be addressed in the NDP.)
 - An identification of reasonable steps, based on the results of the annual assessment, it has implemented and will implement for the provision of services and information in the appropriate language. This information includes the initial and continuing notice required under WIOA Section 188 and all information that is communicated under 29 CFR Part 38.
- A description of the procedures that have been implemented to meet the particularized language needs of limited English speaking individuals who seek services/information from the recipient.
- Policy statement/guidance issued on the procedures for identifying and assessing the language needs of its LEP applicants/clients that provide for a range of interpreter assistance, notification to LEP persons, in appropriate language, of the right to free language assistance, etc.
- A description of how and the to what extent to registrants, applicants, eligible registrants/applicants, employees, applicants for employment, and members of the public are made aware of their rights to file a complaint under 29 CFR 38 is sufficiently addressed within orientations for each of these individuals.
- A description of how the Local Workforce Board disseminates the EO notice to its subrecipients throughout the region.
- A description of how the Local Workforce Board ensure that subrecipients post the EO notice as required. • A description of how the State ensures that recruitment brochures and other materials routinely made available to the public include the statement equal

opportunity employer/program and auxiliary aids and services are available upon request to individuals with disabilities. Also, where a telephone number is included on these materials, the 711 Relay services are provided.

- A description of the steps taken to ensure that communications with individuals with disabilities are as effective as communication with others.
- A description of the process the State has used and will continue to use to develop and communicate policy and conduct training regarding nondiscrimination and equal opportunity.

The Law – Notice and Communication (click on the triangle on the left to view)

§38.34 Recipients' obligations to disseminate equal opportunity notice.

(a) A recipient must provide initial and continuing notice as defined in §38.36 that it does not discriminate on any prohibited basis. This notice must be provided to:

- (1) Registrants, applicants, and eligible applicants/registrants;
- (2) Participants;
- (3) Applicants for employment and employees;
- (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
- (5) Subrecipients that receive WIOA Title I financial assistance from the recipient; and
- (6) Members of the public, including those with impaired vision or hearing and those with limited English proficiency.

(b) As provided in §38.15, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for LEP individuals as described in §38.9.

§38.35 Equal opportunity notice/poster.

The notice must contain the following specific wording: Equal Opportunity Is the Law It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity. The recipient must not discriminate in any of the following areas: Deciding who will be admitted, or have access, to any WIOA Title I- financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity. Recipients of federal financial assistance

must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities. What To Do If You Believe You Have Experienced Discrimination If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either: The recipient's Equal Opportunity 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 or electronically as directed on the CRC Web site at www.dol.gov/crc. If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above). If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient). If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

§38.36 Recipients' obligations to publish equal opportunity notice.

(a) At a minimum, the Equal Opportunity Notice required by §§38.34 and 38.35 must be:

- (1) Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's Web site pages;
- (2) Disseminated in internal memoranda and other written or electronic communications with staff;
- (3) Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available; and
- (4) Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.

(b) The notice must be provided in appropriate formats to registrants, applicants, eligible applicants/ registrants, applicants for employment and employees and participants with visual impairments. Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment and employees with a visual impairment, a record that such notice has been given must be made a part of the employee's or participant's file.

(c) The notice must be provided to participants in appropriate languages other than English as required in §38.9.

(d) The notice required by §§38.34 and 38.35 must be initially published and provided within 90 days of January 3, 2017, or of the date this part first applies to the recipient, whichever comes later.

§38.37 Notice requirement for service providers. The Governor or the LWDA grant recipient, as determined by the Governor and as provided in that State's Nondiscrimination Plan, will be responsible for meeting the notice requirement provided in §§38.34 and 38.35 with respect to a State's service providers.

§38.38 Publications, broadcasts, and other communications.

(a) Recipients must indicate that the WIOA Title I-financially assisted program or activity in question is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities," in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIOA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or equally effective telecommunications system, such as a relay service, videophone, or captioned telephone used by the recipient, as required by §38.15(b).

(b) Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

(c) A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis specified in §38.5, except as such treatment is otherwise permitted under Federal law or this part.

§38.39 Communication of notice in orientations.

During each presentation to orient new participants, new employees, and/ or the general public to its WIOA Title I-financially assisted program or activity, in person or over the internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA and this part, including the right to file a complaint of discrimination with the recipient or the Director. This information must be communicated in appropriate languages as required in §38.9 and in formats accessible for individuals with disabilities as required in this part and specified in §38.15.

Focal Points/Terms

[Initial and Continuing](#)

[Requirements](#)

[Scope of Requirement](#)

[Required Language](#)

[Orientations](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- A copy of each communication that instructs the Local Workforce Development Board recipients on how they are to comply with the requirements of WIOA Section 188 and 29 CFR Part 38 regarding notice and communication.
- A copy of the posted EO notice.
- A copy of any checklist of the contents of participant and employee files, indicating that the notice requirement has been met.
- A copy of any orientation agendas that include a discussion of equal opportunity and nondiscrimination under WIOA section 188 and 29 CFR Part 38.
- A copy of each item of material, distributed at orientation sessions, which addresses the rights of individuals under WIOA section 188 and 29 CFR part 38.
- Copies of agendas (and a list of dates) of past and proposed EO policy briefings and EO training.
- A copy of each policy issuance or instruction that relates to WIOA Section 188 or 29 CFR Part 38.
- A copy of each recruitment brochure and other item of material distributed to the public by WIOA Title I financially assisted recipient, showing that each includes the statements "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities"; and the statewide telephone relay service relay 711.

Best Practices

As part of the organization and administration, of the notice requirement, the practice of having a map of facilities with poster location notated assists in planning and review. It is a single focus reference point for updating changes and to verify quickly strategic locations of sign placement based on local process and traffic. Regular review and spot checks to ensure information is accurate and up to date by creating a document list and location. This can also be done during new recipient or employee orientation.

Requirements of Section 38.41 through 38.45: Data Collection and Maintenance

- Each recipient must collect and maintain such data and records, as prescribed by the Director, as the Director comply with the nondiscrimination and equal opportunity provisions. The system and format in which the records and data are kept must be 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.
- Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping, reporting and determining eligibility.
- Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

The Law – Data Collection and Maintenance (click the triangle on the left to view)

§38.41 Collection and maintenance of equal opportunity data and other information.

(a) The Director will not require submission of data that can be obtained from existing reporting requirements or sources, including those of other agencies, if the source is known and available to the Director.

(b)(1) Each recipient must collect such data and maintain such records, in accordance with procedures prescribed by the Director, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA or this part. The system and format in which the records and data are kept must be 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 and this part.

(2) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/ registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee.

Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA Title I- financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

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

(i) Knowledge of disability status or medical condition and access to information in related files. Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:

(A) Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.

(B) First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.

(C) Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws. See also §38.44.

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

(c) Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with the recipient that allege discrimination on the basis(es) of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity. The log must include: 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 and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

(d) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

(e) A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or LWDA grant recipient, as provided in the State's Nondiscrimination Plan.

§38.42 Information to be provided to the Civil Rights Center (CRC) by grant applicants and recipients.

In addition to the information which must be collected, maintained, and, upon request, submitted to CRC under §38.41:

(a) Each grant applicant and recipient must promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity. This notification must include:

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

(b) Each recipient (as part of a compliance review conducted under §38.63, or monitoring activity carried out under §38.65) must provide the following information:

- (1) The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and
- (2) Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include:

- (i) The names of the parties;
- (ii) The forum in which each case was filed; and
- (iii) The relevant case numbers.

(c) At the discretion of the Director, grant applicants and recipients may be required to provide, in a timely manner, any information and data that the Director considers necessary to investigate complaints and conduct compliance reviews on bases prohibited under the nondiscrimination and equal opportunity provisions of WIOA and this part.

(d) At the discretion of the Director, recipients may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part.

(e) At the discretion of the Director, grant applicants may be required to submit, in a timely manner, the particularized information that the Director considers necessary to determine whether or not the grant applicant, if financially assisted, would be able to comply with the nondiscrimination and equal opportunity provisions of WIOA or this part.

(f) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

§38.43 Required maintenance of records by recipients.

(a) Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three years from the close of the applicable program year:

(1) The records of applicants, registrants, eligible applicants/ registrants, participants, terminees, employees, and applicants for employment; and

(2) Such other records as are required under this part or by the Director. (b) Where a discrimination complaint has been filed or compliance review initiated, every recipient that possesses or maintains any type of hard-copy or electronic record related to the complaint (including records that have any relevance to the underlying allegations in the complaint, as well as records regarding actions taken on the complaint) or to the subject of the compliance review must preserve all records, regardless whether hard-copy or electronic, that may be relevant to a complaint investigation or compliance review, and maintain those records for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review.

§38.44 CRC access to information and information sources.

(a) Each grant applicant and recipient must permit access by the Director or the Director's designee during its hours of operation to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, or monitoring activities associated with a State's development and implementation of a Nondiscrimination Plan, and for inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA or this part.

(b) Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part.

(c) Whenever any information that the Director asks a grant applicant or recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the grant applicant or recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the grant applicant or recipient made to obtain it.

§38.45 Confidentiality responsibilities of grant applicants, recipients, and the Department.

Grant applicants, recipients and the Department must keep confidential to the extent possible, consistent with a fair determination of the issues, the identity of any individual who furnishes information relating to, or assists in, an investigation or a compliance review, including the identity of any individual who files a complaint. An individual whose identity is disclosed must be protected from retaliation (See §38.19).

Focal Points/Terms

[Data Analysis](#)

[Data Set](#)

[Confidentiality](#)

[Document Retention](#)

[Notice](#)

[Notice Requirement](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- Samples of each policy issuance that discusses ensuring the confidentiality of demographic information regarding individuals. Samples of reports regarding demographic information.
- Samples of complaint logs and instructions, in hard copy and electronic file forms, used by the State and its recipients to track complaints that allege a violation of 29 CFR Part 38.

