EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 11-14

TO: STATE WORKFORCE AGENCIES
STATE-LEVEL EQUAL OPPORTUNITY OFFICERS

FROM: PORTIA WU
Assistant Secretary
Employment and Training Administration

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Director
Civil Rights Center

SUBJECT: Collection and Analysis of Claimant Demographic Data

1. **Purpose.** The purpose of this directive is to remind all State administrators of Unemployment Insurance (UI) programs of their responsibility: (1) to collect and analyze claimant demographic data for possible indications of systemic discrimination, and (2) to investigate any such indications of potential discrimination that the analyses disclose. This Unemployment Insurance Program Letter (UIPL) rescinds and replaces UIPL No. 46-89.

2. **References.** Sections 121(b)(1)(B)(xii) and 188 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2841(b)(1)(B)(xii); 29 U.S.C. 2938; 29 CFR Part 37.

3. **Background.** Subsections (a) and (b) of WIA Section 188 prohibit discrimination on the basis of race, color, religion, sex (with limited statutory exceptions), national origin, age, disability, or political affiliation or belief with regard to participation in, provision of benefits of, or employment in the administration or in connection with, any program or activity funded or otherwise financially assisted in whole or in part under WIA. 29 U.S.C. 2938(a), (b). Section 121(b)(1)(B)(xii) requires that programs authorized under State unemployment compensation laws ("State unemployment insurance agencies" or "State UI agencies") participate as required partners in WIA's American Job Center Network (formerly known as the One-Stop delivery system). 29 U.S.C. 2841(b)(1)(B)(xii).

   The Department of Labor's (DOL's) regulations implementing WIA Section 188 apply that statutory nondiscrimination mandate to all programs and activities that are part of the workforce investment system and that are operated by One-Stop partners listed in WIA Section 121(b). *See* 29 CFR 37.2(a)(2) and 37.4. Accordingly, State UI agencies are subject to DOL's regulations implementing Section 188's nondiscrimination provisions. As explained further below, among the requirements to which State UI agencies must adhere is

RESCISSIONS	EXPIRATION DATE
UIPL No. 46-89	Continuing

the mandate that certain demographic data be collected, maintained, and stored confidentially.[1] 29 CFR 37.37(b)(1), (b)(2). Such information is necessary to, among other things, determine the extent to which the recipients are operating their programs or activities without discrimination prohibited by WIA Section 188. 29 CFR 37.37(b)(2).

4. **Requirements for Data Collection and Maintenance.** State UI agencies, as recipients, are subject to the non-discrimination and equal opportunity requirements in 29 CFR Part 37. As such, they are required to "collect such data and maintain such records . . . as the Director [of DOL's Civil Rights Center, or CRC] finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA or [29 CFR] part [37]." 29 CFR 37.37(b)(1). In particular, each recipient "must record the race/ethnicity, sex, age, and where known, disability status of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee." 29 CFR 37.37(b)(2). DOL interprets this regulatory provision as requiring "recipients" to ask individuals in the listed categories for their demographic data, but not requiring such individuals to provide the data, except where necessary to determine eligibility for a particular program or activity. "The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the "recipient's" compliance with section 188 of WIA and [29 CFR] part [37]." 29 CFR 37.37(b)(1).

   Information that must be provided before asking for demographic data. DOL's regulations cited above require recipients to provide information about the reasons for a data request, and the ways in which the data may be used, before asking about a claimant's race/ethnicity, sex, age, or disability status.[2] In addition, all requests for such information must inform the claimant that the provision of such information is voluntary, and that such information may not be used as determinants of eligibility for participation in the unemployment insurance program. This does not preclude state UI agencies from doing fact-finding if there is an indication the individual may not have been "able and available" for work and making an eligibility determination based on the fact finding.

