



Federal Register

Friday,
August 25, 2000

Part V

Department of Labor

Office of the Secretary

State Guidance for Developing Methods of
Administration Required by Regulations
Implementing Section 188 of the
Workforce Investment Act of 1998; Notice

DEPARTMENT OF LABOR

Office of the Secretary

State Guidance for Developing Methods of Administration (MOA) Required by Regulations Implementing Section 188 of the Workforce Investment Act of 1998 (WIA)

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide interested parties with the final approved Guidance for use by States in submitting their Methods of Administration as required by 29 CFR part 37. That part implements the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Annabelle T. Lockhart, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., N.W., Room N-4123 FPB, Washington, DC 20210, telephone number (202) 219-8927 (voice)(this is not a toll-free number), or (800) 326-2577 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Workforce Investment Act of 1998 (WIA), Public Law 105-220 (August 7, 1998), provides the framework for a reformed national workforce preparation and employment system designed to meet the needs of the nation's employers, its job seekers, and those who want to further their careers. While WIA makes many programmatic changes in the workforce development system authorized under the Job Training Partnership Act of 1982 (JTPA), one constant has been the prohibition against discrimination. The nondiscrimination and equal opportunity provisions of JTPA (section 167) prohibit discrimination against applicants, beneficiaries and employees on the bases of race, color, national origin, age, disability, sex, religion, and political affiliation or belief. Further, section 167 prohibits discrimination against beneficiaries on the bases of citizenship and participation in JTPA. The nondiscrimination and equal opportunity provisions of WIA (section 188) prohibit discrimination against applicants, beneficiaries and employees on the same bases.

Methods of Administration (MOA), designed to assure the Secretary of Labor that State programs financially assisted by the Department operate in a nondiscriminatory manner, have been required of States since 1984. This requirement was codified when, on January 15, 1993, the Department of Labor issued 29 CFR part 34, the

regulations that implement section 167 of JTPA. (See 29 CFR 34.33.)

Section 188(e) of WIA requires the Secretary to issue regulations implementing section 188. An interim final rule implementing that section was published on November 12, 1999, at 29 CFR part 37. As with part 34, part 37 includes the requirement that States develop, implement and maintain, for each of their State programs, an MOA. (See 29 CFR 37.54 and 37.55.) The MOA standards contained in part 37 are substantially the same as those contained in part 34. States that have faithfully implemented and maintained their MOAs under JTPA will find that the time and effort needed to update their MOA to meet WIA requirements will be minimal.

Signed at Washington, D. C., this 21st day of August, 2000.

Alexis M. Herman,
Secretary of Labor.

ATTACHMENT: State Guidance for Developing Methods of Administration (MOA) Required by Regulations Implementing Section 188 of the Workforce Investment Act of 1998 (WIA)

OMB Control No. 1225-0077
Expires January 31, 2003

The regulations that implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), published at 29 CFR part 37, require that each Governor establish and adhere to a Methods of Administration (MOA) for his/her State programs. This document provides Guidance for Governors and States in meeting the regulatory requirements regarding MOAs.

An MOA is a document that describes the actions an individual State will take to ensure that its WIA Title I-financially assisted programs, activities, and recipients are complying, and will continue to comply, with the nondiscrimination and equal opportunity requirements of WIA and its implementing regulations. States were first required to prepare and submit MOAs in 1984, under the Job Training Partnership Act (JTPA). The requirement was continued in 1993, under the regulations implementing the nondiscrimination and equal opportunity provisions of JTPA. The JTPA MOA requirements were set forth in 29 CFR 34.33. The form and content of the MOAs required under 29 CFR part 37 remain substantially the same as those of the MOAs required under JTPA.

Title 29 CFR 37.54(a) provides that each Governor must establish and

maintain an MOA for State programs. 29 CFR 37.54(d) describes the required elements of an MOA. Finally, 29 CFR 37.55 addresses requirements related to submitting and updating the MOA.

By submitting an MOA, the Governor agrees to fully follow its provisions. Failure to do so may result in a finding of noncompliance. See 29 CFR 37.65(a).