Best Practices

The creation of an electronic folder or keeping a physical folder with security access can assist in maintaining and documenting confidentiality. Having a master record of documents that would contain confidential information will make review easier for monitoring.

Requirements of Section 29 CFR §38.40: Affirmative Outreach

Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to:

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

The Law – Affirmative Outreach (click on the triangle to the left to view)

§38.40 Affirmative outreach. Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title I- financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to:

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

Focal Points/Terms

[Reasonable Efforts](#)

[Equal Access](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- Copies of targeted outreach and recruitment plans.
- Criteria for determining priority of service.
- Copies of plans for One-Stop delivery systems to expand the pool of those considered for participation or employment in their programs and by race/ethnicity, sex, disability status, age, and language needs.

- Samples of brochures, posters, public-service announcements, computer screens displaying related information, and other publicity materials.

Requirements of Section 38.53: Oversight Responsibilities Regarding Recipients' Recordkeeping

The Local Workforce Development Board must ensure that recipients collect and maintain records in a manner consistent with WIOA Section 188 and 29 CFR Part 38 using procedures prescribed by OOWD and under 29 CFR Part §38.41(a). The Local Workforce Development Board must ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

The Law – Oversight Recipients' Recordkeeping

§38.53 Governor's oversight responsibilities regarding recipients' recordkeeping. The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of §38.41 and any procedures prescribed by the Director under §38.41(a). The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

[Focal Points/Terms Requirements](#)

[Confidentiality](#)

Sample Documents:

- Schedules of reviews and criteria for review of recipients.
- EO Monitoring instrument(s) used by Local Workforce Development Board.
- Local Policy issuances and procedural guidance regarding monitoring reviews and evaluations.
- A representative sample of monitoring review reports, including findings and status of follow-up actions.

Requirements of Sections 38.72 and 38.73: Complaint Processing Procedures

- Local Workforce Boards are obligated under WIOA Section 188 to implement the State's complaint procedures. These procedures must be published for investigating complaints that allege discrimination on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status for WIOA.
- Complaints may be filed alleging intimidation and retaliation in accordance with 29 CFR 38.19.
- Complaint may be filed with CRC or Recipient within 180 days and should include:

- Information a complaint may contain.
- How due process will be provided.
- Right to notice of the charges.
- Right of representation.
- Right of the parties to provide evidence and question others who present evidence.
- A decision based strictly on the recorded evidence.

The complaint form includes:

- Include the name, title, address, telephone number and TDD/TTY number of the individual responsible for receiving the complaint.
- Provide for written notice of lack of jurisdiction of complaint, including reasons for the determination and notice of CP's right to file with CRC within 30 days of the CP's receipt of notice.
- Provide for initial written notice to the CP acknowledging that the recipient has received the complaint and notice that CP has right to representation.
- Provides a written statement to CP containing 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 reason for rejection.
- A period for fact-finding or investigation of the circumstances.
- A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR) also known as a mediation.

[The Law – Complaint processing \(click on the triangle to the left to view\)](#)

§38.72 Required elements of a recipient’s complaint processing procedures.

(a) The procedures that a recipient adopts and publishes for processing complaints permitted under this part and WIOA Section 188 must state that the recipient will issue a written Notice of Final Action on complaints within 90 days of the date on which the complaint is filed.

(b) At a minimum, the procedures must include the following elements:

(1) Initial, written notice to the complainant that contains the following information:

- (i) An acknowledgment that the recipient has received the complaint; and
- (ii) Notice that the complainant has the right to be represented in the complaint process;
- (iii) Notice of rights contained in §38.35; and

(iv) Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in §§38.4(h) and (i), 38.34, and 38.36.

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

(i) A list of the issues raised in the complaint; and

(ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.

(3) A period for fact-finding or investigation of the circumstances underlying the complaint.

(4) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section.

(5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

(i) For each issue raised in the complaint, a statement of either:

(A) The recipient's decision on the issue and an explanation of the reasons underlying the decision; or

(B) A description of the way the parties resolved the issue; and

(ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

(c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:

(1) The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.

(2) The choice whether to use ADR or the customary process rests with the complainant.

(3) A party to any agreement reached under ADR may notify the Director in the event the agreement is breached. In such circumstances, the following rules will apply:

(i) The non-breaching party may notify with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach; and

(ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

(4) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in §§38.69 through 38.71.

§38.73 Responsibility for developing and publishing complaint processing procedures for service providers.

The Governor or the LWDA grant recipient, as provided in the State's Nondiscrimination Plan, must develop and publish, on behalf of its service providers, the complaint processing procedures required in §38.72. The service providers must then follow those procedures.

[Focal Points/Terms](#)

[Complaint Processing Requirements](#)

[Alternative Dispute Resolution](#)

[Procedures](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- The State's discrimination complaint procedures developed pursuant to 29 CFR 38.72 through 38.73.
- The instrument (e.g. policy directive, memorandum) used to inform recipients of the complaint procedures and directing recipients as to their use.
- The ADR procedures, if not included with complaint processing procedures.

Requirements of Sections 38.51 and 38.53: Monitoring Responsibilities

The Local Workforce Board and its recipients are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR Part 38. Local Workforce Boards must:

- Establish and implement a Nondiscrimination Plan, under §38.54, to give a reasonable guarantee of the recipient's compliance with such provisions;
- Enter into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;
- Act with due diligence to monitor the recipient's compliance with these provisions; and
- Take prompt and appropriate corrective action to effect compliance.

[The Law – Monitoring Responsibilities \(click on the triangle to the left to view\)](#)

§38.51 Governor's oversight and monitoring responsibilities for State Programs.

The Governor is responsible for oversight and monitoring of all WIOA Title I-financially assisted State Programs. This responsibility includes:

(a) Ensuring compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part, and negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found under §38.91(b).

(b) Annually monitoring the compliance of recipients with WIOA section 188 and this part, including a determination as to whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way. At a minimum, each annual monitoring review required by this paragraph must include:

(1) A statistical or other quantifiable analysis of records and data kept by the recipient under §38.41, including analyses by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status;

(2) An investigation of any significant differences identified in paragraph (b)(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 of WIOA or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the Nondiscrimination Plan.

§38.53 Governor's oversight responsibilities regarding recipients' recordkeeping.

The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of §38.41 and any procedures prescribed by the Director under §38.41(a). The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

§ 38.54 Governor's obligations to develop and implement a Nondiscrimination Plan.

(a)(1) Each Governor must establish and implement a Nondiscrimination Plan for State Programs as defined in § 38.4(kkk). In those States in which one agency contains both SWA or unemployment insurance and WIOA Title I-financially assisted programs, the Governor must develop a combined Nondiscrimination Plan. (2) Each Nondiscrimination Plan must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIOA and this part.

(b) The Nondiscrimination Plan must be: (1) In writing, addressing each requirement of paragraph (c) of this section with narrative and documentation; (2) Reviewed and updated as required in § 38.55; and (3) Signed by the Governor.

(c) At a minimum, each Nondiscrimination Plan must: (1) Describe how the State Programs and recipients have satisfied the requirements of the following regulations: (i) Sections 38.25 through 38.27 (Assurances); (ii) Sections 38.28 through 38.33 (Equal Opportunity Officers); (iii) Sections 38.34 through 38.39 (Notice and Communication); (iv) Sections 38.41 through 38.45 (Data and Information Collection and Maintenance); (v) Section 38.40 (Affirmative Outreach); (vi) Section 38.53 (Governor's Oversight Responsibility Regarding Recipients' Recordkeeping); (vii) Sections 38.72 and 38.73 (Complaint Processing Procedures); and (viii) Sections 38.51 and 38.53 (Governor's Oversight and Monitoring Responsibilities for State Programs).

(2) Include the following additional elements:

(i) A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of WIOA, is likely to conduct its WIOA Title I financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in this part;

(ii) A review of recipient policy issuances to ensure they are nondiscriminatory;

(iii) A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity;

(iv) Procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of § 38.5 regarding race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, political affiliation or belief, citizenship, or participation in any WIOA Title I-financially assisted program or activity;

(v) Procedures for ensuring that recipients comply with the requirements of applicable Federal disability nondiscrimination law, including Section 504; Title II of the Americans with Disabilities Act of 1990, as amended, if applicable; WIOA Section 188, and this part with regard to individuals with disabilities;

(vi) A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIOA or this part are aware of and can effectively carry out these responsibilities;

(vii) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and

(viii) Supporting documentation to show that the commitments made in the Nondiscrimination Plan have been and/or are being carried out. This supporting documentation includes, but is not limited to:

- (A) Policy and procedural issuances concerning required elements of the Nondiscrimination Plan;
- (B) Copies of monitoring instruments and instructions;
- (C) Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part;
- (D) Information reflecting the extent to which equal opportunity training, including training called for by §§ 38.29(f) and 38.31(f), is planned and/or has been carried out;
- (E) Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and
- (F) Copies of any notices made under §§ 38.34 through 38.40.

[Focal Points/Terms](#)

[Data Analysis](#)

[Monitoring Requirement](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- Schedules of reviews and criteria for selecting recipients for monitoring.
- Monitoring instrument(s) used by State and/or local-level staff to monitor recipients.
- Policy issuances and procedural guidance regarding monitoring reviews and recipient evaluations.
- A representative sample of reports of monitoring reviews, including findings and the status of follow-up actions.

Additional Elements

Ensuring Eligible Training Providers Compliance

Local Workforce Development Boards must have a system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of WIOA, is likely to conduct its WIOA Title I-financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations.

Sample of Documents that Support Compliance with WIOA Section 188:

- A copy of each directive that instructs those at the State and local level who are responsible for reviewing assurances, job training plans, contracts, and policies and procedures under 29 CFR 38.
- Copies of assurances in plans, contracts, and other agreements.
- Copies of memos or directives to contract managers advising them to include the required assurances in appropriate documents.