   When and under what circumstances to ask for data. As noted above, the regulations require recipients to record the race/ethnicity, sex, age, and disability status of "every applicant, registrant, eligible applicant/registrant, participant, [and] terminee. . . ." Each claimant must be asked to provide the four categories of demographic data during the initial application process. To ensure that data analyses provide an accurate picture of whether a State's processes for determining benefits claims and/or appeals are nondiscriminatory, it is

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[1] This data must be kept for a minimum of three years from the close of the applicable program year, but may be kept longer if required by a State UI program. 29 C.F.R. 37.39.

[2] 29 CFR 37.37(d) requires compliance with the U.S. Office of Management and Budget guidelines on the collection of data based on race or ethnicity. As the date of this directive, those guidelines are obtainable in the document "Standards and Guidelines for Statistical Surveys" (September 2006) available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/statpolicy/standards_stat_surveys.pdf and "Questions and Answers When Designing Surveys For Information Collections" (January 2006) Question 56 p. 51 available at http://www.whitehouse.gov/sites/default/files/omb/inforeg/pmc_survey_guidance_2006.pdf

particularly important to make efforts to ensure that demographic data are collected as part of the initial UI eligibility determination and updated throughout the claims process where feasible.[3]

Format of questions about race and ethnicity. Under the WIA nondiscrimination regulations, questions about race and ethnicity must follow the current guidelines of the U.S. Office of Management and Budget. *See* 29 CFR 37.37(d). As of the date of this directive, those guidelines are obtainable in the document "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity," published as Appendix A to "Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity" ((December 15, 2000)), and available at http://www.whitehouse.gov/sites/default/files/omb/assets/information_and_regulatory_affairs/re_app-a-update.pdf.

The cited guidelines state that "Self-reporting or self-identification using two separate questions is the preferred method for collecting data on race and ethnicity. In situations where self-reporting is not practicable or feasible, the combined format may be used." In DOL's view, the UI program presents few, if any, circumstances under which self-reporting of race and ethnicity is not practicable or feasible; therefore, the two-question format should be used. The guidelines require that under this format, ethnicity must be collected first.

According to the guidance, the minimum designations for race and ethnicity in the two-question format are:

Ethnicity:
-- Hispanic or Latino
-- Not Hispanic or Latino

Race:
-- American Indian or Alaska Native
-- Asian
-- Black or African American
-- Native Hawaiian or Other Pacific Islander
-- White

Individuals shall be offered the option of selecting one or more racial designations. Recommended forms for the instruction accompanying the multiple response question are "Mark one or more" and "Select one or more." The guidance permits collection of data re: race and/or ethnicity in greater detail; "however, any collection that uses more detail [must] be organized in such a way that the additional categories can be aggregated into these minimum categories for data on race and ethnicity."

Confidentiality. DOL's regulations require that all demographic data, including disability status, whether hard-copy or electronic, "must be stored in a manner that ensures

[3] Updating demographic data throughout the claims process is particularly important for disability status, but applies to all demographic data categories.

confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate . . .; or other use authorized by law." 29 CFR 37.37(b)(2). The system for maintenance of demographic data, if stored separately, must be cross-referenced to individual records, in the event that it is necessary for DOL or other authorized agencies to identify the race, gender, etc., of a particular claimant in the course of a complaint investigation or compliance review.

Medical and disability-related information must be collected and maintained on separate forms and in separate medical files. 29. CFR 32.15(d). To successfully meet these requirements, hard-copy files should be stored in locked cabinets, safe files, or secured rooms; electronic records should be password-protected. Similar to demographic data, medical information must be cross referenced to individual records for the same reasons.

Access to demographic data, medical, or disability-related information, must be strictly limited and must be available only on a "need to know" basis. The above confidentiality requirements related to demographic data are in addition to those imposed by the regulations related to confidentiality and disclosure of state UC information that are published at 20 CFR Part 603.