This Guidance specifically discusses the requirements of 29 CFR 37.54(b) and 37.55, and is intended to explain, not to add to, the requirements contained in those regulatory provisions. The Guidance is based upon materials the Civil Rights Center (CRC) prepared in 1993 to train Equal Opportunity (EO) Officers regarding the requirements of MOAs under JTPA. This Guidance does not create new legal requirements or change current legal requirements. Instead, it reflects the view of CRC and is intended to serve as a basic resource document on CRC-administered laws. The legal requirements related to nondiscrimination and equal opportunity that apply to recipients of financial assistance under WIA are contained in the statutes and regulations cited in this Guidance. Every effort has been made to ensure that the information contained in the Guidance is accurate and up to date.

I. Guidance on Meeting the Requirements of 29 CFR 37.54(b) Section 37.54(b) Requires That Each MOA Shall be:

- In writing, addressing each requirement of 29 CFR 37.54(d) with narrative and documentation;
- Reviewed and updated as required by 29 CFR 37.55; and
- Signed by the Governor.

The MOA should be organized in the nine elements listed below, with both a narrative and a documentation section for each element.

Section A. Narrative

The first section of each element should be a narrative description of how the State and its recipients, as that term is defined in 29 CFR 37.4, are meeting and will continue to meet the requirements of part 37. The narrative should be specific. CRC regards the narrative as the more important section, since it contains the description of what the State and its recipients are doing and will continue to do to fulfill their obligations under WIA section 188 and 29 CFR part 37.

Section B. Documentation

The second section of each element should include documentation that shows how the State is carrying out that element of the MOA. When reviewing

the adequacy of and/or performance under an MOA, CRC may request additional supporting documentation pursuant to 29 CFR 37.65.

Element 1. Designation of State-and local-level Equal Opportunity (EO) Officers (29 CFR 37.54(d)(1)(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 37.23 through 37.28. The intent of this section is to ensure that any individual the recipient appoints as EO Officer has the education, training and experience, and is provided the necessary ongoing training and qualified staff, to perform his or her duties assigned under 29 CFR part 37. Additionally, the EO Officer should not be in a position that would constitute, or appear to constitute, a conflict of interest. Further, the State should ensure that he or she reports, on EO matters, directly to the appropriate official in the organization (see 29 CFR 37.25(e)). In summary, any individual appointed as EO Officer should have the skill, ability, knowledge and authority to properly oversee and direct the EO program to which that individual has been assigned.

(a) The narrative section of this element should identify, at a minimum:

- Each individual designated as a State-level Equal Opportunity Officer and each individual designated as a local-level Equal Opportunity Officer, by name, position title, business address (including e-mail address if applicable) and telephone number (including TDD/TTY number). (See 29 CFR 37.23.)
- The level within the organization (described in such terms as the individual's authority and position relative to the top of the hierarchy) occupied by the EO Officer(s). (See 29 CFR 37.24.)
- The duties of the EO Officer(s), and the manner in which those duties are carried out. (At a minimum, duties assigned to the EO Officer must include those listed in 29 CFR 37.25.) Describe both the EO duties, responsibilities and activities associated with the implementation of 29 CFR part 37, and all other duties, responsibilities and activities.

Note: The EO Officer may not be assigned duties, responsibilities or activities that would constitute a conflict of interest or the appearance of such a conflict; see 29 CFR 37.24.)

- The manner in which the recipient makes the identity of the EO

Officer(s) known to applicants, registrants, eligible applicants/registrants, participants, employees, and applicants for employment, as well as interested members of the public. (See 29 CFR 37.26.)

- The level of staff and other resources available to State- and local-level EO Officer(s) to ensure that WIA Title I—financially assisted programs and activities operate in a nondiscriminatory way. (See 29 CFR 37.26(c).)
- The State's plan for ensuring that State- and local-level EO Officers and their staffs are sufficiently trained to maintain competency. (See 29 CFR 37.26(d).)
- The identity, by name, title and organization, of the individual to whom each State- and local-level EO Officer reports on equal opportunity matters.
- A description of the professional and support staffing levels and resources provided to each State- and local-level EO Officer to assist him or her in ensuring compliance with WIA section 188 and part 37.
- The type and level of training each State- and local-level EO Officer has received and will receive to ensure that he or she is capable of fulfilling his or her responsibilities as an EO Officer.
- The means by which the State makes public the names, position titles and telephone numbers (including TDD/TTY numbers) of each State- and local-level EO Officer.
- A description of any duties, other than WIA equal opportunity responsibilities, assigned to each State- and local-level EO Officer.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

