

Element 7 - Monitoring Recipients For Compliance (29 CFR 37.54(d)(2)(ii))

PART A

The State of Hawaii Department of Labor and Industrial Relations (DLIR) is designated as the WIA grant administrator. The Department assigned its Workforce Development Division (WDD) to administer and monitor WIA grant funds and program operations. The State Equal Opportunity (EO) Officer is appointed by the Governor to oversee the equal opportunity responsibilities for the WIA.

At the Local-Level Area, each of the four County Mayors is designated the local grant administrator for their county. The Mayors appoint their Local Workforce Investment Area (LWIA) EO Officers.

The State of Hawaii ensures compliance with its administrative obligations under WIA Section 188 and, and the responsibilities assigned through its Methods of Administration (MOA) under 29 CFR Part 37.

A compliance review shall evaluate the extent to which the recipient and/or sub-recipient has fulfilled their requirements by:

1. Complying with the administrative obligation of 29 CFR Part 37: (Elements of an Equal Opportunity (EO) Monitoring Review)

1) Assurances

- Has the recipient provided the written assurance required under §37.20?
- Is the assurance incorporated into all agreements, including county contracts, entered into regarding the operation of the WIA Title 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, structures, or interest in real property structures, does the instrument conveying the transfer contain the assurance?

2) EO Officers

- Has the recipient designated an equal opportunity officer, or point of contact?
- Does the appointed EO 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 listed 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

§37.28?

3) Notice and Communication

- Is the recipient aware of its obligation under §37.29 to disseminate its equal opportunity policy?
- When notice is provided, of the recipients EO obligations, does the notice contain the specific wording required in §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 TTY/TDD 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 and about the treatment of participants?

4) 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 Officer 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?

5) Universal Access

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

6) Complaint Processing Procedures

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

2. Performance of the responsibilities assigned to recipients by the State through the MOA:

1) Conducting equal opportunity monitoring and evaluation reviews:

- Does the recipient have a schedule for monitoring?
- Does the recipient have a form/checklist for monitoring?
- What tools does the recipient use to assess architectural assembly

2) Imposing sanctions and corrective actions for violations:

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

3) 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 in a nondiscriminatory manner?
- Does the recipient have a schedule of training on EO matters?
- Is the content of the training adequate?

3. Programs and activities are operating in a non-discriminatory manner.

- 1) Conduct analyses by race/ethnicity, sex, age, and disability status of program and employment activity.
 - Does the analysis include rates of application, placement, and termination?
 - Does the analysis include the "Practical Significance or 80% Rule?"
- 2) Conduct follow-up monitoring to determine the cause of any such differences.
 - 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 and/or sanctions were instituted?

4. EO Monitoring (Complaint Review) Responsibility

The State WIA EO Officer will have the overall responsibility for the State of Hawaii EO Monitoring. Each of the Local Workforce Investment Area (LWIA) Directors and the LWIA Equal Opportunity Officers will be responsible for EO Monitoring in their

respective counties and report to the State EO Officer.

The LWIA EO Officers will schedule their EO Monitoring of recipients and/or sub-recipients in their county on an annual basis. The State EO Officer shall be included as part of a collaborative team with the LWIA EO Officers to do on-site visits of their One-Stop Career Centers, once every three (3) years, unless a complaint is received or a desk audit indicates the need of an immediate on-site review.

Each EO review shall include a review of each recipient's and/or sub-recipient's:

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

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

5. Monitoring Review Process

Each LWIA ED Officer is responsible for monitoring and evaluating their local area recipients' and/or sub-recipients' compliance with section 188 of the WIA and 29 CFR Part 37. This includes a system of periodically monitoring the compliance of recipients to determine if they are conducting their WIA Title I-financially assisted program in a nondiscriminatory manner.

Each periodic monitoring review must include:

- A. A quantifiable analysis of the records and data kept by the recipient, including analyses by race/ethnicity, sex, age, and disability status;
- B. An investigation of any significant differences found across groups in participation in the programs, activities, and employment as a result of the analysis;
- C. An assessment to determine if administrative obligations have been fulfilled, including recordkeeping, notice, and communication;
- D. A review of policies to ensure they are nondiscriminatory;
- E. A system for reviewing job training plans, contracts, assurances and similar agreements to, ensure they are nondiscriminatory and they contain the required language;
- F. Procedures for ensuring compliance with Section 504;

- G. A system to ensure that individuals assigned the responsibility .for carrying out nondiscrimination requirements can do them effectively;
- H. Procedures for obtaining prompt corrective action when noncompliance is found; and,
- 1. Supporting documentation to show that commitments made in the MOA are carried out. The documentation shall include:
 - 1) The issuing of policies and procedures required by various elements of the MOA;
 - 3) Copies of monitoring instruments and instructions; The development and communication of nondiscrimination policies;
 - 4) The extent to which Equal Opportunity training is planned and carried out;
 - 5) Reports of monitoring reviews; and,
 - 6) Reports of follow-up actions (where violations are found).

