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UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

DEC 28 1998

Re: Biennial Compliance Reports to the Office for Civil Rights

Dear Colleagues:

Now that we have completed one full cycle under the September 1996 revised procedures for Vocational Education Methods of Administration (MOA) reports, the Office for Civil Rights (OCR) has developed some supplementary advice and guidance that state agencies may find useful in developing their future compliance reports. This advice is based on experience gained by OCR staff and state MOA Coordinators in implementing these new procedures. MOA Coordinators who participated in the workshop sponsored by OCR in Washington, D.C. in 1997 reviewed and discussed many of the first reports submitted under the new procedures. The participants also offered a number of recommendations for improving the format and content of future MOA compliance reports. OCR has refined and augmented these recommendations in light of our subsequent reviews of states' compliance reports.

The 1996 revisions to the Memorandum of Procedures (MOP) were designed to give state agencies greater flexibility to target and address serious equity-related issues or priorities, and to increase state agency resources available for comprehensive on-site reviews by reducing the requirements and associated paperwork for reports to OCR. The revised MOP identifies eight information items that comprise the newly simplified compliance reports. Six of these items provide basic information about the state agency's sub-recipient universe and compliance activities. The remaining two items are the substantive portions of the report: the letters of findings (LOFs) issued pursuant to the on-site reviews conducted during the reporting period, and the voluntary correction plans (VCPs) for these on-site reviews.

The enclosure provides discussion and recommendations for each of these items. We hope this information will assist you in your ongoing civil rights activities, as well as in preparing your next OCR report. If you have any questions about the enclosure, please telephone Mary Lou Starling at 202-205-9496.

Sincerely,

Jeanette Lim

Jeanette Lim
Director
Program-Legal Group
Office for Civil Rights

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Advice for MOA Coordinators on Preparing Biennial Reports to OCR

Item 1: Staff Resources: The staff resources, in full time equivalent (FTE) or person years, allocated by the state agency to the MOA compliance program during each year of the reporting period.

Discussion: Few states keep precise records of the "person-hours" devoted to MOA activities. Consequently, this item will be an estimate of the state agency's total staff time spent on MOA activities during a reporting year. For this estimate, it does not matter that agencies may define "person year" or FTE differently. The reporting agency may wish to include a brief explanation of how the term is being used, but this is not required.

The estimate usually starts with the percentage of the MOA Coordinator's work year that is spent on the whole range of MOA activities (targeting of on-sites, data analysis, technical assistance to sub-recipients and co-workers, policy reviews, on-site compliance reviews and letters of findings, corrective action plans, monitoring, etc.). For example, if the MOA Coordinator spends about half of his or her time during the work year on MOA activities, this would be expressed as 0.5 FTE, or 50% of a person year. To this base number would be added the time spent by other agency staff on MOA activities. For example, if a "work year" is defined as 50 weeks, and if three other agency staff each spend three weeks participating in on-site reviews and related activities, that could be estimated as an additional 0.18 FTE or 18% of a person year.

Recommendations:

- There should be a separate estimate of staff time for each reporting year.
- The same basic system (FTE or person years) should be used to designate the time spent by each participating staff member.
- Although the requirement is merely to report total staff resources allocated per year to MOA, it is preferable to break out the time spent by the MOA Coordinator.

Item 2: New Policy Review: The results of the review of new state policies and procedures set forth in the four areas cited in Section II (a) of the Guidelines, along with a description of the actions taken, if any, to correct any new policies and procedures found to be discriminatory.

Discussion: This item is not intended to provide a detailed discussion of reviews of new state policies and procedures. Rather, it should be limited to summaries of any actions taken to correct any discriminatory aspects. It is not necessary to discuss new policies or procedures that you found to be non-discriminatory. The policies themselves should not be submitted.

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Recommendations:

- This item can be satisfied with a statement saying that new state policies and procedures were reviewed and none were found to be discriminatory.
- This item also can be satisfied with a statement saying that revisions were made to several new state policies and procedures to ensure that they were not discriminatory. You may indicate the subject area(s) of these policies, but it is not required.
- If considerable time and effort was devoted to this task, you may want to estimate the number of policies reviewed and their subject area(s). A chart is acceptable.
- Do not include the new policies and procedures in your report to OCR.

Item 3: Subrecipient universe: A list of the subrecipient and SOP universe in alphabetical order and the year in which the last on-site was conducted. Subrecipients or SOP's that are new from the previous report should be noted.

