



MOA Element 7

MONITORING FOR COMPLIANCE

AGENDA

- **Presentation:** Review of Learning Objectives
- **Presentation:** Requirements for EO Monitoring and Periodic Monitoring
- **Activity:** Checklist for Identifying Ways to Monitor Compliance
- **Presentation:** Review of Acceptable Documentation
- **Presentation:** State's Procedures for Monitoring Compliance
- **Wrap-Up Activity:** Alphabet Review

LEARNING OBJECTIVES

- The participant will be able to state the oversight responsibilities for WIOA monitoring.
- The participant will be able to identify the EO monitoring requirements under WIOA.
- The participant will be able to list the minimum requirements for periodic monitoring.
- The participant will be able to identify acceptable documentation for monitoring requirements.
- The participant will be able to explain the state's procedures to monitor compliance.

MONITORING RESPONSIBILITIES

- Each Governor must establish (29 CFR 38.51-38.54[d][2][ii]):
 - A *system* to periodically monitor all aspects of the recipients' compliance with WIOA
 - A *system* for determining whether the state and its recipients are complying, and will continue to comply, with the requirements for implementation of the Nondiscrimination and Equal Opportunity provisions of WIOA

NOTE:

The Governor usually designates a person at the state level to oversee these responsibilities. Therefore, the state is required to establish a system and to periodically monitor their recipients' compliance with implementation of the Nondiscrimination and Equal Opportunity Provisions of WIOA.

EO MONITORING

Each EO monitoring review system must include:

- A review of each recipient's compliance with its administrative obligations
 - EO Officers
 - Notice and Communication
 - Assurances

- A review of each recipient's compliance with their responsibilities assigned through the MOA

- A review of programs and activities to determine whether discrimination is occurring
 - This activity is the most important part of the monitoring review!



What type of review system does your state use to conduct its monitoring?

PERIODIC MONITORING (29 CFR 38.37 AND 38.54)

Each periodic monitoring review, at a minimum, must involve:

- Analyzing the data and records kept by the recipient to determine whether any differences found based upon race/ethnicity, sex, age and disability status have practical or statistical significance.
- Investigating any significant differences identified across groups with respect to participation in the programs, activities, or employment provided by the recipient
- Evaluating the extent to which recipients are complying with the administrative obligations under the MOA including the following elements:
 - Assurances
 - Equal Opportunity Officers
 - Notice and communication
 - Data and information collected and maintained
 - Universal access
 - Complaint processing procedures
 - Performance of the responsibilities assigned to recipients by the state through the MOA
- Conducting equal opportunity monitoring/evaluation reviews of applicants for, and recipients of, WIOA (including compliance with the requirements of Sec. 504 with regard to individuals with disabilities)

- Imposing sanctions and corrective actions for violations noted by the recipient during its monitoring reviews
- Ensuring that 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, sex, age and disability status of program and employment activity including, at a minimum, rates of application, placement, and termination to determine if significant differences exist.
- 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 another appropriate techniques.

Acceptable Analyses

- **Practical Significance.** “80% rule” (see 41 CFR 60-3, the DOL regulation regarding the Uniform Employee Selection Guidelines) (Presented in Element 6)
- **Statistical Significance.** Two-standard Deviation Test



What type of analyses does your state use to identify significant differences?

ACTIVITY: IDENTIFYING WAYS TO MONITOR COMPLIANCE

Purpose:

-  To identify ways in which the state monitors whether its recipients are implementing the Nondiscrimination and Equal Opportunity provisions of the WIOA

Task:

- ✓ Think about your state's monitoring system. What documents and procedures are in place to demonstrate a recipient's compliance?
- ✓ Make a list of your ideas for monitoring on the page provided.
- ✓ Discuss your ideas as a group.
- ✓ Pick someone to report out.

Time:

-  10 minutes

NOTES:
IDENTIFYING WAYS TO MONITOR COMPLIANCE

WAYS TO MONITOR COMPLIANCE

- An investigation conducted through a review of the recipient's records
- A review of the recipient's policy issuances to ensure that they are nondiscriminatory
- A review conducted through the appropriate system, of the recipient's job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity
- A review of the MOA for a system of policy communication and training to ensure that EO Officers (and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provision of WIOA) are aware of, and can effectively carry out, their responsibilities
- A review of the MOA for procedures to obtain prompt corrective action or, as necessary, for provisions regarding applying sanctions when noncompliance is found
- A review of supporting documentation to show that the commitments made in the MOA have been and are being carried out

NOTE:

See appendix for examples of checklists for monitoring.

DIRECTOR OF THE CIVIL RIGHTS CENTER: AUTHORITY

What is the CRC Director's authority to monitor the activities of the Governor? (29 CFR 38.65)

The Director may:

- Periodically review the adequacy of the MOA as well as the adequacy of the Governor's performance under the MOA
- Review the MOA during a compliance review

NOTE:

Nothing in this subpart precludes the Director from monitoring directly any WIOA recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIOA.

FAILURE TO COMPLY WITH REQUEST FOR INFORMATION

What happens if a recipient fails to submit the requested data, records, or information, or fails to provide CRC with the requested access?
(29 CFR 38.66)

- The CRC Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements, where the failure results in the inability of the Director to make a finding.

Such failure includes, but is not limited to, the recipient's failure or refusal to:

- Submit requested information, records, or data within the designated time of receiving a Notification letter.
- Submit information, records, or data requested during a compliance review, complaint investigation or other action in a timely manner.
- Provide CRC access in timely manner to recipient's premises, records, or employees during compliance review as required in 29 CFR 38.40.

Recipient's Failure to Show Cause

If the recipient fails to show cause why enforcement proceedings should not be initiated, the CRC Director must follow the enforcement procedures outlined in 29 CFR 38.99 – 38.100.

If the CRC Director concludes that compliance cannot be secured by voluntary means, the Director must either:

- Issue a Final Determination
- Refer the matter to the Attorney General with a recommendation for civil action; or
- Take other such actions provided by law

MONITORING DOCUMENTATION

Supporting documentation includes, but is not limited to:

- Policy and procedural issuances concerning required elements of the MOA
- Monitoring instruments and instructions
- Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required
- Information reflecting the extent to which Equal Opportunity training, including training for the EO Officer to maintain his/her competency as well as training for the EO Officer's staff, is planned and/or has been carried out (29 CFR 38.25[f] and 29 CFR 38.26[d])
- Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including appropriate sanctions
- Notices made under Notice and Communication (29 CFR 38.29 – 36)

MONITORING FOR COMPLIANCE AT THE STATE LEVEL

Your state's MOA describes:

- How the state will communicate monitoring obligations to all recipients
- How the recipients have made, and will continue making, efforts to ensure monitoring is occurring
- How the state will monitor and evaluate the success of its recipients' monitoring efforts



Wrap-up Activity – Alphabet Review (20 Minutes)

- In your groups, generate at least one significant item, concept or principle from element seven that starts with each letter of the alphabet.
- Use the page provided in your manual.
- You may be creative in adapting various words.
- Each group will be asked to share their items.

ALPHABET REVIEW

A.

N.

B.

O.

C.

P.

D.

Q.

E.

R.

F.

S.

G.

T.

H.

U.

I.

V.

J.

W.

K.

X.

L.

Y.

M.

Z.