5. **Data Analysis.** Under 29 CFR 37.25 (*see also* 29 CFR 37.54), UI program administrators must conduct statistical or other quantifiable data analyses of demographic records and data, to determine whether their UI programs and activities are being conducted in a nondiscriminatory way. These analyses must, at a minimum, include analyses by race/ethnicity[4], sex, age, and disability status, to identify any statistically significant differences in the success rates of claimants who are members of these demographic categories. CRC recommendation includes conducting the following analyses:

   a) **Overall Single-Claimant Claims Processed:** By OMB race/ethnic identification, sex, age, and disability status for the following:
      - Total number of new initial claims
      - Total number of additional initial claims
      - Total number of initial claims (new and additional)

   b) **Single-Claimant Monetary Determinations:** By OMB race/ethnic identification, sex, age, and disability status for the following:
      - Total number of monetary determinations made
      - Total number of monetary determinations resulting in ineligibility

   c) **Single-Claimant Non-Monetary Determinations:** By OMB race/ethnic identification, sex, age, and disability status, and by adjudicator, for the following:
      - Total number of non-monetary determinations made

[4] The 1997 OMB guidance provides: "When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the five racial categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses to the race question. If data on multiple responses are collapsed, at a minimum the total number of respondents reporting 'more than one race' shall be made available."

- Total number of monetary determinations denying benefits

i) *Separation issues:* By OMB race/ethnic identification, sex, age, and disability status for the following:

A) Total number of separation from work determinations made because of:
- Voluntary quits
- Discharge for misconduct
- Other

B) Total number of separation from work determinations denying benefits because of:
- Voluntary quits
- Discharge for misconduct
- Other

ii) *Non-separation issues:* By OMB race/ethnic identification, sex, age, and disability status for the following:

A) Total number of non-separation determinations made by the following issues:
- Able, available, and actively seeking work
- Disqualifying or deductible income
- Refusal of suitable work
- Reporting requirements
- Other

B) Total number of non-separation determinations denying benefits by the following issues:
- Able, available, and actively seeking work
- Disqualifying or deductible income
- Refusal of suitable work
- Reporting requirements
- Other

d) **Single-Claimant Appeals:** By OMB race/ethnic identification, sex, age, and disability status for the following:

i) *Lower authority*

A) Total number of lower authority appeals decisions made by the following:

- *Separation issues*
  - Voluntary quits
  - Discharge for misconduct
  - Other

- *Non-separation issues*
  - Able, available, and actively seeking work
  - Disqualifying or deductible income
  - Refusal of suitable work
  - Reporting requirements
  - Other

B) Total number of appeals decisions in favor of claimants

C) Total number of appeals decisions not in favor of claimants

ii) *Higher authority*

A) Total number of higher authority appeals decisions made

B) Total number of appeals decisions in favor of claimants

C) Total number of appeals decisions not in favor of claimants

Where the above analyses identify statistically significant differences, UI program administrators must ensure that the differences are investigated, to determine whether they appear to be caused by discrimination in the UI program. The investigation must be conducted through review of claimant records and any other appropriate means. *Compare* 29 CFR 37.54(d)(2)(ii)(A) and (B).

6. **Technical Assistance**. CRC and the Employment and Training Administration (ETA) intend to follow this directive with additional technical assistance to States about how to conduct the required analyses and investigations for the UI program.

7. **Actions Required**. As described in detail above: (1) Ensure that demographic data regarding claimants is collected, and is maintained in a confidential manner; (2) Conduct statistical or other quantifiable data analyses to identify statistically significant differences in the success rates of various demographic groups, as described above; and (3) Where such differences are identified, ensure that an appropriate assessment is conducted to determine whether they appear to be caused by discrimination in the UI program.

8. **Inquiries**. For further information, you may contact the U.S. Department of Labor, Civil Rights Center, Office of Compliance Assistance and Planning, at CivilRightsCenter@dol.gov (e-mail), 202-693-6501 (voice), 202-693-6516 (TTY), 800-877-8339 (Federal Relay Service for TTY/TDD), 877-709-5797 or myfedvrs.tv (video relay), or 200 Constitution Ave. N.W., Room N-4123, Washington, DC 20210 (postal mail).