- Examples of each document (e.g., notices, directives, memoranda, letters to community groups, flyers, and relevant pages of handbooks and manuals) that communicates, either internally or externally, the EO Officer's name and other required information to registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and interested members of the public.
- Examples of each communication (e.g., directives) that instructs the State's recipients as to the actions they are to take to comply with 29 CFR 37.23 through 28 with regard to EO Officers.
- A copy of the State EO Officer's position description, showing those duties specifically related to WIA

equal opportunity activities, and other duties.

- A representative sample of local-level EO Officer position descriptions. NOTE: If a single, standard position description has been adopted for all local-level EO Officers, then a single copy of that description is sufficient.
- Copies of organization chart(s) showing the organizational location of each EO Officer.
- The identity of any staff who perform duties that support WIA EO activities (e.g., clerical, data analysis), a position description for each such staff member, and average hours per week spent on EO-related activities by each such staff member (if positions are not devoted to WIA equal opportunity activities on a full-time basis).
- EO budget and source of funds.
- Summary of EO-related training that staff (EO staff and others) have received and a schedule of EO training to be delivered in the future. This may be training delivered by the State- or local-level EO Officer to recipient staff, or training delivered to EO Officers or recipient staff by outside sources, such as CRC.

Element 2. Notice and Communication (29 CFR 37.54(d)(1)(iii))

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 37.29 through 37.36. States should ensure the establishment of a notice and communication system that makes all registrants, applicants, eligible applicants/registrants, applicants for employment, employees and interested members of the public aware of both the recipient's obligation to operate its programs and activities in a nondiscriminatory manner, and the extent of the rights of members of these groups to file complaints of discrimination.

(a) The narrative section of this element should describe, at a minimum:

- The methods and frequency of dissemination of the notice, including initial dissemination. (See 29 CFR 37.29.)
- The means by which the notice is made available to individuals with disabilities. (See 29 CFR 37.31(b).)
- The means by which the State ensures that recipients post the notice. (See 29 CFR 37.33.)
- The means by which a copy of the notice is placed in the participant's file (see 29 CFR 37.31(a)), or where

the files are maintained electronically, how the requirement of 37.31(a) is and will continue to be met.

- The means by which the State ensures that recruitment brochures and other materials routinely made available to the public include the statements "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities." (See 29 CFR 37.34(a).)
- Where a telephone number is included on recruitment brochures and other materials, the means by which the State ensures that the materials indicate a TDD/TTY number or provide for an equally effective means of communication with individuals with hearing impairments. (See 29 CFR 37.34(a).)
- The means by which program-related information is published or broadcast in the news media (e.g., publication of Requests for Proposal) and the means by which the State ensures that publications/broadcasts state that the program is an equal opportunity employer/program and that auxiliary aids and services are available upon request to individuals with disabilities. (See 29 CFR 37.34(b).)
- The manner in which and extent to which information in languages other than English is provided, and the manner in which the State ensures that persons of limited English-speaking ability have access to its programs and activities on a basis equal to that of those who are proficient in English. (See 29 CFR 37.35.)
- The manner in which and extent to which orientations for registrants, applicants, eligible applicants/registrants, employees, applicants for employment, and members of the public include a discussion of the rights of such persons under WIA section 188 and 29 CFR part 37. (See 29 CFR 37.36.)
- The steps taken to ensure that communications with individuals with disabilities are as effective as communications with others. (See 29 CFR 37.29(b).)
- The process the State has used and will continue using to develop and communicate policy and conduct training regarding nondiscrimination and equal opportunity. (See 29 CFR 37.25(c), and 37.54(d)(2)(iii), and 37.54(d)(2)(vi).)