- Copies of checklists or other guidelines used by contract specialists, attorneys, or others who review contracts and agreements indicating that nondiscrimination and equal opportunity are considered in the evaluation of such documents.
- A copy of the procedures developed to review grant applicants and training providers seeking eligibility on their ability to comply with the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38.
- A copy of each WIOA EO issuance (e.g., EO policy, sexual harassment and religious accommodation policies).

Compliance with Federal Disability Nondiscrimination Laws

The Local Workforce Development Board must develop and implement procedures for ensuring that recipients comply with the requirements of applicable Federal disability nondiscrimination law, including Section 504; Title II of the Americans with Disabilities Act as Amended in 2008 (ADA Amendments Act of 2008); WIOA Section 188, and 29 CFR Part 38 with regard to individuals with disabilities.

The Law – Monitoring Responsibilities (click on the triangle to the left to view)

§ 38.54 Governor’s obligations to develop and implement a Nondiscrimination Plan.

(a)(1) Each Governor must establish and implement a Nondiscrimination Plan for State Programs as defined in § 38.4(kkk). In those States in which one agency contains both SWA or unemployment insurance and WIOA Title I-financially assisted programs, the Governor must develop a combined Nondiscrimination Plan.

(2) Each Nondiscrimination Plan must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIOA and this part.

(b) The Nondiscrimination Plan must be:

(1) In writing, addressing each requirement of paragraph (c) of this section with narrative and documentation;

(2) Reviewed and updated as required in § 38.55; and

(3) Signed by the Governor.

(c) At a minimum, each Nondiscrimination Plan must: (1) Describe how the State Programs and recipients have satisfied the requirements of the following regulations: (i) Sections 38.25 through 38.27 (Assurances); (ii) Sections 38.28 through 38.33 (Equal Opportunity Officers); (iii) Sections 38.34 through 38.39 (Notice and Communication); (iv) Sections 38.41 through 38.45 (Data and Information Collection and Maintenance); (v) Section 38.40 (Affirmative Outreach); (vi) Section 38.53 (Governor’s Oversight Responsibility Regarding Recipients’ Recordkeeping); (vii) Sections 38.72 and 38.73 (Complaint Processing Procedures); and (viii) Sections 38.51 and 38.53 (Governor’s Oversight and Monitoring Responsibilities for State Programs).

(2) Include the following additional elements: (i) A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of WIOA, is likely to conduct its WIOA Title I financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in this part; (ii) A review of recipient policy issuances to ensure they are nondiscriminatory; (iii) A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity; (iv) Procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of § 38.5 regarding race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, political affiliation or belief, citizenship, or participation in any WIOA Title I-financially assisted program or activity; **(v) Procedures for ensuring that recipients comply with the requirements of applicable Federal disability nondiscrimination law, including Section 504; Title II of the Americans with Disabilities Act of 1990, as amended, if applicable; WIOA Section 188, and this part with regard to individuals with disabilities;** (vi) A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIOA or this part are aware of and can effectively carry out these responsibilities; (vii) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and (viii) Supporting documentation to show that the commitments made in the Nondiscrimination Plan have been and/or are being carried out. This supporting documentation includes, but is not limited to: (A) Policy and procedural issuances concerning required elements of the Nondiscrimination Plan; (B) Copies of monitoring instruments and instructions; (C) Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part; (D) Information reflecting the extent to which equal opportunity training, including training called for by §§ 38.29(f) and 38.31(f), is planned and/or has been carried out; (E) Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and (F) Copies of any notices made under §§ 38.34 through 38.40.

§ 38.12 Discrimination prohibited based on disability.

(a) In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings;

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

(3) Provide a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirements of the Rehabilitation Act as amended by WIOA, including those provisions that prioritize opportunities in competitive integrated employment;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

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

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, service, or training to registrants, applicants, or participants.

(c) A recipient must not deny a qualified individual with a disability the opportunity to participate in WIOA Title I-financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.

(d) A recipient must administer WIOA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

(1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIOA Title I-financially assisted program or activity with respect to individuals with disabilities; or

(3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same State.

(f) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On the basis of disability:

(i) Excluding qualified individuals from a WIOA Title I-financially assisted program or activity;

(ii) Denying qualified individuals the benefits of such a program or activity; or

(iii) Subjecting qualified individuals to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the disability-related objectives of either:

(i) The WIOA Title I-financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIOA or this part.

(g) A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(h) A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient are not, themselves, covered by this part.

(i) A recipient must not impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of any aid, benefit, service, training, program, or activity being offered.

(j) Nothing in this part prohibits a recipient from providing any aid, benefit, service, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.

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

(l) A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities 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.

(m) The exclusion of an individual without a disability from the benefits of a program limited by federal law to individuals with disabilities, or the exclusion of a specific class of individuals with

disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part.

(n) This part does not require a recipient to provide any of the following to individuals with disabilities:

(1) Personal devices, such as wheelchairs;

(2) Individually prescribed devices, such as prescription eyeglasses or hearing aids;

(3) Readers for personal use or study; or

(4) Services of a personal nature, including assistance in eating, toileting, or dressing.

(o)(1) Nothing in this part requires an individual with a disability to accept any accommodation, aid, benefit, service, training, or opportunity provided under WIOA Title I or this part that such individual chooses not to accept.

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

(p) *Claims of no disability.* Nothing in this part provides the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted auxiliary aids or services, reasonable modifications, or reasonable accommodations that were denied to an individual without a disability.

§ 38.13 Accessibility requirements.

(a) **Physical accessibility.** No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. Recipients that are subject to Title II of the ADA must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, comply with the applicable federal accessible design standards, such as the ADA Standards for Accessible Design (1991 or 2010) or the Uniform Federal Accessibility Standards. In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA, that is not enforced by CRC. As indicated in § 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

(b) **Programmatic accessibility.** All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and

procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

§ 38.14 Reasonable accommodations and reasonable modifications for individuals with disabilities.

(a) With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of “reasonable accommodation” and “undue hardship” in § 38.4(rrr)(1).

(1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of “undue hardship” in § 38.4(rrr)(1). The decision must be accompanied by a written statement of the recipient’s reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

(3) If a requested accommodation would result in undue hardship, the recipient must, after consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient.

(b) With regard to any aid, benefit, service, training, and employment, a recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of “fundamental alteration” in § 38.4(z).

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.

(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of “fundamental alteration” in § 38.4(z). The decision must be accompanied by a written statement of the recipient’s

reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.

(3) If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

Focal Points/Terms

[Competitive Integrated Environment](#)

[Accessibility](#)

[Accommodations](#)

[Undue Hardship](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- The procedures by which persons with disabilities are assured participation in programs and activities in a setting that is as integrated as possible.
- The procedure(s) for making the availability of reasonable accommodations and modifications known, as well as the request and resolution procedures.
- The Local Workforce Development Board procedures for ensuring that communication with persons with disabilities is as effective as communication with others.
- The Local Workforce Development Board procedures for ensuring that the programs and activities operated by its WIOA Title I recipients are programmatically and architecturally accessible to individuals with disabilities.
- Any evaluation conducted to determine the programmatic or architectural accessibility of a WIOA Title I-financially assisted program or activity and the status of any corrective actions taken.
- Copies of materials and/or agendas for any disability awareness training conducted for recipient staff.

Recipient Language Assistance Plan (LEP Plan): Promising Practices

Recipients that develop, implement, and periodically revise a written language assistance plan are more likely to fulfill their obligation of taking reasonable steps to ensure access to programs and activities by LEP individuals. The guidelines set forth below provide a clear framework for developing a written plan that will ensure meaningful access to LEP individuals. Developing and implementing a written plan helps to establish and documenting compliance with nondiscrimination obligations and helps ensure that LEP beneficiaries receive the necessary assistance to participate in the recipient's programs and activities.

The elements of a successful LEP plan are not fixed. Written LEP plans must be tailored to the recipient's specific programs and activities. Plans will need to be revised to reflect new recommendations, changes in the recipient's operations, as well as the recipient's experiences and lessons learned, changing demographics, and stakeholder and beneficiary feedback.

The Law – Monitoring Responsibilities (click on the triangle to the left to view)

§ 38.9 Discrimination prohibited based on national origin, including limited English proficiency.

(a) In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including limited English proficiency. An individual must not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any WIOA Title I-financially assisted program or activity based on national origin. National origin discrimination includes treating individual beneficiaries, participants, or applicants for any aid, benefit, service, or training under any WIOA Title I-financially assisted program or activity adversely because they (or their families or ancestors) are from a particular country or part of the world, because of ethnicity or accent (including physical, linguistic, and cultural characteristics closely associated with a national origin group), or because the recipient perceives the individual to be of a certain national origin, even if they are not.

(b) A recipient must take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity.

(1) Reasonable steps generally may include, but are not limited to, an assessment of an LEP individual to determine language assistance needs; providing oral interpretation or written translation of both hard copy and electronic materials, in the appropriate non-English languages, to LEP individuals; and outreach to LEP communities to improve service delivery in needed languages.

(2) Reasonable steps to provide meaningful access to training programs may include, but are not limited to, providing:

(i) Written training materials in appropriate non-English languages by written translation or by oral interpretation or summarization; and

(ii) Oral training content in appropriate non-English languages through in-person interpretation or telephone interpretation.

(c) A recipient should ensure that every program delivery avenue (e.g., electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training that the recipient

provides. As a recipient develops new methods for delivery of information or assistance, it is required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides.

(d) Any language assistance services, whether oral interpretation or written translation, must be accurate, provided in a timely manner and free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training at issue.

(e) A recipient must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that these language assistance services are available free of charge.

(f)(1) A recipient shall not require an LEP individual to provide their own interpreter.

