



Introduction to the Methods of Administration

What it is

What the basic regulatory requirements are



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Webinar Objectives

- **Give a bit of background**
 - **What law applies**
 - **Who must comply**
- **Explain in simple terms:**
 - **What an MOA is**
 - **What the basic MOA regulatory requirements are**



So what laws are we talking about here?

- Workforce Investment Act of 1998 (WIA), Section 188
- Implementing regulations: 29 CFR part 37
 - **Regulations are laws!**



Who must comply with these laws?

- WIA Section 188 and regulations apply to:
 - Governor
 - Recipients of WIA financial assistance, *as defined in 29 CFR part 37*

Examples of recipients:

✓ All programs and activities:

- offered by One-Stop partners
- through One-Stop delivery system

✓ Job Corps



What is a Methods of Administration (MOA)?

- Basically, it's the Governor's nondiscrimination program
 - *Governor is responsible* for ensuring that all covered State programs comply with Section 188 and the regulations (Section 37.51)
 - MOA: Describes *how Governor carries out* that responsibility



How is the MOA used?

- *CRC reviews it* to ensure that overall EO program:
 - complies with the law
 - is effective
- State- and local-level EO Officers, staff and management *can consult it* when deciding how to handle a particular situation



What are the overall MOA requirements?

- *Technical requirements for MOA itself are generally in sections 37.52 through 37.55*
 - EO Officer's obligations are in section 37.25(g)
- *But the whole point of the MOA is ...*
 - *to ensure nondiscrimination and equal opportunity*
 - *for everyone who comes in contact with your workforce system*



What are “MOA elements”?

- Convenient method of grouping together regulatory requirements related to a topic
- ELEMENTS ARE NOT THE LAW
 - You must comply with *the regulations under* each element
- MOA IS NOT THE LAW
 - MOA simply *explains Governor’s program* for ensuring compliance with the law
- See CRC’s MOA Guidance at http://www.dol.gov/oasam/regs/fedreg/notices/State-MOA_EO-Guidance.htm



What are the nine MOA elements?

1. Designation of Equal Opportunity Officers
2. WIA Equal Opportunity Notice & Communication
3. Assurances
4. Universal Access
5. Compliance with Disability Laws
6. Data Collection & Recordkeeping
7. Monitoring
8. Complaint Processing Procedures
9. Corrective Actions/Sanctions Procedures



General format for written MOAs

- **For each element:**

- **Narrative**

- ✓ Explains how Governor ensures that recipients comply with relevant regulatory requirements

- **Supporting documentation**

- ✓ Evidence to show that Governor has *actually* carried out her responsibilities



MOA Element I

Equal Opportunity (EO) Officers

29 CFR 37.23 through 37.28



Equal Opportunity (EO) Officer

- Oversees and directs a recipient's nondiscrimination and equal opportunity (EO) program
- Related responsibilities:
 - EO Officer responsibilities
 - Recipient responsibilities



EO Officer's responsibilities (Section 37.25)

- Serves as liaison with CRC
- Conducts EO monitoring and investigations
- Reviews written policies
- Deals with discrimination complaint processing procedures
- Reports directly to top official
- Undergoes training
- Oversees MOA development / implementation

Recipient responsibilities (Sections 37.23, 37.24, 37.26 through 37.28)

- Appoint senior-level employee as EO Officer (37.24)
- Ensure EO Officer:
 - Has no conflict of interest (37.24)
 - Gives top priority to EO-related duties (Guidance)
 - Has sufficient staff and resources (37.26(c))
 - Receives training necessary to maintain competency (37.26(d))



More recipient responsibilities under Element I

- Explicit
 - Publicizing EO Officer's name, position title, contact info (37.26 (a))
 - Ensuring EO Officer's name & contact info appear on all EO-related communications (37.26 (b))
- Implicit
 - Ensuring EO Officer reports directly to top-level official (37.25 (e))



MOA Element 2

Notice and Communication
29 CFR 37.29 through 37.36

Key Requirements For Notice and Communication

- Providing the WIA “Equal Opportunity Is the Law” Notice (aka “The Notice”)
- Putting “tag lines” and “alternative contact numbers” on covered materials
- Complying with language access requirements
- Discussing nondiscrimination and equal opportunity during orientations



What's the difference between “The Notice” and “tag lines”?

