

Office of the Secretary of Labor

§ 34.40

(b) The Methods of Administration shall be:

(1) In writing;

(2) Updated periodically as required by the Director; and

(3) Signed by the Governor.

(c) The Methods of Administration shall, at a minimum:

(1) Describe how the requirements of §§ 34.20, 34.21, 34.22, 34.23, 34.24, 34.31, and 34.42 have been satisfied; and

(2) Include the following additional elements:

(i) A system for periodically monitoring the compliance of recipients with this part, including a determination as to whether the recipient is conducting its JTPA-funded program or activity in a nondiscriminatory way;

(ii) A system for reviewing the nondiscrimination and equal opportunity provisions of job training plans, contracts, assurances, and other similar agreements;

(iii) Procedures for ensuring that recipients provide accessibility to individuals with disabilities;

(iv) A system of policy communication and training to ensure that members of the recipients' staffs who have been assigned responsibilities pursuant to the nondiscrimination and equal opportunity provisions of JTPA or this part are aware of and can effectively carry out these responsibilities;

(v) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and

(vi) Supporting documentation to show that the commitments made in the Methods of Administration have been and/or are being carried out. Supporting documentation includes, but is not limited to: policy and procedural issuances concerning required elements of the Methods of Administration; copies of monitoring instruments and instructions; evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated pursuant to this part; information reflecting the extent to which Equal Opportunity training, including training called for by § 34.22, is planned and/or has been carried out; as applicable, reports of monitoring reviews and reports of follow-up actions taken thereunder where violations

have been found, including, where appropriate, sanctions; and copies of any notification made pursuant to § 34.23.

(d) The Governor shall, within 180 days of the effective date of this part:

(1) Develop and implement Methods of Administration consistent with the requirements of this part, and

(2) Submit a copy of the Methods of Administration to the Director.

§ 34.34 Monitoring.

(a) The Director may periodically review the adequacy of the Methods of Administration established by a Governor, as well as the adequacy of the Governor's performance under that Methods of Administration, to determine compliance with the requirements of § 34.33. The Director may review the Methods of Administration during a compliance review under § 34.40, or at another time.

(b) Nothing in this subpart shall limit or preclude the Director from monitoring directly any JTPA recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of JTPA or this part.

(c) The procedures contained in subpart D of this part shall apply to reviews or investigations undertaken pursuant to paragraphs (a) and (b) of this section.

Subpart D—Compliance Procedures

§ 34.40 Compliance reviews.

(a) The Director may from time to time conduct pre- and post-approval compliance reviews of grant applicants for and recipients of Federal financial assistance under JTPA to determine compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part. Techniques used in such reviews may include desk reviews, on-site reviews, and off-site analyses.

(b) *Pre-approval reviews.* (1) As appropriate and necessary to ensure compliance with the nondiscrimination and equal opportunity provisions of JTPA or this part, the Director may review any application, or class of applications, for Federal financial assistance under JTPA prior to and as a condition

§ 34.41

of their approval. The basis for such review shall be the assurance specified in §34.20, information and reports submitted by the grant applicant pursuant to this part or guidelines published by the Director, and any relevant records on file with the Department.

(2) Where the Director determines that the grant applicant for Federal financial assistance under JTPA, if funded, would not comply with the nondiscrimination and equal opportunity requirements of JTPA or this part, the Director shall issue a Letter of Findings. Such Letter of Findings shall advise the grant applicant, in writing, of:

- (i) The preliminary findings of the review;
- (ii) The proposed remedial or corrective action pursuant to §34.44 and the time within which the remedial or corrective action should be completed;
- (iii) Whether it will be necessary for the grant applicant to enter into a written Conciliation Agreement as described in §34.45; and
- (iv) The opportunity to engage in voluntary compliance negotiations.

(3) If a grant applicant has agreed to certain remedial or corrective actions in order to receive Federal financial assistance under JTPA, the Department shall ensure that the remedial or corrective actions have been taken or that a Conciliation Agreement has been entered into, prior to approving the award of further assistance under JTPA. If a grant applicant refuses or fails to take remedial or corrective actions or to enter into a Conciliation Agreement, as applicable, the Director shall follow the procedures outlined in §34.46.

(4) The Director shall notify, in a timely manner, the departmental granting agency of the findings of the pre-approval compliance review.

(c) *Post-approval reviews.* (1) The Director may initiate a post-approval review of any recipient to determine compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part. The initiation of a review may be based on, but need not be limited to, the following: The results of routine program monitoring, the nature of or incidence of complaints, the date of the last review, and Congressional or community concerns.

29 CFR Subtitle A (7-1-12 Edition)

(2) Such review shall be initiated by a Notification Letter, advising the recipient of:

- (i) The practices to be reviewed;
- (ii) The programs to be reviewed;
- (iii) The data to be submitted by the recipient within 30 days of the receipt of the Notification Letter; and
- (iv) The opportunity, at any time prior to receipt of the Final Determination described in §34.46, to make a documentary or other submission which explains, validates or otherwise addresses the practices under review.

(3) Except as provided in §34.41(e), within 210 days of issuing a Notification Letter initiating a review, the Director shall:

- (i) Issue a Letter of Findings, which shall advise the recipient, in writing, of:
 - (A) The preliminary findings of the review;
 - (B) Where appropriate, the proposed remedial or corrective action to be taken, and the time by which such action should be completed, as provided in §34.44;
 - (C) Whether it will be necessary for the recipient to enter into a written assurance and/or Conciliation Agreement, as provided in §34.45; and
 - (D) The opportunity to engage in voluntary compliance negotiations.
- (ii) Where no violation is found, the recipient shall be so informed in writing.
- (4) The time limit for submitting data to the Director pursuant to paragraph (c)(2)(iii) of this section may be modified by the Director.

§ 34.41 Notice to Show Cause.

(a) The Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the failure or refusal to:

- (1) Submit requested data within 30 days of the receipt of the Notification Letter;
- (2) Submit documentation requested during a compliance review; or
- (3) Provide the Directorate access to a recipient's premises or records during a compliance review.