(2) A recipient also shall not rely on an LEP individual's minor child or adult family or friend(s) to interpret or facilitate communication, except:

(i) An LEP individual's minor child or adult family or friend(s) may interpret or facilitate communication in emergency situations while awaiting a qualified interpreter; or

(ii) The accompanying adult (but not minor child) may interpret or facilitate communication when the information conveyed is of minimal importance to the services to be provided or when the LEP individual specifically requests that the accompanying adult provide language assistance, the accompanying adult agrees to provide assistance, and reliance on that adult for such assistance is appropriate under the circumstances. When the recipient permits the accompanying adult to provide such assistance, it must make and retain a record of the LEP individual's decision to use their own interpreter.

(3) Where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, or where the competency of the interpreter requested by the LEP individual is not established, a recipient may decide to provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well.

(g) With regard to vital information:

(1) For languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site. Written training materials offered or used within employment-related training programs as defined under § 38.4(t) are excluded from these translation requirements. However, recipients must take reasonable steps to ensure meaningful access as stated in § 38.9(b).

(2) For languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service, or training that the recipient provides. Vital information may be conveyed orally if not translated.

(3) Recipients must include a “Babel notice,” indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on Web sites.

(h) To the extent otherwise required by this part, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service, or training, the recipient must convey vital information in that language.

(i) Recipients are required to take reasonable steps to provide language assistance and should develop a written language access plan to ensure that LEP individuals have meaningful access. The appendix to this section provides guidance to recipients on developing a language access plan.

Appendix to § 38.9—Guidance to Recipients Recipient Language Assistance Plan (LEP Plan): Promising Practices

The guidelines in this appendix are consistent with and, in large part, derived from existing federal guidance to federal financial assistance recipients to take reasonable steps to ensure meaningful access by limited English proficient (LEP) individuals. Recipients that develop, implement, and periodically revise a written language assistance plan are more likely to fulfill their obligation of taking reasonable steps to ensure access to programs and activities by LEP individuals. The guidelines set forth below provide a clear framework for developing a written plan that will ensure meaningful access to LEP individuals. Developing and implementing a written plan has many benefits, including providing the recipient with a roadmap for establishing and documenting compliance with nondiscrimination obligations and ensuring that LEP beneficiaries receive the necessary assistance to participate in the recipient’s programs and activities. The elements of a successful LEP plan are not fixed. Written LEP plans must be tailored to the recipient’s specific programs and activities. And, over time, plans will need to be revised to reflect new recommendations and government guidance; changes in the recipient’s operations, as well as the recipient’s experiences and lessons learned; changing demographics; and stakeholder and beneficiary feedback. Nonetheless, a recipient that develops an LEP plan incorporating the elements identified below will benefit greatly in accomplishing its mission and providing an equal opportunity for LEP individuals to participate in its programs and activities. A written LEP plan should identify and describe:

1. The process the recipient will use to determine the language needs of individuals who may or may seek to participate in the recipient’s program and activities (self- or needs-assessment)

2. The results of the assessment, e.g., identifying the LEP populations to be served by the recipient
3. Timelines for implementing the written LEP plan
4. All language services to be provided to LEP individuals
5. The manner in which LEP individuals will be advised of available services
6. Steps individuals should take to request language assistance
7. The manner in which staff will provide language assistance services
8. What steps must be taken to implement the LEP plan, e.g., creating or modifying policy documents, employee manuals, employee training material, posters, Web sites, outreach material, contracts, and electronic and information technologies, applications, or adaptations
9. The manner in which staff will be trained
10. Steps the recipient will take to ensure quality control, including monitoring implementation, establishing a complaint process, timely addressing complaints, and obtaining feedback from stakeholders and employees
11. The manner in which the recipient will document the provision of language assistance services
12. The schedule for revising the LEP plan
13. The individual(s) assigned to oversee implementation of the plan (e.g., LEP Coordinator or Program Manager)
14. Allocation of resources to implement the plan
Illustrative Applications in Recipient Programs and Activities
Unemployment Insurance Program Example 1. Unemployment insurance programs are recipients covered under this rule, and States must take reasonable steps to provide meaningful access to LEP individuals served or encountered in their unemployment insurance programs and activities.

For example, given the nature and importance of unemployment insurance, if an LEP individual who speaks Urdu seeks information about unemployment insurance from a State's telephone call center that assists unemployment insurance enrollees and applicants, the State may consider the proportion of Urdu-speaking LEP individuals served or encountered by the State's unemployment insurance program; the frequency with which Urdu-speaking LEP individuals come in contact with the State's unemployment insurance program; and the resources available to the State and costs in determining how it will provide this LEP individual with language assistance. Urdu is a language that is rarely, if ever, encountered by this State's UI program. Because low-cost commercial language services, such as telephonic oral

interpretation services, are widely available, the State should, at a minimum, provide the Urdu-speaking LEP individual telephonic interpretation services to ensure meaningful access to unemployment insurance because, even if Urdu is a non-frequently encountered, non-English language, low-cost commercial language services, such as telephonic oral interpretation services, are widely available. Population Significance as It Pertains to Vital Information

2. Recipients have some flexibility as to the means to provide language assistance services to LEP individuals, as long as they take reasonable steps to provide meaningful access to their program or activity.

For instance, if a recipient provides career services to an LEP individual who speaks Tagalog and the individual requests a translated brochure on an upcoming job fair, the recipient should consider the importance of the information in the brochure, and may consider: The proportion of Tagalog-speaking LEP individuals served or encountered; the frequency with which Tagalog-speaking LEP individuals come in contact with the recipient; and the resources available to the recipient. In this instance, the recipient would be required to provide a written translation of the brochure for the LEP individual if Tagalog were a language spoken by a significant number or proportion of the LEP persons in the eligible service population and a language frequently encountered in the career services program. But if Tagalog is not spoken by a significant number or proportion of the population eligible to be served, and was not frequently encountered by the career services program, it would be reasonable for the recipient to provide an oral summary of the brochure's contents in Tagalog. Training Provider Example Incorporating English Language Learning

3. Providing English language learning opportunities may be one step that a recipient takes in order to take reasonable steps to provide an LEP individual meaningful access to its programs or activities.

For example, John, a Korean speaking LEP individual, learns through the one-stop center about available welding positions at ABC Welding, Co. He also learns through the one-stop center about upcoming welder training courses offered at XYZ Technical Institute, an eligible training provider. John decides to enroll in one of the XYZ welding courses. XYZ, which conducts its training courses in English, must take reasonable steps to provide John meaningful access to the welder training course. Recipients may work together to provide meaningful access, but remain independently obligated to take reasonable steps to provide meaningful access to programs and activities. In this regard, XYZ is not required to administer an English language learning class itself. Instead, XYZ may coordinate with the one-stop center to ensure that John receives appropriate English language learning either directly from the one-stop or from another organization that provides such English language training. The English language class would not be offered to John instead of the training program, but John could attend the English language class at the same time as or prior to the training program. Whether John takes the English class before or concurrently with the welding course will depend on many factors including an objective, individualized analysis of John's English proficiency relative to the

welding course. Regardless of how the English language learning is delivered, it must be provided at no cost to John. In evaluating whether reasonable steps include oral interpretation, translation, English language learning, another language service, or some combination of these services, XYZ may work with the one-stop center to provide meaningful access to John.

Focal Points/Terms

[Meaningful Access](#)

[LEP Plan Requirements](#)

[LEP Vital Information](#)

[LEP Emergency Exception](#)

[LEP Minimal Information Exception](#)

[Example 1](#)

[Example 2](#)

[Example 3](#)

Sample of Documents that Support Compliance with WIOA Section 188:

- The recipient's process for determining the language needs of individuals who may seek to participate in the recipient's program or activities (needs-assessment).
- The results of the assessment, e.g., identifying the LEP populations to be served by the recipient.
- Timelines for implementing the written LEP plan.
- All language services to be provided to LEP individuals.
- The manner in which LEP individuals will be advised of available services.
- Steps individuals would take to request language assistance.
- Staff procedures and the manner in which staff will provide language assistance services.
- What steps must be taken to implement the LEP plan, e.g., creating or modifying policy, employee manuals, employee training material, posters, websites, outreach materials, contracts, electronic and information technologies, applications, or adaptations.
- The method for staff training.
- Steps the recipient will take to ensure quality control, including monitoring implementation, establishing a complaint process, addressing complaints in a timely manner, and obtaining feedback from stakeholders and employees.
- The method that the recipient will use to document the provision of language assistance services.
- The schedule for revising the LEP plan.
- The individual(s) assigned to oversee implementation of the plan (e.g., LEP Coordinator or Program Manager).

- Allocation of resources to implement the plan.

Training for Compliance under WIOA Section 188

A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs with responsibilities under the nondiscrimination and equal opportunity provisions of WIOA or this part are aware of and can effectively carry out these responsibilities.

Sample of Documents that Support Compliance with WIOA Section 188:

- Summary of EO-related training that staff have received and a schedule of EO training delivered or planned.

Corrective Actions and Sanctions

Local Workforce Development Board must implement and enforce procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found.

Sample of Documents that Support Compliance with WIOA Section 188:

- A copy of any policy memo/directive explaining this element and its distribution.
- A copy of each instrument (e.g. directives, memoranda) used to inform recipients of the State's procedures regarding corrective actions and sanctions.

Monitoring for WIOA Section 188 Compliance Instructions and Guidance Statistical Data Analysis

OOWD is committed to ensuring compliance with the nondiscrimination and equal opportunity provisions of WIOA Section 1888 and 29 CFR Part 38. DWD will negotiate where appropriate with a recipient to secure voluntary compliance when noncompliance is found under 38.91(b). This requires a statistical or other quantifiable analysis of records and data kept by the recipient to include analysis by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status. The Local Workforce Board and its recipients are responsible for investigating any significant differences with programs, services, activities and employment practices. Monitoring for compliance using statistical analysis will provide the following:

- Who used your programs, services and activities?
- What programs, services and activities were utilized?
- When were programs, services and activities utilized?
- Where were programs, services and activities utilized? 5. How were programs, services and activities utilized?

