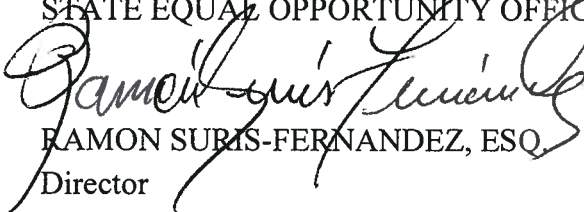




<b>U.S. Department of Labor</b> <b>Office of the Assistant Secretary for Administration and Management</b> <b>CIVIL RIGHTS CENTER</b> <b>Room N-4123</b> <b>200 Constitution Avenue, NW</b> <b>Washington, DC 20210</b>	<b>CRC Directive No.:</b> <b>2009 - 02</b>
	<b>Date of Issuance:</b> <b>August 13, 2009</b>
	<b>Date of Expiration:</b> <b>NONE</b>

TO: STATE GOVERNORS  
STATE EQUAL OPPORTUNITY OFFICERS

FROM:   
RAMON SUBIS-FERNANDEZ, ESQ.  
Director  
Civil Rights Center, U.S. Department of Labor

SUBJECT: Requirements for the Biennial Review of the MOA and Submission of MOA Revisions and Certifications

**Purpose.** This Directive addresses the requirements for Governors' biennial review of their States' Methods of Administration (MOA) documents, and for their submission of MOA revisions or certifications that the previously submitted MOA remains in effect. Under the regulations implementing Section 188 of the Workforce Investment Act of 1998 (WIA), these documents are submitted to the Director of the U.S. Department of Labor Civil Rights Center (CRC). The Directive also announces that CRC:

- Is realigning the schedule for Governors' submissions of either revised MOAs or certifications of previous MOAs, so that the schedule is once again consistent with the explicit regulatory language regarding the deadlines for such submissions. The realigned schedule is attached to this Directive.
- Will review each Governor's compliance with the requirements for biennially reviewing the State's MOA and for submitting either a revision of the MOA or a certification that the previously submitted MOA remains in effect (this certification is considered a request for a finding that the MOA continues to provide a reasonable guarantee of compliance). CRC's review will include a finding of whether the Governor complies with the regulatory deadlines for submission.
- Will follow the regulatory procedures set forth in 29 CFR part 37, Subpart D, including the enforcement provisions, when conducting the reviews.

**Background.** The regulations, codified at 29 CFR part 37, that implement the nondiscrimination and equal opportunity provisions found in Section 188 of WIA require that each State Governor establish and adhere to an MOA for “State programs” as defined in 29 CFR 37.4. The MOA is a document that describes the actions each State will take to ensure that its WIA Title I-financially assisted programs, activities, and recipients are complying, and will continue to comply, with WIA Section 188 and its implementing regulations. By submitting an MOA, the Governor agrees to fully follow its provisions.

CRC is responsible for administering and enforcing WIA Section 188 and for developing and issuing policies, guidance, standards, and procedures for effecting compliance with that Section and its implementing regulations. Pursuant to Section 37.13 of those regulations, the CRC Director is authorized to make any rulings under or interpretations of WIA Section 188 or 29 CFR part 37. This Directive is issued under Section 37.13.

Section 37.55(c) of the WIA nondiscrimination regulations provides that every two years from the date on which the initial MOA is submitted to the CRC Director, the Governor must review the MOA and the manner in which it has been implemented and determine whether any changes are necessary in order for the State to fully and effectively comply with WIA Section 188 and its implementing regulations in 29 CFR part 37. If changes to the MOA are necessary, the Governor must submit the changes, in writing, to the CRC Director. If no changes are necessary, the Governor must certify, in writing, that the MOA previously submitted remains in effect. The CRC Director reviews the MOA submissions and makes a finding on the issue of whether the MOA provides a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIA Section 188 and its implementing regulations in 29 CFR part 37.

*Realignment of deadlines for submission.* Since the WIA nondiscrimination regulations were first published in November 1999, the actual dates on which States have submitted their MOA revisions or certifications have deviated from the deadlines specified in the regulations. These deviations have taken place for a variety of reasons, including a directive issued by CRC in 2005 revising the submission schedule. CRC has also granted extensions of the deadlines for individual States to submit their revised MOAs or certifications. CRC believes that the resulting pattern of MOA submissions has reduced the benefits for Governors of having a current MOA that has been reviewed and found by the CRC Director to give a reasonable guarantee of compliance.

These benefits are not insignificant. The Governor is jointly and severally liable for all violations of the nondiscrimination requirements by the recipients in his or her State, unless he or she has established and adhered to a MOA that meets the requirements set forth in the regulations, and has taken three other necessary actions.<sup>1</sup> 29 CFR 37.52(a)(1). If the Director finds that one or more recipients in a particular State has violated WIA Section 188 or its

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<sup>1</sup> The three additional actions that the Governor must have taken in order to be eligible for a waiver of joint and several liability under the regulations are “Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity,” “Acted with due diligence to monitor the recipient's compliance with these provisions,” and “Taken prompt and appropriate corrective action to effect compliance.” See 29 CFR 37.52(a)(2), (3), and (4).

implementing regulations, but determines that the Governor has met the MOA requirement, and has taken the other required steps, the Director may recommend to the Secretary of Labor that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient. 29 CFR 37.52(b). Thus, a current MOA that has been reviewed by the CRC Director and found to provide a reasonable guarantee of compliance can help shield a Governor from liability for a recipient's actions.