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

- A copy of each communication that instructs the State's recipients on how they are to comply with the requirements of 37.29 through 37.36 regarding notice and communication.
- A copy of the posted notice required by 29 CFR 37.29 and 37.30.
- A copy of any checklist of the contents of participant and employee files, indicating that the notice requirement has been met. (See 29 CFR 37.31(a)(4).)
- A copy of any orientation agendas that include, as an agenda item, a discussion of equal opportunity and nondiscrimination under WIA section 188 and 29 CFR part 37. (See 29 CFR 37.36.)
- A copy of each item of material, distributed at orientation sessions, that addresses the rights of individuals under WIA section 188 and 27 CFR part 37. (See 29 CFR 37.36.)
- Copies of agendas (and a list of dates) of past and proposed EO policy briefings and EO training. (See 29 CFR 37.25(f), 37.26(d) and 29 CFR 37.54(d)(2)(vi).)
- A copy of each policy issuance or instruction that relates to WIA section 188 or 29 CFR part 37. (See 29 CFR 37.25(c), 37.54(d)(iii), 29 CFR 54(d)(vi) and 37.54(d)(viii).)
- A copy of each recruitment brochure and other item of material distributed to the public by a WIA Title I-financially assisted recipient, showing that each includes:
 - The statements "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities"; and
 - The telephone numbers for TDD/TTY access and/or telephone relay services. (See 29 CFR 37.34(a).)

Element 3. Review assurances, job training plans, contracts, and policies and procedures (29 CFR 37.54(d)(1)(i) and (d)(2)(i), (iii) and (iv))

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 37.20 and 37.54(d)(1)(i) and (d)(2)(i), (iii) and (iv) regarding the review of assurances, job training plans, contracts, and policies and procedures. Additionally, this element should address the procedures the State and its recipients are following and will continue to follow in assessing the ability of grant applicants, if funded, or training providers, if declared eligible, to comply with WIA section 188 and 29 CFR part 37.

(a) The narrative section of this element should describe, at a minimum, how the State ensures that:

- Each grant applicant, and each training provider seeking eligibility, includes in its application for financial assistance under Title I of WIA the required EO assurance. (See 29 CFR 37.20(a)(1).)
 - The required assurance is incorporated into each grant, cooperative agreement, contract, or other arrangement whereby Federal financial assistance under Title I of WIA is made available. (See 29 CFR 37.20(a)(2).) NOTE: 29 CFR 37.20(a)(2) provides that the assurance may be incorporated by reference into these documents.
 - Each grant applicant, and each training provider seeking eligibility, is able to provide programmatic and architectural accessibility for individuals with disabilities. (See subpart C of 29 CFR part 32.)
 - Job training plans, contracts, assurances, and other similar agreements entered into by recipients are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity. (See 29 CFR 37.54(b)(2)(iv).)
 - State- and local-level policy issuances, or issuances from other recipients, are not discriminatory either in intent or effect. (See 29 CFR 37.54(d)(2)(iii).)
 - Policies on WIA Title I nondiscrimination and/or equal opportunity issues are developed and implemented in a timely manner.
- (b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:
- A copy of each directive that instructs individuals at the State and/or local level who are responsible for reviewing assurances, job training plans, contracts, and policies and procedures as to the requirements of, and their duties under, 29 CFR 37.20, 37.54(d)(1)(i), and (d)(2)(i), (iii) and (iv).
 - Copies of assurance pages of plans, contracts, and other agreements.
 - Copies of memos or directives to contract managers advising them to include the required assurance in the appropriate documents.
 - Copies of checklists or other guidelines used by contract specialists, attorneys, or others who review contracts and agreements that indicate that nondiscrimination

and equal opportunity are considered in the evaluation of such documents.

- A copy of procedures developed to review the ability of grant applicants, and training providers seeking eligibility, to comply with the nondiscrimination and equal opportunity provisions of WIA and 29 CFR part 37.
- A copy of each WIA EO issuance (e.g., the general EO policy statement, the policy statement on sexual harassment and the policy statement on religious accommodation).

Element 4. Universal Access (29 CFR 37.54(d)(1)(vi))

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 37.42 relating to the provision of universal access to programs and activities.