Step One: Summary of Organization and Programs, Services and Activities

Provide a description of your organization. The description should summarize all services, activities and programs your organization provides to the public. The description should include eligibility requirements for each program, service and activity along with goals and performance outcomes set by the grantee. The summary should identify the entity that has funded the program, service and activity. This is a really helpful step in identifying areas to measure through data analysis and to prioritize review. By diagramming the organization and services, a foundation is created for consistency for future comparison and analysis.

Summary includes the following:

- All program(s), service(s) and activity(ies) offered through the organization
- Eligibility requirements for each program, service and activity
- Entity that funds the program, service and activity and the amount of funds obligated
- Performance goals for the program, service, activity
- Responsible position that provides oversight for the program, service and activity

As a reminder, monitoring for compliance under WIOA Section 188 includes but is not limited to the following:

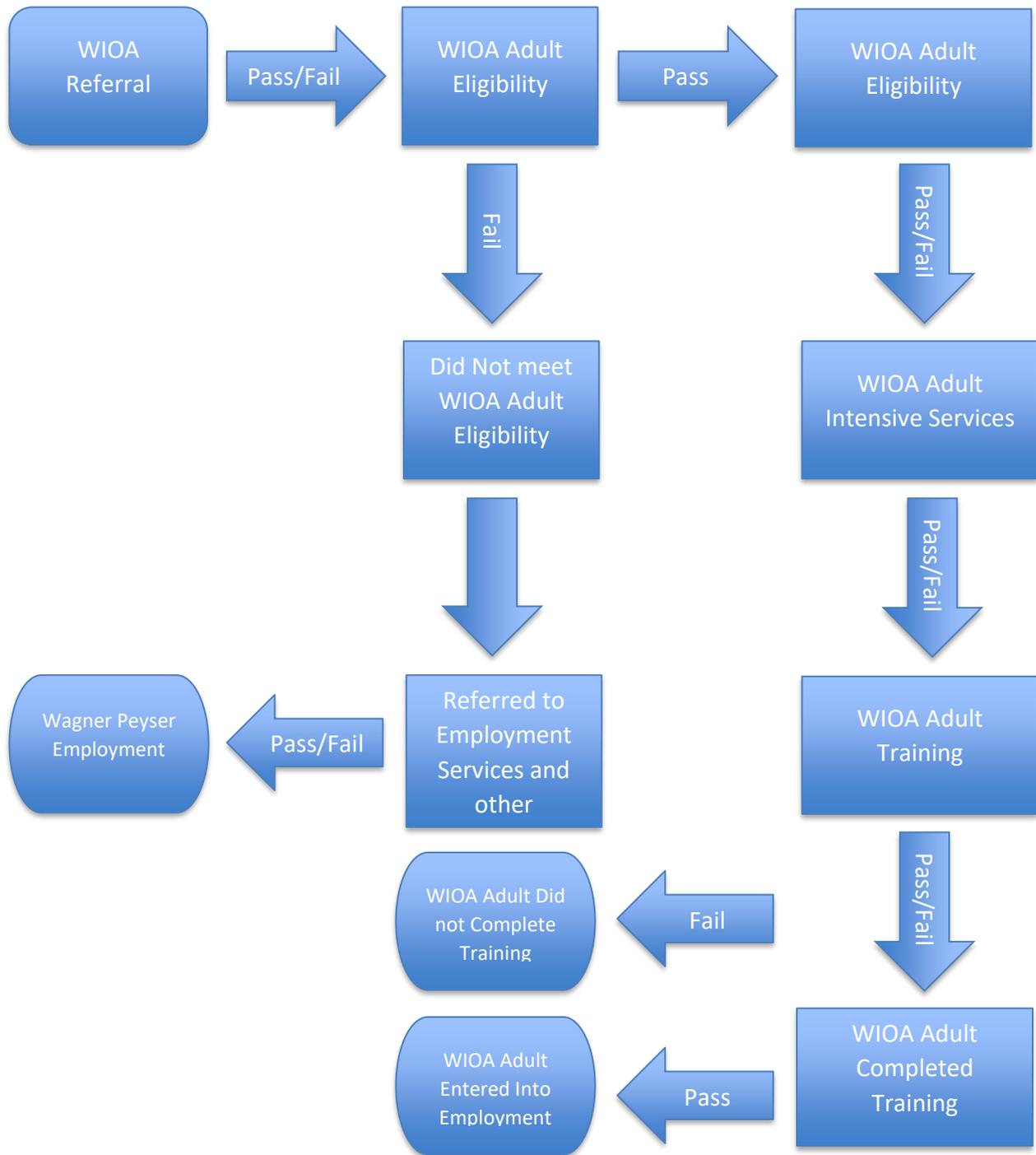
- WIOA Core Partners
- Partner Agencies
- Workforce Development Boards
- Employees of Workforce Development
- Subcontractor/Service Providers

- Eligible Training Providers (ETPs)
- On-the-Job Training(OJT) Contractors (15 participants and 15 employers)

Step Two: Mapping out Pass and Fail Points

Each program, service and activity identified in the summary must include a chart of mapping out the pass and fail points for programs, services and activities offered through the organization.

Example- WIOA Adult Enrollment Pass/Fail Points



Step Three: Comparing Civilian Labor Force Information

According to the Bureau of Labor Statistics (BLS), the civilian labor force is made up of two components. The first is civilian workers, a category that includes all private sector, state and local government workers. Workers – or "employed persons," in the language of the Current Population Survey – are defined as people who are 16 years old or older and did at least one hour of paid work (or unpaid work in their own business) in the survey's reference week, or who did at least 15 hours of unpaid work in a family business. Active-duty military personnel, institutionalized individuals, agricultural workers and federal government employees are excluded.

The second component of the labor force is unemployed people. This category does not simply include anyone who lacks a job: an unemployed person must have been available for work during the survey's reference week (discounting temporary illness) and made "specific efforts" to find a job during the previous four weeks. People who would like to work but have given up due to lack of opportunities, an injury or illness are considered to be outside the labor force. Information regarding unemployment can be obtained from the Bureau of Labor Statistics.

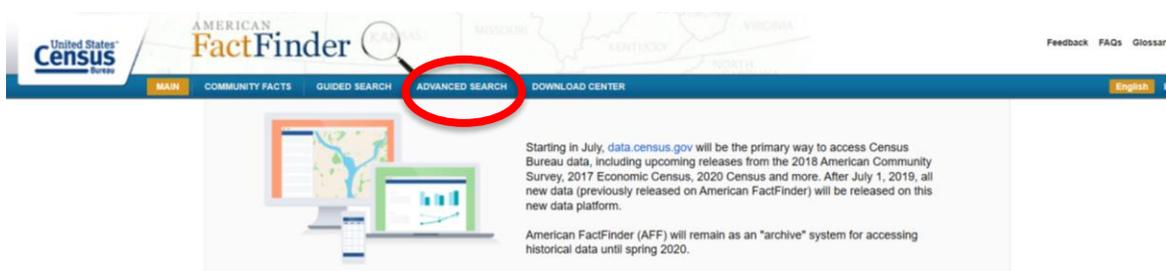
Each Local Workforce Development Board must compare their current workforce data to the Civilian Labor Force information to get an awareness of civilian workers that are working or prepared to work in their area.

Civilian Labor Information may be accessed through

1. American Fact Finder - <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>
2. Local community organizations that collect equal opportunity data.

If you are utilizing information from American Fact Finder you must access the following reports:

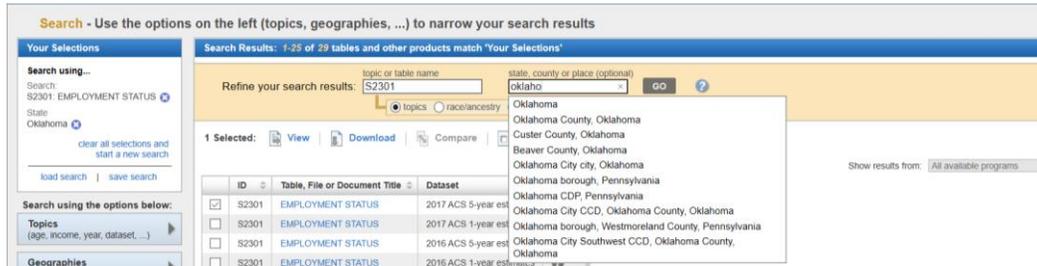
Go to the advance search



- Plug in the reports:
 - S2301: Race
 - C18120: Disability
 - B23001: SEX BY AGE



- You can view a city or county



If you have more than one county in your region, you will need to combine your data or if your area is not available compare to State of Oklahoma Overall.

If you are monitoring for compliance you will need to compare your workforce labor force to the civilian labor force.

Step Four: Analyze Data – 80% Rule and 2 – Standard Deviation Test

Equal Opportunity Commission has given guidance in the form of a simple and practical means to assist in determining if serious discrepancies in rates of employment and other selection decisions are occurring. The first formula for consideration is the 80% rule also referred to as the four-fifths rule. The basis for this rule is that any selection rate which is less than 80% of the highest selection rate indicates a substantially different rate of selection. If there is a selection rate less than 80% then further analysis should occur to assist in determine causation. This is where the standard deviation can assist in determining the magnitude of the issue or bring insight into disparate impact that is not readily apparent with the 4/5ths calculation.

80% Rule

For each Category, divided the number of each group that passed by the total number in that group. If percentages have already been calculated you can go bypass the first step.

