

ELEMENT SEVEN

Monitor Recipients for Compliance

Reference: 29 CFR 37.54(d)(2)(ii)

Statement of Commitment

The South Dakota Department of Labor and Regulation (SD DLR), as the recipient of Workforce Investment Act funding, shall periodically review the operation of programs operated by its divisions as well as those operated by sub-recipients.

Each EO review shall include a review of each recipient's:

- Compliance with its administrative obligations under WIA section 188 and 29 CFR Part 37;
- Compliance with responsibilities it has been assigned through the MOA; and
- Programs and activities, to determine whether discrimination is occurring.

Such review shall include analysis of data and records collected by the recipient pursuant to 29 CFR §37.41 to determine whether any difference based upon race/ethnicity or sex have practical or statistical significance. Where such differences are found, follow-up investigation shall be conducted to determine if such differences are due to discrimination.

Monitoring Process

Each recipient's EO officer is responsible for monitoring and evaluating the recipient's compliance with section 188 of the WIA and 29 CFR Part 37.

A review shall consist of three segments:

- Statistical analysis/desk review;
- On site review; and
- Report of results.

Each compliance review shall evaluate the extent to which the recipient is:

1. Complying with the administrative obligations of 29 CFR Part 37, including:

Assurances

- Has the recipient provided the written assurance required under §37.20?
 - Is the assurance incorporated into all agreements entered into regarding the operation of the WIA Title I funded activity?
 - Is the recipient aware of how long the obligation under the assurance will last?
- Is the recipient aware of the breadth of coverage of the obligation?
- Where WIA Title I funding is in the form of real property or structures or interest in real property structures, does the instrument conveying the transfer contain the assurance?

Equal Opportunity Contacts

- Has the recipient designated an equal opportunity officer, coordinator, or point-of-contact?
- Does the appointed EO contact meet the eligibility requirements under §37.24?
- Has the recipient listed, in writing, the responsibilities of the EO officer, including but not limited to those under §37.25?
 - Has the recipient fulfilled its obligations relating to the EO officer under §37.26?
 - If the recipient is a small recipient as defined under 37.4, has the recipient fulfilled its obligations under §37.27?
 - If the recipient is a service provider as defined in §37.4 has the recipient fulfilled its obligations under §37.28?

Notice Communication

- Is the recipient aware of its obligation under §37.29 to disseminate its equal opportunity policy?
- When notice is provided of the recipient's EO obligations, does the notice contain specific wording specified under §37.30?
- Has the recipient's notification been published in the areas specified in §37.31?
- Was notice provided in a timely manner as required in §37.32?
- Is the recipient in compliance with §37.34 (a) regarding "tag lines" and TDD/TTY information?
 - Is the recipient in compliance with §37.34 (b) regarding the publication and broadcast of program information?
 - Is the recipient in compliance with §37.34 (c) regarding communication of information about the treatment of participants?

Data and Information Collection and Maintenance

- Does the recipient collect and maintain the data elements required under §37.37 (b)(2)?
- Does the recipient maintain a log of complaints alleging discrimination as required under §37.37?
- Has the recipient notified the CRC and the state-level EO officers of any administrative enforcement actions or lawsuits filed against it alleging discrimination?
- Does the recipient maintain records for the length specified under §37.39?
- Does the recipient have in place a system adequate to assure the confidentiality of records?

Universal Access

- Has the recipient taken adequate steps to assure universal access to the services and programs provided?

Complaint Processing Procedures

- Has the recipient developed, implemented and published complain procedures as required under §37.70 through 37.89?
- Does the complaint procedure contain all elements required under §37.76?

2. Performing the responsibilities assigned such recipients by the State through MOA such as:

Conducting equal opportunity monitoring and evaluation;

- Does the recipient have a scheduled of monitoring?
- Does the recipient have form/checklist for monitoring?
- What instruments does the recipient utilize to assess architectural accessibility?

Imposing sanctions and corrective actions for violations;

- How does the recipient provide notification of sanction or corrective action?
- How does the recipient follow up on sanctions and corrective action notification?
- How does the recipient provide for failure to correct the violation?

Ensuring policy development, communication, and training are carried out;

- What is the recipient's method of policy development and how does it provide for nondiscriminatory content?
- Does the recipient communicate policies in a nondiscriminatory manner?
- Does the recipient have a schedule of training on EO matters?
- Is the content of the training adequate?

3. Ensuring that the recipient's programs and activities are operating in a nondiscriminatory manner and ensuring equal opportunity, including:

- How does the recipient conduct analysis of program and employment activity by race/ethnicity and sex?
- Does the analysis include rates of application, placement and termination?
- How does the recipient conduct follow-up investigations to determine the cause of any differences?
- Has the recipient discovered any such differences?
- If so, what corrective actions/sanctions were instituted?

Policy and Procedure Review

The recipient's EO contact shall institute a procedure whereby policy and procedure documents are reviewed to assure nondiscrimination. This review shall include existing documents and a means of routing new documents through the EO contact for review.

State EO Officers are responsible for reviewing such documents issued at the division level that effect their respective divisions and sub-recipients. Local EO Coordinators are responsible for the review of documents at the local level.

As a part of the monitoring and review process, the State EO Officer will review a representative sampling of the EO Coordinator's policy and procedure documents for compliance.

Monitoring Reports

At the conclusion of a review and evaluation a written report shall be drafted by the State EO Officer conducting the review. The report shall be due within 60 days of the completion of the review. Copies of the report shall be distributed to the recipient's management, the State EO officers and at the discretion of the State EO officers, their Division Director(s). A copy shall be maintained by the EO Officer conducting the review.

Follow-up shall be conducted regarding any corrective actions or sanctions.

The written report shall contain all information pertinent to the review including, at a minimum:

- Name, location and contact information of the recipient reviewed;
- A brief description of the services or program provided by the recipient;
- Name and contact information of the EO officer conducting the review;
- Reason for the review;
- Results of any statistical analysis;
- Names and staff interviewed;
- Names of participants interviewed;
- Overall results of the review;
- Any findings of noncompliance;
- Sanctions or corrective actions called for; and
- Method and time frame of follow-up.

Finding of Noncompliance

If the investigating authority finds reasonable cause to believe that the recipient has violated the nondiscrimination and equal opportunity provisions of WIA, 29 CFR Part 37, an Initial Determination must be issued. The Initial Determination must include:

- The specific findings of the investigation;
- The corrective or remedial action that the investigating authority proposes to the recipient, under Sec. 37.94;
- The time by which the recipient must complete the corrective or remedial action;
- Whether it will be necessary for the recipient to enter into a written agreement under Sec. 37.95 and 37.96; and
- The opportunity to engage in voluntary compliance negotiations.

Follow-up on a Finding of Noncompliance shall be as outlined in Element Nine of this MOA.

Method of Selection for Review and Frequency of Review

The following criteria shall be used to determine selection for review:

- Results of routine central office monitoring;
- Date of last review;
- Number of participants served; and
- Number and nature of complaints received.

Every effort will be made to perform in-office compliance monitors through the local office visit process.

Each recipient shall be reviewed a minimum of once during the life of the grant/agreement and once every two years for multi-year agreements. At Least twenty-five (25) percent of job centers will receive a monitoring review each year, on a rotating basis.

Documentation for Element Seven:

ES/WIA/UI Local Office EO Assessment
Sample of grantee EO Contracts