(a) The narrative section of this element should describe, at a minimum, how:

- The State has communicated the obligation of recipients (including, e.g., LWIAs, one-stop operators and service providers) to make efforts (including outreach) to broaden the composition of the pool of those considered for participation or employment in their programs and activities in an effort to include members of both sexes, of the various racial and ethnic groups and of various age groups, as well as individuals with disabilities.
- Recipients have made and will continue to make efforts to broaden the composition of those considered for participation or employment in their programs and activities, as described above.
- The State monitors and evaluates the success of recipient efforts to broaden the composition of those considered for participation and employment in their programs and activities, as described above.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

- Copies of targeting, outreach and recruitment plans.
- Criteria for determining priority of service.
- Copies of plans for One-Stop delivery systems to expand the pool of those considered for participation or employment in their programs and by race/ethnicity, sex, disability status, and age.
- Samples of brochures, posters, public-service announcements,

computer screens displaying related information, and other publicity materials.

Element 5. Compliance with section 504 of the Rehabilitation Act of 1973, as amended and 29 CFR part 37 (29 CFR 37.54(d)(2)(v))

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of the disability related requirements of WIA section 188; Section 504 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, including but not limited to 29 CFR 37.7, 37.8, and 37.9 and Subparts B and C of 29 CFR Part 32.

(a) The narrative section of this element should describe, at a minimum how the State ensures that recipients:

- Meet their obligation not to discriminate on the basis of disability. (See 29 CFR 32.12 (a), 32.26, and 37.7.)
- Provide reasonable accommodation for individuals with disabilities (See 29 CFR 32.13 and 29 CFR 37.8);
- Provide reasonable modification of policies, practices and procedures, as required (See 29 CFR 37.8);
- Provide architectural accessibility for individuals with disabilities (See 29 CFR 32.28); and
- Provide programmatic accessibility for persons with disabilities (See 29 CFR 32.27).
- Provide for and adhere to a schedule to evaluate job qualifications to ensure that the qualifications do not discriminate on the basis of disability. (See 29 CFR 32.14.)
- Limit preemployment/employment medical inquiries to those permitted by and in accordance with WIA section 188, Section 504, the Americans with Disabilities Act of 1990, and their implementing regulations. (See 29 CFR 32.15.)
- Ensure the confidentiality of medical information provided by registrants, applicants, eligible applicants/registrants, participants, employees, and applicants for employment. (See 29 CFR 32.15.)
- Administer their WIA Title I-financially assisted programs and activities so that each individual with a disability participates in the most integrated setting appropriate to that individual. (See 29 CFR 37.7(d).)
- Are able to communicate with persons with disabilities as effectively as with others. (See 29 CFR 37.9.)

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

- Copies of policies/procedures issued by the State or any of its WIA Title I recipients, such as:
- The procedures by which persons with disabilities are assured of participation in programs and activities in as integrated setting as possible;
- The procedures by which the availability of reasonable accommodation and reasonable modification are made known to persons with disabilities, and the procedures for making and resolving such requests;
- The procedures by which the State ensures that communication with persons with disabilities is as effective as communication with others; and
- The procedures by which the State ensures that the programs and activities operated by its WIA Title I recipients are architecturally and programmatically accessible to individuals with disabilities.
- Any evaluation conducted to determine the programmatic or architectural accessibility of a WIA Title I-financially assisted program or activity and the status of any corrective actions taken by the recipient involved.
- Copies of publications and agendas for any training conducted for recipient staff that is intended to raise awareness of disability issues.

Element 6. Data and Information Collection and Maintenance (29 CFR 37.54(d)(1)(iv) and (vi))

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 37.37 through 37.41 related to data and information collection and maintenance. The State must ensure that a data and information collection and maintenance system for its WIA Title I-financially assisted State programs is established and maintained. (See 29 CFR 37.53.)

The most important purposes of the equal opportunity data and information collection and maintenance system required by 29 CFR part 37 are to assist CRC and those assigned by the State (e.g., State- and/or local-level EO Officers) in:

- Monitoring recipient equal opportunity performance;
- Identifying instances or areas of discrimination; and
- Identifying individuals or groups of individuals who have been

discriminated against on a basis prohibited by WIA section 188 and 29 CFR part 37.