Step 1: Calculate Pass Rates for Each Comparator Group

For each color, divide the number of each group that passed by the total number of cards in that group

A.
$$\frac{\text{Number of Successful Red Cards}}{\text{Total Number of Red Cards}} =$$

B.
$$\frac{\text{Number of Successful Blue Cards}}{\text{Total Number of Blue Cards}} =$$

Step 2: Calculate Impact Ratio

Divide Rate for Red (A above) by Rate for Blue (B above)

$$\frac{\text{Enter Percent for Red from above}}{\text{Enter Percent for Blue from above}} =$$
 This is the Impact Ratio

The answer compares the success rate of Red Cards to the success rate of Blue Cards. To calculate the percentage, take the answer above and multiply it times 100%.

For Another Example, this time using percentages already calculated utilizing – S2301 Report American Fact Finder 2013-2017 Employment Estimates

Overall Population 16 and Over – Oklahoma 3,043,261

Male Employment Rate 74.8% Female Employment 64.8%

Is the female employment rate in Oklahoma substantially different than males?

We divide the employment rate of Females by Males. $64.8\%/74.8\% = 86.7\%$ the employment rate of females is 86.7% of males in the state of Oklahoma. Since this is greater than 80% there is not a substantially different employment rate under this formula.

2-Standard Deviation

Statistical significance (Two (2) standard deviation test): Standard deviation is a statistic used to measure dispersion in a distribution; a measure of the typical distance between the average (mean) and any given value. It measures the "width" of the distribution of values. In other words, how spread out are the numbers. If the difference between the expected value and the observed number is greater than two deviations, then the hypothesis would not be statistically significant. In practice, the calculation of the number of standard deviations is performed using generally accepted mathematical formulas. Standard deviation is the square root of the variance. Variance is the squared differences from the mean.

To calculate the variance, the mean needs to be determined first.

- The mean is the sum divided by the count.
- For each number subtract the mean to determine dispersion
- Square the result for the squared difference.
- Average the squared differences.

For example – Let’s look at employment rates based on race utilizing – S2301 Report American Fact Finder 2013-2017 Employment Estimates

Table 1 - American Fact Finder 2017 Estimates

Race	Employment Rate
African American/Black	54.6%
American Indian/Native American	54.5%
Asian	61.6%
Caucasian/White	57.5%
Native Hawaiian Pacific Islander	57.3%
Hispanic/Latino	64.9%

$$(54.6\% + 54.5\% + 61.6\% + 57.5\% + 57.3\% + 64.9\%) = 350.4$$

$$(54.6\% + 54.5\% + 61.6\% + 57.5\% + 57.3\% + 64.9\%) / 6 = 58.4\%$$

$$\text{Count} = 6 \quad \text{Sum} = 350.4 \quad \text{Mean} = 58.4\%$$

For each number we are going to subtract the mean.

Race	Employment Rate	Dispersion
African American/Black	54.6% - 58.4%	-.038
American Indian/Native American	54.5% - 58.4%	-.039
Asian	61.6% - 58.4%	.032
Caucasian/White	57.5% - 58.4%	-0.009
Native Hawaiian Pacific Islander	57.3% - 58.4%	-.011
Hispanic/Latino	64.9% - 58.4%	.065

Note: For ease of calculation when doing percentages you convert to decimal.

Race	Employment Rate		Squared Difference
African American/Black	54.6% - 58.4%	-.038*-.038	.002
American Indian/Native American	54.5% - 58.4%	-.039*-.039	.002
Asian	61.6% - 58.4%	.032*.032	.001
Caucasian/White	57.5% - 58.4%	-.009*-.009	.0001
Native Hawaiian Pacific Islander	57.3% - 58.4%	-.011*-.011	.0002

Race	Employment Rate		Squared Difference
Hispanic/Latino	64.9%- 58.4%	.065*.065	.0043

Note: The negative simple is removed when doing the square.

$$(14.44 + 15.21 + 10.56 + .81 + 1.21 + 42.25) = 84.48$$

$$(.002 + .002 + .001 + .0001 + .0002 + .0043) / 6 = .0096$$

$$\text{Count} = 6 \quad \text{Sum} = .0096 \quad \text{Mean} = .0016 \quad \text{Variance} = .0016$$

To Determine the Standard Deviation we take the square root of the variance. $\sqrt{.0016} = .04$

By dividing the dispersion by the standard deviation, the number of standard of deviations can be calculated.

Race	Employment Rate	Dispersion	Standard Deviation	# of Standard Deviations
African American/Black	54.6%	-.038	.04	.95
American Indian/Native American	54.5%	-.039	.04	.96
Asian	61.6%	.032	.04	.8
Caucasian/White	57.5%	-0.009	.04	.225
Native Hawaiian Pacific Islander	57.3%	-.011	.04	.275
Hispanic/Latino	64.9%	.065	.04	1.625

If the number of standard deviations is great than 2 then there is a substantial difference in rates.

In the above example, all of the rates were in close proximity. By calculating the number of standard deviations, we can infer that the rates are in the range of random selection and not due to another factor.

Step Five: Follow-up Investigation Statistical Significance

When the analysis discloses that differences have practical or statistical significance, a follow-up investigation must be conducted to determine whether the differences are due to intentional discriminatory conduct, conduct that has a disparate impact on a protected group, or some other factors (US DOL CRC).

Investigating Adverse Impact

Adverse impact does not necessarily indicate discrimination has occurred but should always be reviewed and/or investigated. There are two theories of discrimination, Disparate Treatment and Disparate Impact.

Disparate treatment which is intentional discrimination. There is a specific act or behavior that has created an intentional adverse condition to an individual. In other words the employer intentionally takes an individual's protected status into consideration when taking an adverse action to the individual, such as a demotion, transfer, termination, non-selection or layoff. Most allegations are disparate treatment cases

Disparate impact does not require a showing of intent to prove discrimination. It can occur or is caused by a neutral policy, procedure or practice with no intent to discriminate an individual based on their protected status.

Investigating Course of Action

Investigate possible reasons for the significant differences. Anecdotal evidence could occur:

- When a member of a demographic group comes forward to talk about how he or she met the requirements but didn't get to participate in a program or activity.
- When a member of a group provides first-hand knowledge that a service provider acted in a manner that could negatively impact his or her group.

Anecdotal evidence should be considered as evidence of possible adverse impact and it should be investigated in conjunction with quantifiable analysis.

- Rumors or word of mouth incidents.
- Social Media including blogs, news articles, internet postings, tweets, etc.
- If justification (business necessity) is found, document the justification; no further action necessary for that demographic in that step.
- If justification is not found, take mitigating actions.
 - Follow-up to see if the mitigating actions made a difference

Step Six: Gathering Quantifiable Evidence

Schedule a meeting with appropriate staff to discuss the issue

- Review the records with the appropriate staff or inform them of what was found
- Let the group know you are finding adverse impact for specific groups and that it is incumbent upon the organization to investigate the issues
- Ask the group what they think are the reasons that the demographic groups in question are unsuccessful in advancing through particular steps in the program/activity or service.
- Review participant(s) files when needed.
- If the reasons given from program staff are justifiable, note them in your analysis file.
- If a policy, procedure or practice is causing the impact and there is no reason it can't be modified, recommend the modification.
- If justifiable reasons cannot be determined, ask the group to strategize or brainstorm to determine mitigating actions that can be taken.

- This could take the form of increased outreach to the affected group(s), greater encouragement to complete the step or process, or asking members of the group during counseling whether there are additional barriers that haven't been discussed.
- Document the mitigating action that is being taken.

As an Equal Opportunity Officer, continuous monitoring allows you to identify potential items of review and discussion before a full investigation is necessary. A good practice of spending five minutes at every staff meeting discussing trends in data or changes is good way to continue the conversation regarding equal opportunity and the importance of being always mindful. Frequent communication build trust and confidence in staff to address issues.

Step Seven: Follow up Strategy

Conduct follow-up analysis within a reasonable time period (three months, six months, nine months or a year) to see if the mitigating actions are helping; increase participation rate in services and activities. Recommend further action as needed. If you are in the practice of having allotted time on the agenda for staff meetings on a regular basis, it can assist in being a reminder for follow up in addition to being an excellent tool for documentation. Review the minutes after meetings to ensure your Equal Opportunity topics are being recorded.

An excellent practice would be to create a local Data Analysis Reporting Format Guide

Provide a clear format outline for your recipients.

1. Cover Page

- Identify Region and the EO Officer

2. Overview Section

- Summary of Region's Civilian labor force by EO demographics and comparison to WIOA workforce system
- Provide a description of each organization contracted in your workforce region including programs/activities the organization operates for the program year being reviewed

3. Data Analysis Section:

- Include the service delivery and identify pass/fail points for each program offered in the job centers/location
- Identify any adverse impact with each program/service/activity
- Summarize the anecdotal evidence ☐ Provide proof that the evidence was examined and investigated

4. Describe what actions your region took to investigate the issue

- Reviewing records
- Reviewing policies
- Describe any justifiable reasons for the adverse impact
- Describe your affirmative outreach plan and how your organization will take reasonable steps with implementation of the affirmative outreach plan

5. Follow Up Section:

- Identify any consistent adverse impact occurring with a particular group(s) from the previous program year.
- Provide any updates of the impact of your affirmative outreach plan from the previous year in your report.

***Local Workforce Development Boards are obligated to track adverse impact with various groups with programs, services, and activities. The Local Workforce Development Board is also obligated to provide technical assistance and take the appropriate actions with goals and outcomes if there is a consistent issue.**

Corrective Actions and Sanctions

The Local Workforce Development Board should have a policy to address corrective actions and sanctions to be taken when violations are found. Corrective actions must be designed to completely correct technical violations (e.g. failure to post notice, failure to collect data, etc.) and discrimination violations. In the case of a finding of discrimination, the procedures must provide, where appropriate, for retrospective 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. The time frames for the completion of each corrective and remedial action should be identified. Provide provisions for execution of a written agreement or assurance to document the correction of the violation. The Local Workforce Development Board should have provision for follow-up monitoring to ensure that commitments are fulfilled.