The compliance review shall consist of five segments:

- A. Statistical analysis desk review;
- B. Onsite review;
- C. Exiting Conference;
- D. Monitoring Report (Report of results); and,
- E. Follow-up (Corrective Actions/Sanctions)

Prior to conducting an on-site compliance review of a Local Workforce Investment Area (LWIA), the reviewer shall notify the appropriate Director/Administrator approximately four weeks prior to the review. The EO Staffing Data Form (Exhibit A) for collecting demographic information on staff and the Monitoring Review Instrument (Exhibit B) may be forwarded at this time. The request should include instructions that the data should be returned at least ten (10) days prior to the review.

Desk Review

Upon receipt of the preliminary information, the desk review should be performed. The reviewer should analyze the statistical information and written program reports received, as well as the monitoring instrument responses, if applicable (Exhibits C-D). This part of the process may help to identify potential items to be addressed during the on-site review and help the reviewer prepare an action plan based on the results of the desk review.

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 that, upon entering the site, the reviewer meet with the appropriate Director/Administrator to discuss the scope of the review, to make arrangements for client and staff interviews or file reviews, and to discuss preliminary findings (Exhibits E - I).

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

- 1) Staff composition;
- 2) Management and client interviews;
- 3) Staff awareness of nondiscrimination and EO laws;
- 4) Complaint files (if appropriate);
- 5) Client files;
- 6) Physical aspects of the site — programmatic and architectural accessibility;
- 7) Observance of reception, intake, and assessment processes, if applicable;
- 8) Maintenance of EO policies and complaint files;
- 9) Interviews with community-based organizations (when complaints or concerns have been identified or expressed);
- 10) Agreements with local organizations to provide needed services to persons with special needs; and,
- 11) Display of announcement, mandatory WIA "Equal Opportunity is the Law" posters, and posters and signs for clients with limited English-speaking abilities.

Exit Conference

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

Monitoring Reports

At the conclusion of the monitoring review process, a "Monitoring Report" shall be written by the EO Officer conducting the review (Exhibit K). 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 and the State EO Officer. A copy shall be maintained by the LWIA EO Officer conducting the review.

- A. The Written Report shall contain all information pertinent to the review, including the following:
 - 1) Name, location, and contact information of the recipient reviewed;
 - 2) A brief description of the services or program provided by the

- recipient;
- 3) Name and contact information of the LWIA EO Officer conducting the review;
 - 5) Reason(s) for the review;
 - 6) Results of any analytical data;
 - 7) Names of staff interviewed;
 - 8) Names of participants interviewed;
 - 9) Overall results of the review;
 - 10) Any findings of noncompliance;
 - 11) Sanctions or corrective actions called for; and,
 - 12) Method and time frame of follow-up.

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

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

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

- 1) 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.

Where an informal resolution is not reached, a meeting shall be held between 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 LWIA EO Officer and the State EO Officer to assess the progress made in resolving the identified problem areas.)

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 during the initial compliance review, a follow-up shall be conducted by the reviewing officer regarding any corrective actions or sanctions. (See Element 9 of this MOA for additional information on this subject matter.)

Equal Opportunity Employer/Program
Auxiliary aids and services are available upon request to individuals with disabilities.
TTY/TDD (808) 586-8844

PART B

Supporting Documentation

Exhibit A	*Equal Opportunity Staff Data Form
Exhibit B	*Monitoring Review Instrument
Exhibit C	*Data Analysis
Exhibit D	Adverse Impact and the 80% Rule
Exhibit E	*Onsite Review – Entrance Conference Form
Exhibit F	Recruitment Assessment Form
Exhibit G	*Participant File Review Worksheet
Exhibit H	*Client Interview Form
Exhibit I	*Employee/Staff Interview Form
Exhibit J	*Exit Conference form
Exhibit K	*Monitoring Report Form

* Forms have been duplicated from the *"Guide to Conducting Equal Opportunity Monitoring Reviews,"* NASWA.