- “The Notice” (37.29 through 37.33)
 - It's an entire page long (required text is in 29 CFR 37.30)
- “Tag lines”: brief statements about policy and rights (37.34(a) and (b))
 - Each tag line is one sentence long
 - Required text is in 29 CFR 37.34(a)
- Each is used in different circumstances



More differences between “The Notice” and “tag lines”

- “The Notice” must be distributed in specific ways and to specific parties (listed in sections 37.29, 37.31, 37.32)
- “Tag lines”: must be included on *all materials* that describe:
 - *Programs or activities* that receive Federal financial assistance under WIA Title I, and/or
 - *Requirements for participation* in such programs or activities (37.34(a))

Alternative Contact Numbers

- “Alternative contact numbers”: term used informally by CRC
- Refers to phone numbers for use by persons with disabilities who cannot communicate via voice
 - TTY
 - Relay service such as
 - ✓ Voice Relay Service
 - ✓ Internet Protocol Relay Service



More on Alternative Contact Numbers

- You must provide alternative contact numbers wherever you provide voice phone numbers
- This requirement applies to the same materials on which you must include tag lines (37.34(a))

Providing services and information in languages other than English

- Basic legal principles
 - Denial of or delay in providing services / information in appropriate languages *may be* discrimination on the basis of national origin
 - Federal law trumps State “English-only” laws

Legal requirements

- Title VI and 29 CFR part 31 (DOL's Title VI regulations)
- WIA Section 188 and 29 CFR 37.35 (WIA nondiscrim reg)
 - “Take reasonable steps” or “make reasonable efforts” to meet language needs

How do you determine what to do when?

- CRC's Limited English Proficiency (LEP) Guidance is designed to help you figure it out
 - 68 FR 32290 (May 29, 2003)
 - <http://www.dol.gov/oasam/regs/fedreg/notices/2003013125.pdf>



Orientations

- All orientations for:
 - New employees
 - New participants
 - Members of the public
- Must contain a discussion of:
 - The rights provided / protected by WIA Section 188 and 29 CFR part 37
 - In particular, the right to file a discrimination complaint (Element 8)

Remember . . .

- In the MOA, for each element, you must include:
 - A narrative *describing* how the Governor ensures that recipients comply with these requirements, ***and*** ...
 - Documentation *proving* that the Governor has actually taken the actions described in the narrative



MOA Element 3

Assurances

29 CFR 37.20 through 37.22



Assurance Requirements for Recipients

- Assurance = agreement to comply with nondiscrimination requirements (specific text in 37.20)
 - This text:
 - Must be *physically included* in all **applications** for WIA Title I financial assistance (37.20(a)(1))
- (cont'd on next slide. . .)



More About Assurance Requirements for Recipients

- Assurance text:
 - is **“incorporated by operation of law”** in grant documents, contracts, any other arrangements that “make WIA Title I financial assistance available” [37.20(a)(2)]
 - This means that the assurance applies even where:
 - ✓ it isn't included in the grant document or contract
 - ✓ there isn't any document at all!

Examples of possible supporting documentation

- Copies of:
 - Memos or directives to grant and contract managers explaining the assurance requirements
 - Pages from Solicitations for Grant Applications (SGAs) or Requests for Proposal (RFPs) explaining that applications and proposals must contain the verbatim text of the assurance
 - Checklists or other guidelines used by contract / grant reviewers, showing that applications or proposals that do not include the assurance will not be considered

Poll Pop Quiz

- I. What must each element of a written MOA include?
 - a. A narrative explaining how the Governor ensures that recipients comply with the relevant regulatory requirements.
 - b. Documentary evidence proving that the actions described in the narrative have actually been taken.
 - c. Both of the above.



MOA Element 4

Universal Access

29 CFR 37.42

Universal access = outreach

- Recipients must make reasonable efforts to include varying demographic groups in their covered programs and activities, including:
 - Different genders
 - Various racial and ethnic groups
 - Individuals with disabilities
 - Different age groups

Minimum outreach requirements

- Advertising in media that target specific populations – examples:
 - Radio and TV stations that broadcast in specific non-English languages
 - Websites and web broadcasts designed to reach specific populations, such as youth, older persons, people with disabilities

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More minimum outreach requirements

- Sending notices about openings in your programs and activities to schools and community service groups that serve various populations
- Consulting with appropriate community organizations about ways to improve outreach and service to specific populations

Examples of possible supporting documentation

- Copies of plans for targeting, outreach, and recruitment (state or local level)
- Copies of One-Stop operators' outreach plans
- Samples of brochures, posters, or Public Service Announcements
- Assessments of population in service area, compared with statistics on customers



MOA Element 5

Compliance with Federal
Disability Nondiscrimination Laws

What Federal laws apply?

- Three relevant laws:
 - WIA Section 188 and regs (29 CFR part 37)
 - Section 504 of Rehabilitation Act of 1973 and DOL's implementing regs (29 CFR part 32)
 - Americans with Disabilities Act of 1990, as amended (known as "the ADA")
 - ✓ ADA Title I: applies to employers, employment agencies, others
 - ✓ ADA Title II: applies to State and local public entities, whether or not they receive Federal financial assistance

Sections within Element 5

- 5.1: General Prohibitions
- 5.2: Reasonable Accommodations
- 5.3: Reasonable Modifications
- 5.4: Most Integrated Setting
- 5.5: Effective Communication
- 5.6: Programmatic Accessibility
- 5.7: Architectural Accessibility
- 5.8: Employment Practices

Narrative must describe how Governor ensures that recipients:

- Don't discriminate based on disability (29 CFR 32.12 (a), 32.26, and 37.7)
- Provide reasonable accommodations / modifications (32.13 and 29 CFR 37.8)
- Provide services in integrated settings (37.7(a)(4), (c), and (d))
- Communicate as effectively with people with disabilities as with others (37.9)
- Provide architectural and programmatic accessibility (32.27 and 32.28)
- Regularly review selection criteria (32.14)
- Deal appropriately with medical and disability-related information (32.15 and other regulatory requirements)



MOA Element 6

Data and Information Collection
and Maintenance

29 CFR 37.37 through 37.41



What must the Governor do, and why?