Monitoring Requirements for Eligible Training Providers

Monitoring requirements for eligible training providers include all of the provisions under WIOA Section 188 and 29 CFR Part 28. The information below provides a general format/guide for conducting an analysis on programs, services, and activities offered through the training institution. A statistical or other quantifiable analysis of records and data kept by the recipient (employment and programs) under Section 188 of WIOA and 29 CFR Part 38 including analyses by race/ethnicity, sex, limited English proficiency, preferred language assessment, age, and disability status must be conducted annually, for example:

Number of participants referred to training:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of applicants that applied to training:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (example: Healthcare)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of participants participating in the training:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of participants completed training:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of participants not completing training:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of participants that completed training and entered employment in the field trained in:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of participants that did not complete training, but entered employment:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare, Construction)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of participants that did not complete training but entered employment in field trained in:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare, Construction)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Number of participants that completed training but did not enter employment in the field trained in:

- By program (Example: WIOA, Trade Act, and other programs if known)
- By Industry (Example: Healthcare, Construction)
- By Credential (Example: C.N.A , R.N.A, HVAC)

Employment Practices Monitoring Requirements for WIOA Recipients

Employment practices are a recipient's practices related to employment, including but not limited to:

- Recruitment or recruitment advertising;
- Selection, placement, layoff or termination of employees;
- (Upgrading, promotion, demotion or transfer of employees;
- Training, including employment-related training;
- Participation in upward mobility programs;
- Deciding rates of pay or other forms of compensation;
- Use of facilities; or
- Deciding other terms, conditions, benefits and/or privileges of employment.

Employee selection procedures - A recipient must comply with the Uniform Guidelines on Employee Selection Procedures, 41- CFR part 60-3.

Each recipient of WIOA funds must include the appropriate language in their assurances:

Assurances ensure: all job training plans, contracts, and other similar agreements entered into by recipients are nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity.

(Subpart B-29 CFR Part 38.20)

- For staffing statistical analyses purposes, the recipient must keep records of:
 - Applicants of employment
 - Employees
- Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant for employment and employee.
- This information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting.
- Each recipient must promptly notify the State EO Officer when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the “basis” of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I program or activity.

The notification must include:

The names of the parties to the action or lawsuit; the relevant case numbers, and any negative monitoring reviews by other agencies must be submitted to the State EO Officer.

- Each recipient must maintain the following records for a period of not less than three years from the close of the appropriate program year:
- The records of applicants for employment and employees;
- Other records as are required Section 188 of WIOA and 29 CFR Part 38.
- Records regarding complaints must be maintained for a period of not less than three years from the date of resolution of the complaint.
- All Workforce Development Boards and their recipients must conduct staffing analysis on employment related practices annually.
- The staffing analysis report for all regions is due to the OOWD EO by October 30th of every program year.
- Staffing analysis is conducted for employment activities from July 1st –June 30th for each program year.

EO Staffing Analysis Guidance and Requirements

All recipients staffing analysis reports will include the following:

- Summary of the makeup of your workforce region (civilian labor force data)
- Background description of the organization
- Organization chart
- Description of your current hiring practices, describing how your organization:
 - Advertises job openings
 - Accepts applications for employment,
 - Selects candidates for interviews, and
 - Selects candidates for hire
- Description of how often your organization analyzes and updates job descriptions
- Description of how performance evaluations are conducted
- Description of how employees are selected for training (internal/external)

Utilization Analysis which would include:

- The number of open positions from the last program year (i.e. PY18-PY19)
- The number of incumbent workers within the organization for the last program year (i.e. PY18-PY19)
- A comparison of the incumbent workers to the available positions
- You will analyze the employment data by utilizing the 80% or 4/5th rule by categories (Gender, Race, Disability Status if known)
 - Applicant Pool ☒
 - Interviews

- Promotions
- Demotions
- Terminations

Organization Structure (Small Organizations)

Organizations with fewer than 50 employees

The organization can provide a list of all of the employees and identify each location where the employees work and categorize the employment data by race, gender, and disability status and job category.

OR

The organization can provide employment data for each location where it must be categorized by race, gender, and disability status and job category.

Organization Structure (Large Organizations)

Organizations with more than 50 employees must report by location.

- Employment data must be categorized by race, gender, disability status (if known) and job category.
- The report should identify if there is a headquarters office and the employees working at this office.
- Analyzing the Data - Large Organizations
- Large organizations will need to analyze their organizations by workforce units. Workforce Unit (i.e. Divisions, Units, Departments, Sections etc...)
- Large organizations will need to analyze the employee data by each location and by job category

Analyzing the Data in Large and Small Organizations

Large and Small organizations will analyze the data by race, gender and disability status (if known) by:

- Comparing the Civilian Labor Force to the Organizations employment make up (Resource: American Fact Finder)
- Comparing the applicants (Applicants Pool) to the number of candidates who were interviewed,
- Comparing those Promoted to all eligible candidates or applicants, and
- Comparing those Demoted and Terminated to the entire organization

Investigation Summary

Your investigation results should indicate the specific actions(s) your organization is taking in regards to the nondiscrimination and equal opportunity provisions of WIOA.

This includes: hiring, promotion, demotion, transfer, or recruitment as well as advertising, layoff, termination, rates of pay or other forms of compensation and selection for training.

Your investigation summary should include how your employment practices have been reviewed to determine whether members of the various groups are receiving fair consideration for job opportunities.

Your investigation should include proof that attention has been directed toward executive and middle management levels.

Outreach Plan

Your outreach plan should include how the public and your current employees are informed at least annually of your organization's commitment to nondiscrimination and equal employment opportunity provisions under WIOA for all persons.

Your outreach plan should identify recruiting sources that have been informed of your organization's commitment to provide equal opportunity employment.

Your outreach plan should include how employment records of all employees are reviewed to determine the availability of promotable and transferable employees within your organization.

Supporting Documentation

Supporting documents include:

- Data Reporting Template completed by recipients
- EEOC-1 Report (if your organizations meets the EEOC requirements)
- Organizations own spreadsheets (if it meets the WIOA requirements)

Onsite Equal Opportunity Monitoring Reviews

OOWD State Equal Opportunity will monitor for compliance utilizing the provisions of WIOA Section 188 and 29 CFR Part 38. The onsite review will include but is not limited to the following:

- Review of records, reports, and data
- Notices, (posters, flyers, signs, brochures, etc...)
- Customer Interviews
- Employee Interviews
- Assistive Technology Observation
- Any other items that fall under Section 188 of WIOA

Technical assistance is available upon request. Please contact the OOWD State EO at:

Ferris J. Barger

State Equal Opportunity Officer
Oklahoma Office of Workforce Development
900 N. Portland Ave., Oklahoma City, OK 73107
O: (405) 208-2519

Ferris.Barger@okcommerce.gov

EEOOfficer@okcommerce.gov

www.OklahomaWorks.gov

Monitoring Checklist

Documentation Checklist

This checklist may be used by the local EO Officers when monitoring its recipients/subrecipients. For OOWD annual monitoring purposes, please ensure all documents listed below are provided to the state monitors by the deadline specified in the initial monitoring notification or upon request.

For monitoring purposes, electronic copies of the following items can be provided by the recipient in support of monitoring for compliance with Section 188 of the Workforce Innovation and Opportunity Act:

“Equal Opportunity Is the Law” Notice

- Copy of current “Equal Opportunity Is the Law” notice
- List of languages in which notice is available on-demand
- List of alternative formats in which the notice is available on-demand

Assurances

Copies of all open and pending agreements or arrangements used in the delivery of WIOA Title I financially-assisted services, aid, training, and benefits, including:

- Contracts
- Memoranda of understanding
- Cooperative agreements
- Job training plans
- Grant applications
- Requests for proposals
- Agreements with training providers
- Any other arrangements related to the delivery of WIOA Title I financially-assisted services, aid, training, or benefits.

Other Written Materials

Copies of all materials used in the delivery of WIOA Title I financially-assisted services, aid, training, and benefits, including:

- Publications
- Brochures
- A complete orientation package
- Recruitment materials
- Affirmative outreach strategy and list of engagements
- Manuals
- Handbooks

- Directives
- Policies and procedures
- Broadcast scripts
- Written advertising
- Website addresses for recipient's website pages related to WIOA Title I financially-assisted services, aid, training, and benefits
- "Essential eligibility requirements" used by the recipient for delivery of WIOA Title I services, aid, training, and benefits
- WIOA Section 188 discrimination complaint log

Organization

- Copy of EO Officer's resume
- Organizational chart for recipient
- Written confirmation that the EO Officer reports directly to the most senior official in the organization for all EO matters
- Copies of resumes for EO Officer's staff who provide support for all WIOA Section 188 activities
- Certificates of training or education received, and list of training received to maintain EO competencies over the past two years for the EO Officer and his/her staff who perform WIOA Section 188 activities

Monitoring

- All monitoring reports completed by local EO Officer
- Annual reports assessing the physical and programmatic accessibility of all one-stop centers in the local area

1. Sections 38.25 through 38.27 (Assurances);

- 1.1. Does each application for federal financial assistance (includes contracts and bid responses) under Title I of WIOA as defined in 29 CFR 38.4 (i.e. an instrument that has one of its purposes the provisions of assistance or benefits under WIOA Title 1) include the assurance specified in 29 CFR 38.20? **Yes/No Choose an item.**
- 1.2. Do RFPs or similar issuances (that has one of its purpose the provision of assistance or benefits under WIOA Title 1) explain that bidders are required to contain the assurances of 29 CFR 38.20 in their proposal? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

2. Sections 38.28 through 38.33 (Equal Opportunity Officers);

2.1. Has a senior level employee been designated as EO Officer? **Yes/No Choose an item.**

2.2. Do the EO Officer's responsibilities include:

2.2.1. Serving as the liaison with OWD and CRC? **Yes/No Choose an item.**

2.2.2. Monitoring and investigating the Boards' activities and the activities of its subrecipients to ensure compliance with nondiscrimination and EO obligations under WIOA Title I? **Yes/No Choose an item.**