A vital element of any system designed to fulfill these purposes is a way to permit the reviewer to correlate aggregate data to individual records. For example, 29 CFR part 37 requires that recipient's collect four pieces of demographic information about each registrant, applicant, eligible applicant, participant, employee, and applicant for employment: Race/ethnicity, sex, age, and disability status. This information must be kept separate from the recipient's individual records about such persons. However, the system for data and information collection and maintenance must be designed in such a way to allow cross referencing of data to individual records.

It is CRC's policy that existing systems for data and information collection and maintenance that meet all the requirements of 29 CFR 37.37 through 37.41 are acceptable. These systems may be designed by the recipient or some other entity. However, to the extent that a system does not meet all the requirements of these regulatory sections, that system must be modified so that it does meet those requirements.

(a) The narrative section of this element should describe, at a minimum, how the State ensures that:

- Recipients:
- Collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment;
- Record the race/ethnicity, sex, age and, disability status of each applicant, registrant, eligible applicant/registrant, participant, terminee, employee, and applicant for employment (See 29 CFR 37.37(b)(2).);
- Treat records, particularly those containing medical information, in a manner that ensures their confidentiality (See 29 CFR 32.15; 29 CFR 37.37(b)(2); and 29 CFR 37.41.);
- Maintain a log of complaints filed that allege discrimination on one or more of the bases prohibited by WIA section 188 (See 29 CFR 37.37(c).); and
- Maintain such records for a period of three years. (See 29 CFR 37.39.)
- Grant applicants and recipients notify the CRC Director of administrative enforcement actions and lawsuits brought against them that allege discrimination on one or more of the bases prohibited by WIA section 188. (See 29 CFR 37.37(a).)

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to, copies of:

- Instructions to recipients within the State regarding information collection, access to records, and maintenance of records. (See 29 CFR 37.37.)
- Samples of each policy issuance that discusses ensuring the confidentiality of demographic information regarding individuals.
- Samples of reports regarding the above demographic information.
- Samples of formats and instructions, in hard copy and electronic file forms, for complaint logs used by the State and its recipients to track complaints that allege a violation of WIA section 188 or 29 CFR part 37.

Element 7. Monitor Recipients for Compliance (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 WIA section 188 and 29 CFR part 37.

Each EO monitoring review must include a review of each recipient's:

- Compliance with its administrative obligations under WIA section 188 and 29 CFR part 37 (e.g., assurances, notice and communication, EO Officers);
- Compliance with responsibilities it has been assigned through the MOA;
- Programs and activities, to determine whether discrimination is occurring. This activity is the most important part of the monitoring review.

Monitoring recipients to ensure their programs and activities are operating in a nondiscriminatory manner must involve, at a minimum:

(1) Analysis of the data and records collected by the recipient pursuant to 29 CFR 37.37 through 41, to determine whether any differences based upon race/ethnicity or sex have practical or statistical significance; and

(2) Where significant differences are found, follow-up investigations to determine, through records review, interviews, and other appropriate investigative techniques, whether the differences are due to discrimination.

The analyses mentioned in section (1) above may include those that may reveal practical significance, such as the "80% rule" (see 41 CFR 60-3, the DOL

regulation regarding the Uniform Employee Selection Guidelines), and those that reveal statistical significance, such as the two-standard deviation test.

(a) The narrative section of this element must describe, at a minimum, the system for evaluating the extent to which recipients are:

- Complying with the administrative obligations of 29 CFR part 37, including, but not limited to:
- Assurances. (See 29 CFR 37.20 through 37.22.)
- Equal Opportunity Officers. (See 29 CFR 37.23 through 37.28.)
- Notice and communication. (See 29 CFR 37.29 through 37.36.)
- Data and information collection and maintenance. (See 29 CFR 37.37 through 37.41.)
- Universal access. (See 29 CFR 37.42.)
- Complaint processing procedures. (See 29 CFR 37.70 through 37.80.)
- Performing the responsibilities assigned such recipients by the State through the MOA, such as:
- Conducting equal opportunity monitoring/evaluation reviews of applicants for and recipients of WIA Title I financial assistance (including monitoring assurances and programmatic and architectural accessibility).
- Imposing sanctions and corrective actions for violations noted by a recipient during its monitoring reviews.
- Ensuring policy development, communication, and training are carried out.
- Ensuring that their programs and activities are operating in a nondiscriminatory manner and ensuring equal opportunity, including but not limited to:
- Conducting analyses, 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
- Conducting follow-up monitoring to determine the cause of any such differences, through the analysis of the records of individual registrants, applicants, eligible applicants/registrants, employees and applicants for employment; interviews; and other appropriate techniques.