Discussion: State agencies that review both secondary and post-secondary institutions often design their targeting plans to include a certain number of on-site reviews for each level. Where this is the case, it is useful to make separate lists. It is helpful to annotate the list(s) to indicate changes since the last report: sub-recipients that have merged or gone out of existence, as well as "new" ones that have been added. If the year of the last on-site is not known, or if the last on-site(s) involved merged institutions, this also should be noted. While many state agencies continue to schedule on-site reviews of each sub-recipient every five years, the revised MOP eliminated this requirement so that state agencies could concentrate their efforts on the sub-recipients with the greatest potential civil rights problems.

Recommendations:

- Make separate secondary and post-secondary lists of sub-recipient vocational education institutions and programs.
- Annotate the list(s) to indicate additions, eliminations, and mergers of sub-recipients.

Item 4: Subrecipient ranking: A list of the subrecipient and SOP universe ranked by the state's selection criteria used for on-site selection.

Discussion: A ranked list is possible only when the agency targets on-site reviews according to some mathematical formula. Agencies that use other methods will need to use a different technique to illustrate how they applied their targeting criteria to their sub-recipient universe. A brief explanation of the ranking system will be necessary, but it is

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not necessary to submit an additional copy of the targeting plan, unless you have made revisions since submitting your plan to OCR.

Some agencies balance their review selection to include a variety of institutions and potential civil rights problems. For example, an agency responsible for 3 on-site reviews per year might distribute them as follows: 1 recently remodeled vo-tech high school with a history of accessibility problems; 1 community college with very few women students in non-traditional programs; and 1 multi-district vo-tech center with a high number of discrimination complaints. For such a targeting system, 3 separate ranked lists would be appropriate. A state agency with a large sub-recipient universe may want to conduct their on-site reviews only at schools with a large vocational education student population. In this instance, these larger schools should be ranked or grouped according to the other targeting criteria, but schools with smaller populations need not appear on this list.

Recommendations:

- The ranked list(s) or groupings should be consistent with the agency's targeting plan.
- Include a brief explanation of the ranking system.
- It is useful, although not required, to indicate how the various criteria (e.g. student population, number of programs, number of complaints), apply to the sub-recipients selected for on-site reviews.
- Do not rank sub-recipients solely on the basis of time since the last on-site review.

Item 5: Monitoring: A list of all subrecipients and SOP's that the state is monitoring pursuant to on-site reviews conducted in the previous year, along with a summary of the status of each outstanding or fully implemented VCP.

Discussion: A voluntary correction plan should stipulate the specific remedies necessary to correct each violation, the time period needed to implement each remedy, and when and how full implementation of each remedy will be verified to the state agency. Sometimes that full implementation occurs after the submission of the compliance report that included the on-site review and resulting LOF and VCP. This item is designed to report the status of these VCPs from prior reporting periods.

For example, a sub-recipient should be able to publish notices and revise policies and procedures within 30 to 60 days, and mail copies to the state agency as verification that this remedy has been completed. The same sub-recipient, to provide full program accessibility to the disabled, may need to relocate some classes temporarily for a year or more while necessary structural modifications are completed. Written verification may suffice for the temporary relocations, but the state agency may need to conduct an on-site monitoring visit to confirm the structural modifications. The state agency should have

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a system for tracking sub-recipients' progress in completing VCPs, including prompt notice to sub-recipients when they fall behind schedule. With such a system, it is a relatively simple matter to report the status of VCPs. Some states use a chart for this purpose, listing for each sub-recipient the corrections to be made, target completion dates, actual completion dates, methods of verification, and date(s) on which the state agency verified the completion(s). Where extensions are granted or monitoring visits are planned, these should be noted.

Recommendations:

- At a minimum, the list should indicate whether the VCP is fully implemented and, if not, when full implementation is expected.
- Where full implementation has been delayed beyond the time frames specified in the VCP, this should be noted.
- Monitoring visits and other verification activities should be noted.
- Technical assistance visits related to implementation of the VCP may be noted.

Item 6: On-site reviews: A list of the subrecipients and SOP's for which the state conducted on-site reviews.

Discussion: Because your report covers two years, you should either provide a separate list for each year, or list the on-site reviews chronologically, or indicate the date of each review. Since your report should include the LOF and VCP for each on-site review, this item also serves as a list of those enclosures. Occasionally, when an on-site review is conducted shortly before the report is due to OCR, you may not have completed the LOF or accepted the VCP when you submit your report. If this occurs, you should indicate on this list the date by which the outstanding LOF or VCP will be submitted to OCR. In most cases, the list of on-site reviews will correspond to your ranked list of subrecipients in Item 4. Differences should be noted and briefly explained.

Recommendations:

- List on-site reviews by reporting year.
- Note any LOFs or VCPs that are absent from your report, and indicate their projected submission date(s).
- Explain any discrepancies between your ranked list of subrecipients and your on-site selections.