2.2.3. Reviewing the Workforce Board's written policies to ensure they are nondiscriminatory? **Yes/No Choose an item.**

2.2.4. Developing and publishing procedures for processing discrimination complaints under 29 CFR 38.76 – 38.79 and ensuring that those procedures are followed? **Yes/No Choose an item.**

2.2.5. Reporting directly to the appropriate official about EO matters? **Yes/No Choose an item.**

2.2.6. Undergoing Training to maintain competency if the Executive Director requires him or her or his/her staff to do so? **Yes/No Choose an item.**

2.3. Does the EO have other duties and/or do those duties create a conflict or the appearance of conflict? **Yes/No Choose an item.**

2.4. Does the designated EO officer have the appropriate staff and resources to ensure compliance with WIOA Section 188? **Yes/No Choose an item.**

2.5. Has the name, title/position, address, and telephone number of the EO Officer been made public at the local level, and does the information appear on internal and external communications regarding nondiscrimination and EO programs? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

3. Sections 38.34 through 38.39 (Notice and Communication);

3.1. Is there a written nondiscrimination and EO policy that prohibits discrimination on the grounds of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act. **Yes/No Choose an item.**

3.2. Does the policy prohibit retaliation or reprisal against an individual that has (1) filed a complaint, (2) opposed a practice prohibited by the nondiscrimination and EO provisions of WIOA, (3) furnished information to or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to the administration of the WIOA nondiscrimination and EO provisions; and (4) otherwise exercised any rights and privileges under the WIOA nondiscrimination and EO provisions? **Yes/No Choose an item.**

3.3. Does the "Equal Opportunity is the Law" notice (English and Spanish) contain the specific wording required by 29 CFR 38.30? **Yes/No Choose an item.**

- 3.4. Is initial and continuing notice provided that discrimination is prohibited? **Yes/No Choose an item.**
- 3.5. Has the notice been posted in prominently, in reasonable numbers and places, in an available conspicuous physical locations and on the recipient's web site pages numbers and locations? **Yes/No Choose an item.**
- 3.6. Has the notice been disseminated in the form of internal memoranda and other written or electronic communications to include handbooks and manuals? **Yes/No Choose an item.**
- 3.7. Has the notice been provided to each participant and employee and made part of each employee's and participant's file? (Electronic and written if both are maintained.) **Yes/No Choose an item.**
- 3.8. Has the notice been made available in formats that effectively communicate its message to individuals with visual impairments? **Yes/No Choose an item.**
- 3.9. Does the recipient have a written LEP Plan that provides meaningful access to their program or activity? **Yes/No Choose an item.**
- 3.10. Do recruitment or others materials for WIOA Title I funded programs state that the programs or activities are "equal opportunity employer/programs" and that auxiliary aids and services are available upon requires for person with disabilities"? **Yes/No Choose an item.**
- 3.11. Where a telephone number is listed, is there a TDD/TTY or relay service number listed? **Yes/No Choose an item.**
- 3.12. Does the "Equal Opportunity is the Law" notice (English and Spanish) contain the specific wording required by 29 CFR 38.3? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

4. Sections 38.41 through 38.45 (Data and Information Collection and Maintenance) and Section 38:53 (Governor's Oversight Responsibility Regarding Recipients' Recordkeeping);

4.1. Is there a system to collect and maintain records and data necessary to determine compliances with nondiscrimination and EO provisions? **Yes/No Choose an item.**

4.2. Is data collected by race/ethnicity, sex, age, disability status, limited English proficiency, and preferred language for each applicant, registrant, participant, and terminnee? **Yes/No Choose an item.**

4.3. Is data stored in a manner that ensures confidentiality and is it used only for record keeping and reporting, determining eligibility and determining program compliance with nondiscrimination requirements? **Yes/No Choose an item.**

4.4. Is information that could lead to identification of a particular individual as having filed a complaint kept confidential? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

5. Section 38.40 (Affirmative Outreach);

5.1. Has the Workforce Development Board taken appropriate steps to ensure that they are providing equal access to their WIOA Title I financially assisted programs and activities? **Yes/No Choose an item.**

5.2. Do the steps involved reasonable efforts to include members of the various groups protected including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individual with disabilities, and individuals in different age groups? **Yes/No Choose an item.**

- 5.3. Are advertising programs and/or activities in media, such as newspapers or radio programs that specifically target various populations? **Yes/No Choose an item.**
- 5.4. Do notices about openings in the recipient's programs or activities sent to schools or community services groups that serve various populations? **Yes/No Choose an item.**
- 5.5. Does the recipient consult with appropriate community services groups about ways in which to improve its outreach and service to various populations? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

6. Sections 38.70 through 38.73 (Complaint Processing Procedures); and

- 6.1. Has a procedure for resolving allegations of discrimination within the Workforce Board area as well as against service providers been published and implemented? **Yes/No Choose an item.**
- 6.2. Do the discrimination complaint processing procedures specify the following: (1) who may file; (2) where to file; (3) time frames; (4) what the complaint should include; (5) forms available; (6) appropriate sanctions? **Yes/No Choose an item.**
- 6.3. Does the procedure indicate the complainant or respondent have the right to have representation by an attorney or other individual of their choice? **Yes/No Choose an item.**
- 6.4. Does the discrimination complaint procedures provide for an initial written notice that acknowledges receipt of the complaint; the right of representation, and offers an Alternate Dispute Resolution method of resolving the complaint? **Yes/No Choose an item.**

- 6.5. Does the discrimination complaint procedures provide for a written statement to the complainant concerning the recipients accepting or rejecting for investigation each issue raised by the complainant and the reasons for each rejection? **Yes/No Choose an item.**
- 6.6. Do the discrimination complaint procedures provide for a fact finding or investigation period? **Yes/No Choose an item.**
- 6.7. Do the discrimination complaint procedures provide for a period during which the recipient attempts to resolve the complaint through other methods such as alternative dispute resolution at any time after the complainant has filed a written complaint with the recipient but before a notice of Final action has been issued? **Yes/No Choose an item.**
- 6.8. Does the discrimination complaint procedures provide for issuance of a written Notice of Final Action which contains a statement of the recipient's decision on each issue and the reasons underlying the decisions or a description of the way the parties resolved the issue? **Yes/No Choose an item.**
- 6.9. Does Issuance of Final Action in the procedures include the notice that the complainant has the right to file a complaint within 30 days to CRC if he or she is dissatisfied with the final action, or if there is no final resolution of the complaint w/in 90 days of the date the complaint was filed? **Yes/No Choose an item.**
- 6.10. Are records, including complaints, retained for a period of not less than three years from the close of the applicable year or resolution of the complaint? **Yes/No Choose an item.**
- 6.11. Does the Workforce Board maintain a log of complaints that allege discrimination on the grounds 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, and/or participation in WIOA Title I financially assisted program or activity? **Yes/No Choose an item.**
- 6.12. Does the Log include: (1) the name and address of the complainant; (2) the grounds of the complaint; (3) a description of the complaint; (4) the

date the complaint was filed; (5) the disposition of the complaint; and (6) other pertinent information? **Yes/No Choose an item.**

6.13. Is the Log submitted quarterly to the State Equal Opportunity Officer? **Yes/No Choose an item.**

6.14. Does the Workforce Board provide the appropriate staff and resources to process discrimination complaints? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

7. Sections 38.51 and 38.53 (Governor's Oversight and Monitoring Responsibilities for State Programs).

7.1. Is there a system established for monitoring compliance of the recipients with WIOA Section 188 and 29 CFR 38 which includes assessment to determine whether administrative obligations with regard to record keeping, notice and communication, affirmative outreach, and complaint processing? **Yes/No Choose an item.**

7.2. Are recipient policies reviewed to ensure they are nondiscriminatory? **Yes/No Choose an item.**

7.3. Does the monitoring review include reviewing job training plans, contracts, assurances and other similar agreements to ensure required language is present and nondiscriminatory? **Yes/No Choose an item.**

7.4. Is there a review for ensuring compliance with Section 504, Rehabilitation Act of 1973 and 29 CFR 38? **Yes/No Choose an item.**

7.5. Does the review include policy communication and training to ensure that EO officers and staff are aware of and carry out their responsibilities?

Yes/No Choose an item.

7.6. Does the monitoring include procedures for obtaining prompt corrective action? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

8. Eligible Training Providers Compliance

8.1. Is there a signed Training Provider assurance indicating compliance with nondiscrimination and equal opportunity provisions of applicable state and federal law? **Yes/No Choose an item.**

8.2. Is there a review to include quantifiable statistical analysis on training providers' applicants and participants? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.

9. Compliance with Federal Disability Nondiscrimination Laws

- 9.1. Have sites been reviewed and survey for deficiencies with plants initiated to correct deficiencies noted? **Yes/No Choose an item.**
- 9.2. Does the Workforce board review sites and or locations that selections are not made that have a discriminatory effect? **Yes/No Choose an item.**
- 9.3. Does the Workforce Board ensure that eligibility criteria that screen out or tend to screen out an individual with a disability or class of individuals with disability are are not imposed unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program or activity being offered? **Yes/No Choose an item.**
- 9.4. Does the Workforce Board insure 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? **Yes/No Choose an item.**
- 9.5. Does the Workforce Board insure that reasonable accommodations are provided regarding registration for and the provision of aid, benefits, services or training – including core and intensive training and support services to qualified individual with disabilities? **Yes/No Choose an item.**

Notes/Comments: In reviewing compliance with this section, the following were reviewed and observations made:

Recommendations:

Overall Conclusion: The organization appears to be / does not appear to be in compliance with this section based on analysis of relevant documentation.