Additionally, the narrative should describe:

- The procedure for reviewing recipients' policies and procedures, to ensure that the policies and procedures do not violate the prohibitions contained in 29 CFR 37.5 through 37.10.

- The written reports prepared for each review. These reports must provide, among other things, that the results of the monitoring review will be made available to the recipient(s) reviewed.
- The involvement of the State- and local-level EO Officer(s) in conducting reviews. Where EO monitoring is carried out by individuals other than the State- or local-level EO Officer, the narrative should provide the names, titles, and organizations of those persons.
- The procedure for determining which recipients are to be reviewed, the frequency of reviews of recipients, and the number of recipients to be reviewed per year.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to, copies of:

- Schedules of reviews and criteria for targeting recipients for review.
- Monitoring instrument(s) used by State- and/or local-level staff to monitor recipient EO activities.
- Policy issuances and procedural guidance regarding monitoring reviews and recipient evaluations.
- A representative sample of reports of monitoring reviews, including findings resulting from reviews and the status of follow-up actions.

Element 8. Complaint Processing Procedures (29 CFR 37.54(d)(1)(v))

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 37.76 through 37.79 regarding complaint processing procedures.

(a) The narrative section of this element should describe, at a minimum, how the State ensures that:

- Recipients that are required to do so (see 29 CFR 37.77) have developed and published complaint procedures. (See 29 CFR 37.76.) At a minimum, such procedures must:
- Provide for the issuance of a written Notice of Final Action within 90 days of the date on which the complaint is filed. (See 29 CFR 37.76(a).)
- Contain the elements listed in 29 CFR 37.76(b), which include:
- Initial, written notice to the complainant that contains an acknowledgment that the recipient has received the complaint, and a notice that the complainant has the right to be represented in the complaint process (see 29 CFR 37.76(b)(1));
- A written statement, provided to the complainant, that contains a list of

the issues raised in the complaint and, for each issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection (see 29 CFR 37.76(b)(2));

- A period for fact-finding or investigation of the circumstances underlying the complaint (see 29 CFR 37.76(b)(3));
 - A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR) (see 29 CFR 37.76(b)(4) and (c)); and,
 - A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains, for each issue raised in the complaint:
 - Either a statement of the recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue; and
 - Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint. (See 29 CFR 37.76(b)(5).)
 - Describe the procedures to be followed if the complaint is filed more than 180 days after the date of the alleged violation. (See 29 CFR 37.78.)
 - Provide that, if the complainant is dissatisfied with the outcome of the investigation, or if there is no final resolution of the complaint within 90 days of the date the complaint is filed, the complainant is notified that he or she may file his or her complaint with the Civil Rights Center.
 - Recipients follow the established procedures.
- (b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to, a copy of:
- The State's discrimination complaint procedures developed pursuant to 29 CFR 37.76 through 37.79.
 - The instrument (*e.g.*, directive, memorandum) used to inform recipients of the complaint procedures and directing recipients as to their use.
 - The ADR procedures, if not included with complaint processing procedures.

Element 9. Corrective Actions/Sanctions (29 CFR 37.54(d)(2)(vii))

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)(2)(vii).

(a) The narrative section of this element should describe, at a minimum:

- The standard for corrective and remedial actions to be applied when violations of WIA section 188 or 29 CFR part 37 are found. Corrective and remedial actions must be designed to completely correct each violation. For each corrective action, a time frame should be established that sets the minimum time necessary to completely correct the violation. In the case of a finding of discrimination, the procedures must provide, where appropriate, for retroactive relief (including but not limited to back pay) and prospective relief (*e.g.*, training, policy development and communication) to ensure that the discrimination does not recur.
- The procedures for follow-up monitoring to ensure that commitments to take corrective action and remedial action are fulfilled.
- Reports required from the violating recipient regarding actions to correct the violation(s).
- Sanction procedures to be followed where voluntary compliance cannot be achieved.

