

Element 7 - Monitoring Recipients for Compliance
(29 C.F.R. § 38.54(d)(2)(ii))

PART A

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

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 EO Officers.

The Governor of Hawaii and the Director of the Civil Rights Center (CRC) ensure compliance with administrative obligations under WIOA Section 188 and the responsibilities assigned through its Methods of Administration (MOA) under 29 C.F.R. § 38.54.

Each recipient must collect such data and maintain such records, in accordance with procedures prescribed by the DLIR 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.

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 38;
(Elements of an Equal Opportunity (EO) Monitoring Review)

1) Assurances

- Has the recipient provided the written assurance required under §38.20?
- Is the assurance incorporated into all agreements, including county contracts, entered into regarding the operation of the WIOA 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?
- In cases where WIOA 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 EO Officer, or point of contact?

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- Does the appointed EO Officer meet the eligibility requirements under §38.24?
- Has the recipient listed, in writing, the responsibilities of the EO Officer, including but not limited to those listed under §38.25?
- Has the recipient fulfilled its obligations relating to the EO Officer under §38.26?
- If the recipient is a small recipient as defined under §38.4, has the recipient fulfilled its obligations under §38.27?

3) Notice and Communication

- Is the recipient aware of its obligation under §38.29 to disseminate its equal opportunity policy?
- When notice is provided of the recipient's EO obligations, does the notice contain the specific wording required in §38.30?
- Has the recipient's notification been published in the areas specified in §38.31?
- Was notice provided in a timely manner as required in §38.32?
- Is the recipient in compliance with §38.34 regarding "tag lines" and TDD/TTY information?
- Is the recipient in compliance with §38.34 regarding the publication and broadcast of program information?

4) Data and Information Collection and Maintenance

- Does the recipient collect and maintain the data elements required under §38.37 (b)(2)?
- Does the recipient maintain a log of complaints alleging discrimination as required under §38.37?
- Is necessary medical or disability-related information collected on separate forms and maintained in separate files?
- Has the recipient notified the CRC and the State EO Officer of any administrative enforcement actions or lawsuits filed against it alleging discrimination?
- Does the recipient maintain records for the length specified under §38.39?
- Does the recipient have in place a system adequate to assure the confidentiality of records under §38.41?

5) Affirmative Outreach

- Has the recipient taken adequate steps to ensure equal access to the services and programs provided as required under §38.42?

6) Complaint Processing Procedures

- Has the recipient developed, implemented, and

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distributed complaint procedures as required under §38.70 through 38.89?

- Does the complaint procedure contain all elements required under §38.76?

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 address 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 in service access found by the prior analyses.

- 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

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The State WIOA EO Officer will have the overall responsibility for the State of Hawaii EO Monitoring. Each of the Local Workforce Investment Area (LWIOA) Directors and the local EO Officers will be responsible for EO Monitoring in their respective counties and report to the State EO Officer.

The local 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 local 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 monitoring review shall include a review of each recipient's and/or sub-recipient's:

- A. Compliance with its administrative obligations under WIOA section 188 and 29 C.F.R. § 38;
- B. Compliance with responsibilities it has been assigned through the MOA; and
- C. Programs and activities to determine whether discrimination is occurring.

Such monitoring review shall include analysis of data and records collected by the recipient and/or sub-recipient, pursuant to 29 CFR § 38.41, to determine whether a difference in service access 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 local EO Officer is responsible for monitoring and evaluating their local area recipients' and/or sub-recipients' compliance with section 188 of the WIOA and 29 C.F.R. § 38. This includes a system of periodically monitoring the compliance of recipients to determine if they are conducting their WIOA 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;

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- 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
- I. 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;
 - 2) Copies of monitoring instruments and instructions;
 - 3) The development and communication of nondiscrimination policies;
 - 4) The extent to which EO 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 monitoring review of a Local Workforce Investment Area, 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 to the reviewer at this time. The request should include instructions that the data should be returned at least ten (10) days prior to the review.

Statistical Analysis Desk Review

Upon receipt of the preliminary demographic 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

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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 WIOA "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 local 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 local EO Officer conducting the review;
- 4) Reason(s) for the review;

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- 5) Results of any analytical data;
- 6) Names of staff interviewed;
- 7) Names of participants interviewed;
- 8) Overall results of the review;
- 9) Any findings of noncompliance;
- 10) Sanctions or corrective actions called for; and,
- 11) Method and time frame for 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.
- 2) 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 local 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 WIOA, 29 C.F.R. § 38 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.
TDD/TTY: Dial 711 then ask for (808) 586-8866

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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