Further, if a complaint filed with CRC alleges that a State's or recipient's nondiscrimination and/or equal opportunity procedures are unlawful or unfair, and the State has in place a current MOA that has been reviewed and found to provide the required reasonable guarantee, the CRC Director may simply compare the procedures described in the complaint to the procedures described in the MOA. If, during the MOA review process, CRC has already made a positive finding regarding those procedures, the State, its recipients, and CRC may all avoid a burdensome and unnecessary complaint investigation. See Preamble, "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998," Section III, "Overview of the Rule," Subpart B, "Recordkeeping and Other Affirmative Obligations of Recipients," discussion of 29 CFR 37.54, 64 FR 61692, 61707-08 (November 12, 1999).

In order to receive these benefits, the Governor and his or her State must have in place a current MOA that has been reviewed and found by the CRC Director to provide the required reasonable guarantee. Consequently, it is in the interests of the Governor to review the State's MOA and to submit the revisions or certifications to the CRC Director, *on a timely basis*, in order to ensure that the shield provided by the MOA continues uninterrupted.

Accordingly, CRC is realigning the MOA submission schedule so that it is consistent with the explicit regulatory language regarding the deadlines for submission. The realigned schedule is attached to this Directive. Acknowledging the potential impact of this realignment on a State's workload planning, CRC has designed the schedule to give States enough lead time to comply with the realigned deadlines.

Note that this directive does not change the requirement under 29 CFR 37.55(b) that the Governor promptly update the MOA whenever necessary and notify the Director in writing at the time that any updates are made.

*Procedures for review of submissions.* CRC will continue to review Governors' MOA submissions, during the biennial review process or at other times, for compliance with the regulatory requirements. In doing so, beginning on the date on which this Directive is issued, CRC will follow the procedures set forth in 29 CFR part 37, Subpart D, and particularly in sections 37.63 through 37.66. CRC will initiate its review of a Governor's compliance with the MOA biennial review requirements by sending a Notification Letter. Extensions will be granted only in extremely rare circumstances.

*Enforcement Action.* If a Governor fails to respond to the Notification Letter on a timely basis, by submitting either a revised MOA or a certification, CRC may take appropriate enforcement action as authorized by the WIA nondiscrimination regulations.

**Action Required.** Each Governor or his/her designee and each State's Equal Opportunity (EO) Officer, must ensure that the Governor submits either the revisions to the State's MOA, or a certification that the previously-submitted MOA remains in effect, to the CRC Director by the deadline imposed by the WIA nondiscrimination regulations. This will require the Governor and the EO Officer to ensure that the biennial review of the State's MOA takes place in enough time to permit any necessary revisions to the MOA to be made.

**Inquiries.** For further information about this policy or the underlying legal requirements, contact the U.S. Department of Labor, Civil Rights Center, Office of Compliance Assistance and Planning at 202-693-6501 (voice), 202-693-6516 (TTY), or 800-877-8339 (Federal Relay Service -- for TTY); by e-mail at [CivilRightsCenter@dol.gov](mailto:CivilRightsCenter@dol.gov); or by postal mail at U.S. Department of Labor, Civil Rights Center, Office of Compliance Assistance and Planning, 200 Constitution Ave. NW, Room N4123, Washington, DC 20210.

Attachment

## MOA SUBMISSION SCHEDULE

<u>STATE</u>	<u>DATE</u>
Alabama	June 19, 2011
Alaska	February 6, 2011
Arizona	January 24, 2011
Arkansas	December 26, 2010
California	February 28, 2012
Colorado	July 3, 2011
Connecticut	December 14, 2010
Delaware	January 11, 2011
District of Columbia	March 12, 2011
Florida	February 1, 2011
Georgia	December 27, 2010
Hawaii	December 21, 2010
Idaho	December 26, 2010
Illinois	February 14, 2010
Indiana	September 29, 2010
Iowa	February 8, 2011
Kansas	December 20, 2010
Kentucky	October 17, 2010
Louisiana	March 5, 2011
Maine	May 29, 2011
Maryland	February 20, 2011
Massachusetts	February 8, 2011
Michigan	December 20, 2010
Minnesota	December 22, 2010
Mississippi	January 2, 2011
Missouri	January 2, 2011
Montana	December 31, 2010
Nebraska	September 18, 2011

Nevada	December 27, 2010
New Hampshire	December 27, 2010
New Jersey	March 13, 2011
New Mexico	December 17, 2011
New York	February 27, 2012
North Carolina	December 29, 2010
North Dakota	January 22, 2011
Ohio	November 15, 2011
Oklahoma	December 31, 2010
Oregon	January 22, 2011
Pennsylvania	July 11, 2010
Puerto Rico	July 12, 2011
Rhode Island	May 7, 2011
South Carolina	June 1, 2011
South Dakota	February 9, 2011
Tennessee	December 28, 2010
Texas	August 18, 2010
Utah	September 8, 2010
Vermont	September 20, 2010
Virgin Islands	June 7, 2011
Virginia	June 21, 2011
Washington	December 26, 2010
West Virginia	December 21, 2010
Wisconsin	December 21, 2010
Wyoming	December 27, 2010