(b) Documentation for this element to be submitted as part of the MOA should include, but need not be limited to:

- A copy of any policy memorandum/directive explaining corrective actions/sanctions. The sanction procedures described in Subpart E of 29 CFR part 37 may be used as a model for States in the preparation of their procedures.
- A copy of each instrument (*e.g.*, directives, memoranda) used to inform recipients of the State's procedures regarding corrective actions and sanctions.

II. Guidance on Meeting the Requirements of 29 CFR 37.55

Section 37.55 requires that each State's MOA must be:

- Developed and implemented, and a copy submitted to the CRC Director within 180 days of the effective date of 29 CFR part 37, or within 180 days of the Department of Labor's approval of that State's Strategic Five-year Plan, whichever is later;

- Updated when necessary, and the Director notified of any updates at the time of the update; and
- Reviewed every two years from the date on which the initial MOA is submitted to the Director under 29 CFR 37.55(a)(2); for each such review, either the changes made to the MOA as a result of the review, or a certification that no changes are necessary, must be submitted to the Director.

Initial Submission of MOA

Title 29 CFR 37.55(a) requires that each Governor develop and implement an MOA, and submit to the Director a copy of that State's MOA, within 180 days after the State becomes subject to WIA section 188 and 29 CFR part 37. The date on which the 180-day clock begins running is contingent upon the date upon which DOL gave final approval to the State's Five-year Strategic Plan (Plan). MOAs of States whose Plan received final approval on or before November 12, 1999, the effective date of 29 CFR part 37 we due to be submitted to the Director within 180 days of that effective date, in other words, by May 10, 2000.

On the other hand, MOAs of States whose Plan received final approval after November 12, 1999, must be submitted 180 days after the date the Plan received final approval by DOL. For example, State A is delaying its transition to WIA until July 1, 2000, and does not submit its Plan to DOL until February 1, 2000.

State A's Plan receives final approval on May 1, 2000. Given this scenario, State A is required to submit its MOA on or before the date that falls 180 days after May 1. The final date for the submission of State A's MOA, therefore, is October 28, 2000.

Note: The 180-day timeframe described above applies only to the submission of the MOA. In general, States and their WIA Title I-financially assisted recipients are subject to the requirements of WIA section 188 and 29 CFR part 37 on November 12, 1999 or on the date they begin operating WIA Title I programs and activities, whichever is later. The provisions of JTPA section 167 and its implementing regulations, 29 CFR part 34 continue to apply to programs and activities that are implemented under and authorized by JTPA.

Updating the MOA

Title 29 CFR 37.55(b) requires the Governor to (1) update the MOA as necessary and (2) notify the Director of those updates. The requirements regarding updating were not part of the JTPA MOA regulations at 29 CFR 34.33. CRC deemed these new requirements necessary as a result of reviews of MOAs developed under JPTA. Those reviews indicated that the procedures to which a State originally committed in its MOA were not necessarily those in effect at the time of CRC's review. The purpose of an MOA is to describe to DOL how a State will ensure that WIA Title I financial assistance will be administered in a nondiscriminatory way. Further, the MOA is intended to be

a document that State-and local-level staff and management, through the EO Officer, can consult when determining appropriate steps to take when confronted with an EO issue. Therefore, the MOA should be kept current and the Director notified of any changes.

State-level MOA Review

Title 29 CFR 37.55(c) requires that, every two years from the date on which the initial MOA is submitted to the Director under 29 CFR 37.55(a)(2), the Governor must review the MOA and its implementation to determine if any changes are necessary, either to the document or the way in which it is implemented. At the time of the review, the Governor must either (1) provide the Director with any changes that are made or (2) certify to the Director, in writing, that no changes are necessary. This requirement is also a change from the MOA requirements under JTPA. It has been CRC's intent that the MOA be a living document, a guide describing how the State will ensure that its WIA Title I-financially assisted programs operate in a nondiscriminatory manner. Through these modest regulatory changes, CRC hopes to convey that the MOA is to be a document that serves as a guide in fulfilling the recipient's obligations of nondiscrimination and equal opportunity.

[FR Doc. 00-21740 Filed 8-24-00; 8:45 am]
BILLING CODE 4510-23-P