- Ensure that all covered recipients in the State use a system for collecting and maintaining required data (37.53)
- The data system is for:
 - Monitoring recipient equal opportunity performance
 - Identifying individual instances of discrimination or areas of systemic discrimination
 - Identifying individuals or groups of individuals who have been discriminated against

What data must recipients ask for, and who must they ask? (37.37(b)(2))

- Four pieces of demographic information, including:
 - Race/ethnicity
 - Sex
 - Age
 - Disability status
- Specified groups of customers, applicants, and employees
- Data must be *kept confidential*



MOA Element 7

Monitoring for Compliance
29 CFR 37.54(d)(2)(ii)



Governor's monitoring responsibilities

- Establish systems to determine:
 - Whether *grant applicants / potential training providers are likely to comply with WIA nondiscrimination / EO requirements* [37.54(d)(2)(i)]
 - Whether *recipients are actually complying with those requirements* [37.54(d)(2)(ii)]



Required elements of system for monitoring recipients

- Each monitoring review must include, *at a minimum*:
 - **Statistical analyses** of demographic data recipient has collected under 37.37(b)(2), by race/ethnicity, sex/gender, age, and disability status
 - **Investigation of any significant differences** identified by statistical analysis, to see if the differences appear to be caused by discrimination
 - Review of recipient's compliance with:
 - ✓ administrative obligations (e.g., assurances, notice and communication, EO Officers)
 - ✓ any duties assigned under the MOA

Required supporting documentation

- Copies of:
 - Monitoring instruments and instructions
 - Monitoring reports (these should include statistical analyses)
 - Reports of follow-up actions taken where violations have been found (including sanctions imposed)
- Requirements are in Section 37.54(d)(2)(viii), paragraphs (B) and (E)



MOA Element 8

Complaint Processing Procedures
29 CFR 37.70 through 37.80

Complainants have two possible places to file complaints

- Complainant may either:
 - File with CRC, or
 - File at the recipient level (37.71)
 - ✓ Governor must decide whether “recipient-level” complaints will be filed at State level or local level
 - ✓ MOA must indicate which option Governor has chosen (37.77)

Procedures for processing complaints

- Decentralized system = State or local entity can decide what procedures to use
- *But* those procedures must *meet minimum requirements* listed in regs
 - *Any person* who thinks discrimination has taken place may file – not just victims (37.70)
 - *Time limit for filing* = 180 days unless complainant seeks, *CRC Director* grants extension (37.72)

Minimum requirements for complaint processing procedures (37.76)

- *90 days to process complaint* – recipient must issue *written Notice of Final Action* within *90 days* of complaint filing date
- *Initial written notice* acknowledging complaint has been received, telling complainant s/he has the right to be represented during process

(more on next slide)

More minimum requirements for complaint processing procedures

- *Written Statement of Issues* that must contain:
 - List of issues:
 - ✓ raised in complaint
 - ✓ accepted for investigation
 - For each rejected issue, explanation of reasons for rejection
- Fact-finding/investigation period
- Period to try to resolve complaint
 - Complainant must have option of alternative dispute resolution

(more on next slide)



Still more minimum requirements for complaint processing procedures

- Written Notice of Final Action must contain two elements:
 - For each issue raised in complaint, **either**:
 - ✓ Recipient's decision on issue and explanation of reasons for decision, **or**
 - ✓ Description of how parties resolved issue during ADR, **and**
 - Notice that if dissatisfied, complainant has right to file complaint with CRC within 30 days of the date on which Notice of Final Action is issued



MOA Element 9

Corrective Actions and Sanctions

29 CFR 37.52(a)(4)

This is one area where Governor has discretion

- Regulations:
 - Specify that MOA must describe procedures for corrective actions / sanctions, *but . . .*
 - *Do not specify* what the corrective actions / sanctions must be
- MOA Guidance gives guidelines

What corrective actions / sanctions should be used?

- CRC MOA Guidance explains that corrective actions / sanctions:
 - **Must:**
 - ✓ completely correct each violation
 - ✓ provide for:
 - retroactive relief (back pay, lost benefits) *and*
 - prospective relief (training, policy development, communication) to prevent future violations
 - Should include time frames for correction



Any questions?

CRC Information

Web site:

www.dol.gov/oasam/programs/crc/

**Office of Compliance Assistance & Planning
(202) 693-6501**

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(202) 693-6502**

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THAT'S ALL FOLKS!