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Item 7: Letters of Findings: A copy of each letter of findings (LOF) issued pursuant to the on-site reviews conducted during the reporting period.

Discussion: There is no required format for LOFs, and they vary widely from agency to agency. However, all LOFs serve the same purpose: to inform the sub-recipient of the compliance standards applied during the review; to identify the documents, facilities or other evidence examined relative to each standard; and to explain any need for corrective action. Some agencies find it effective to include "commendations" for particularly effective programs, as well as "recommendations" for correcting violations. Some agencies begin and end their on-site reviews with meetings discussing compliance standards and findings. Such meetings should not be substituted for a thorough LOF, however. Both the state agency and the sub-recipient need a written record of the review.

The secondary purpose of the LOF is to permit OCR to assess the adequacy of the review and any resulting corrective actions. On-site reviews must be comprehensive in scope, even where certain issues are targeted for in-depth attention. It should be clear from the LOF (supplemented by on-site checklists as appropriate) that the review addressed the major issue areas discussed in the Guidelines, Sections IV through VIII. Greater emphasis may be given to some issues, consistent with the agency's targeting plan. Compliance standards should be based on the Federal regulations implementing Title VI of the Civil Rights Act of 1964 (34 CFR, Part 100), Title IX of the Education Amendments of 1972 (34 CFR, Part 106), Section 504 of the Rehabilitation Act of 1973 (34 CFR, Part 104), and the Americans with Disabilities Act of 1990 (28 CFR, Part 35). With the recent streamlining of the MOA reports, the LOFs are the state agency's primary means of documenting the quality of their MOA program.

Some state agencies have combined their required MOA on-site reviews with other monitoring visits focusing on general program evaluation, Perkins funding, accreditation, or other subjects. This is not recommended. Sites should be selected for MOA reviews based on civil rights criteria as stated in the targeting plan, and not based on some other monitoring schedule. If an agency schedules additional reviews concurrent with the civil rights review, the on-site reviewers must ensure that the sub-recipient has a clear and distinct understanding of their civil rights responsibilities and of the potential consequences of failing to meet them. Civil rights matters should be treated separately in any presentations, checklists, and other materials, and the LOF should be a separate document. (The voluntary correction plan also should be a separate document.)

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Recommendations:

- The LOF should include compliance standards with regulatory citations and, for each standard, a summary of evidence (e.g. documents, facilities, interviews), findings and recommendations.
- The LOF should be detailed and substantive, and make it clear that a comprehensive on-site review was conducted.
- If the LOF is brief, the complete investigative report or on-site checklist(s) should be provided to the sub-recipient and attached to the OCR report.
- The civil rights on-site review should be conducted independent of Carl Perkins or other funding reviews, even if these reviews happen to be scheduled at the same time. The LOF for the civil rights review should be a separate, distinct document.
- Violations should be clearly identified as such, although the LOF also may discuss "concerns" or potential problems that do not rise to that level.
- The LOF should avoid blanket statements of compliance, and say instead that the investigation did not reveal any evidence of a violation.
- The LOF should remind subrecipients of their continuing civil rights obligations.

Item 8: Voluntary Correction Plans: A copy of each voluntary correction plan (VCP) that was received and accepted for the on-site reviews conducted during the reporting period.

Discussion: There is no required format for the VCP. However, there must be a remedy for each violation. Each remedy should include a description of the action to be taken by the sub-recipient, the date or time frame for its implementation, and how the implementation of the remedy will be reported to (and verified by) the state agency. The remedy must be "legally sufficient" -- that is, it must bring the sub-recipient into compliance with the applicable regulation. It is expected that the time frames for implementation of the various remedies will vary according to complexity. As discussed in Item 5 above, state agencies should maintain a system for monitoring sub-recipients' timely implementation of corrective actions and the submission of verification reports as specified in the VCP.

Recommendations:

- There should be a remedy for each violation.
- Each remedy should include a statement of what will be done, by when, and how it will be reported and verified.
- Implementation of the remedy should be prompt, but reasonable in light of its difficulty.
- When developing the VCP, it is useful to consider how implementation will be verified and monitored.

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- As part of the VCP, it is useful to consider how to measure whether the remedy did, in fact, achieve the desired effect.

General Recommendations:

In addition to the specific discussion and recommendations above, a few general recommendations are offered for future compliance reports to OCR:

- Be sure that each of the eight items above are complete and included in your report.
- Please follow the Revised Procedures of the September 1996 Memorandum for State Methods of Administration (MOA) Coordinators in preparing your future reports.
- Please limit your future reports to the items listed in the September 1996 Revised Procedures.