

# South Dakota's WIOA Title I Non-Discrimination Plan



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## Element 7: Monitor Recipients for Compliance

*29 CFR 38.51*

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## Element 7: Monitor Recipients for Compliance

29 CFR 38.51

### I. Element 7 Criteria

#### A. A System for Monitoring

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

At minimum, each periodic monitoring review will include:

1. A statistical or other quantifiable analysis of records and data kept by the recipient under 29 CFR 38.51 (b) (1), including analyses by race/ethnicity, sex, age, and disability status (see Element 7, Exhibit B, E, and F);
2. An investigation of any significant differences identified in paragraph 1. of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and
3. An assessment to determine whether the recipient has fulfilled its administrative obligations under section 188 or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the NDP;

#### B. Equal Opportunity Monitoring Policy

##### 1. EO Monitoring Responsibility

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

##### 2. EO Monitoring Frequency

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

##### 3. EO Monitoring Requirements

- a. Each EO monitoring review shall include a review of each job service office and sub-recipient's:
  - i. Compliance with its administrative obligations under WIOA section 188 and 29 CFR 38;
  - ii. Compliance with responsibilities it has been assigned through the NDP;
  - iii. Programs and activities to determine whether discrimination is occurring.
- b. Such monitoring review shall include a statistical or other quantifiable analysis of data and records collected by DLR and sub-recipients, including analyses by race/ethnicity, sex, age, and disability status, pursuant to 29 CFR 38.51 (see Element 7, Exhibit B, E, and F). An investigation of any significant differences identified in participation in the programs, activities, or employment provided by DLR, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means.
- c. Both desk and on-site monitoring reviews will assess each recipient's compliance with 29 CFR 38 related to:
  - i. Element 1: Designation of EO Officer
  - ii. Element 2: Notice and Communication
  - iii. Element 3: Assurances
  - iv. Element 4: Universal Access

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

#### **4. EO Monitoring Tools**

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

#### **5. Elements of the Monitoring**

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

### **C. Equal Opportunity Monitoring Procedures**

#### **1. Notification Letter and Monitoring Tools**

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

#### **2. Desk Review**

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

#### **3. On-Site Review**

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

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

- a. Staff composition;
- b. Management and client interviews (see Element 7, Exhibit A, C, and D);

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

#### **4. Exit Conference**

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

#### **5. Initial Determination Letter**

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

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

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

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

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

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

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

## 6. Follow-up – Findings of Noncompliance

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

## 7. Final Determination

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

## 8. Sanctions

- a. If compliance has not been achieved after issuance of a Final Determination or a Notification of Breach of Conciliation Agreement, DLR may apply sanctions or judicial enforcement as follows:
  - i. After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA financial assistance, in whole or in part;
  - ii. Refer the matter to the a DLR staff attorney or CRC with a recommendation that an appropriate civil action be instituted; or
  - iii. Take such action as may be provided by law.
- b. In addition to sanctions and judicial enforcement, if there is no voluntary compliance there may be a deferral of new grants. When the applicable hearing procedures have been initiated against a particular recipient, DLR or the CRC may defer action on that recipient's applications for new WIOA financial assistance until a Final Decision as required has been rendered. Deferral is not appropriate when WIOA financial

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

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

## **II. Element 7 Documentation**

Exhibit A – Monitoring Tool

Exhibit B – Data Analysis Guide

Exhibit C – Client Interview

Exhibit D – Employee Interview

Exhibit E – Data Analysis – Population Served

Exhibit F – Data Analysis – Registered/Enrolled

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