

Element 7: Monitor Recipients for Compliance

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

In this element, the State should address how it and its recipients are complying, and will continue to comply, with the requirements of 29 CFR 37.54(d)(1)(iii). The State is required to establish procedures to monitor periodically all aspects of the recipient's compliance with WIOA section 188 and 29 CFR part 37.

Narrative:

The state of South Dakota complies, and will continue to comply, with the requirements of 29 CFR 37 related to monitoring. All DLR and WIOA Title1-financially assisted programs and/or activities in the state of South Dakota are monitored for compliance with the requirements of Section 188 of the WIOA; Title VI of the Civil Rights Act of 1964, as amended; and Section 504 of the Rehabilitation Act of 1973, as amended. Nondiscrimination and equal opportunity policies are developed and communicated to all recipients. In order to ensure DLR and WIOA Title 1-financially assisted programs and/or activities are operating in a nondiscriminatory manner. South Dakota's monitoring regimen will include an analysis of the data and records collected by the recipient. Compliance reviews determine whether differences based upon race, ethnicity, or sex have practical or statistical significance and if so, whether the difference are due to discrimination. When significant differences are found the ensuing investigation may include but is not limited to, record reviews, interviews, and other appropriate investigative techniques.

In accordance with 29 CFR Part 37, the State EO Officer and/or the CRC may periodically monitor recipients to determine compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA. Recipients will provide, in a timely manner, any information the State EO Officer and/or CRC during normal business hours to its premises, employees, and participants, to the extent that such individuals are on the premises during the course of a complaint investigation, compliance review, or other EO monitoring activities.

In South Dakota, the DLR conducts compliance reviews of recipients to determine compliance with nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR Part 37. The department is comprised of a state-level EO Officer who is responsible for two types of compliance review, desk audit compliance reviews and on-site compliance reviews. Fifty percent of the recipients receive an on-site review during a program year (see MOA Element 7 documentation) while the remaining fifty

percent receive a desk audit. The following year the recipient reviews for on-site and desk audits are reversed. The findings and written report prepared from all compliance reviews are made available to each reviewed recipient within 30-days from the date of the review.

Both desk audit compliance reviews and on-site compliance reviews assess each recipient's compliance with administrative obligations of 29 CFR Part 37 through federal regulations related to EO Officers, notice and communication, assurances, universal access, data and information collection and maintenance, complaint processing procedures, and other related information. Each recipient's performance of its EO responsibilities is evaluated in each compliance review through an examination of each recipient's:

- Documentation of EO monitoring/evaluation reviews of recipients of DLR and WIOA Title I-financial assistance (including monitoring assurances, program accessibility, and architectural accessibility);
- Recommendation of corrective actions for violations noted by a recipient during its monitoring reviews; and
- Assurance of policy development, communication, and training.

Each recipient's method of ensuring that DLR and WIOA Title I-financially assisted programs and/or activities are in compliance with nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR 37 are determined in each compliance review through a review of each recipient's:

- Analysis by race, ethnicity, and sex; of program and employment activity, including but not limited to rates of application, placement, and termination, to determine if significant differences exist, and
- Follow-up monitoring efforts to determine the cause of any such differences, through an analysis of the individual records of applicants, eligible applicants, participants, employees, and applicants for employment; interviews; and other appropriate monitoring techniques.

A desk audit compliance review analyzes program summary materials to ensure that no discrimination is occurring. Incomplete or incorrect responses to the self-evaluation trigger consideration for further monitoring and/or training. Samples of applications taken by the recipient are requested and reviewed for coding, use of keywords, use of

partial applications, and discriminatory comment. Samples of job orders taken by the recipient are requested and reviewed for discriminatory specifications, gender-biased job titles, and specifications that could have an adverse impact on any group. Unemployment Insurance claims in South Dakota are reviewed through analysis of UI non-monetary determinations regarding ability, availability, voluntary leaving and discharge. The UI EO Coordinator reviews all appeal reversals and decisions issued by DLR Administrative Law Judges including review of all fact-findings and additional information to ensure no discrimination is occurring. The results of this analysis regarding claims services to individuals demonstrate equity in determinations.

Previous desk audit compliance reviews are on-site compliance reviews are analyzed to determine whether corrective actions have occurred to address deficiencies. Following the desk audit compliance review, the EO Officer prepares a written report that outlines any areas of non-compliance and may make recommendations for corrective actions. This report and its findings are made available to the recipient reviewed and, if necessary, the recipient is requested to submit a corrective action plan within 30-working days of the report date. If the findings from the desk audit compliance review are extraordinarily serious in nature, a follow-up on-site compliance review will be scheduled.

The on-site compliance review combines a review of summary materials as completed in a desk audit compliance review with an architectural accessibility review of the recipient's facility. Prior desk audit compliance reviews and on-site compliance reviews are analyzed for previous findings or to determine discriminatory trends. Areas to be reviewed may include, but are not limited to:

1. policies and procedures, to ensure that the policies and procedures do not violate the prohibitions contained in 29 CFR 37.5 through 29 CFR 37.10;
2. contracts and other similar agreements, to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity;
3. accessibility of services to persons with disabilities and other applicants with special needs;
4. equal opportunity posters and bulletin boards to determine if the name of the EO Officer or coordinators is posted and if the required EO posters (including the required notice, assurances, EO policy statement, and tag lines) are displayed in the waiting area of the recipient's facility;

5. staff training records to assure that staff have received EO/civil rights-related training from the State EO Officer, EO Coordinators, and/or other appropriate representatives;
6. the reception and switchboard areas to ensure all applicants are treated professionally and courteously and are provided with the same information and opportunities for service; and
7. employees to determine their knowledge of EO/civil rights laws and the laws' impact on the day-to-day operations of the facility.

If training is required on any topic related to equal opportunity, the State EO Officer would provide this at the time of the review. Otherwise, the recipient's EO Coordinator is expected to ensure that all staff is knowledgeable of EO laws and regulations and of how these regulations impact the employees' job duties.

At the completion of the on-site compliance review, the State EO Officer will conduct an exit review and the manager/director of the facility and other pertinent staff to discuss findings and clarify areas in question. At this time, an explanation of the forthcoming recommendations will be given:

Following the on-site compliance review, the EO Officer will prepare and distribute a written report of the review to the recipient's executive officer with copies to the Secretary of the DLR, the WIOA Title I and II Workforce Training Director, the WIOA Title III ES Director, and/or UI Administrator as appropriate. The report details those areas in which the recipient is not in compliance. The report may also make recommendations for corrective actions to occur within 30 working days of the report date. Sanctions for uncorrected findings are discussed in Element 9 of this document.

Documentation:

See attachments.