

Element 6: Data and Information Collection and Maintenance

Reference: 29 CFR 37.54 (d) (1) (vi)

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.37 through 37.41 related to data and information collection and maintenance. The state must ensure that a data and information collection and maintenance system for its DLR State programs is established and maintained. (See 29 CFR 37.53.)

Narrative:

The state of South Dakota complies, and will continue to comply, with the requirements of 29 CFR 37.37 through 37.41 related to data and information collection and maintenance. Data and information collection and maintenance policies are developed and communicated to recipients through South Dakota's Unified Plan for Workforce Investment under the section entitled Data Collection (see MOA Element 6 documentation). Additional communication methods include the Standard Assurances and Certifications for the Workforce Investment Act (WIOA) Program Annual Funding Agreement (see MOA Element 3 documentation) and initial and refresher training for recipient staff. Data and information collected and maintained are utilized to monitor recipients' EO performance, identify instances or areas of discrimination, and identify individuals or groups of individuals who have been discriminated against on the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, pregnancy, childbirth, and related medical conditions in accordance with the Pregnancy Discrimination Act of 1978 and related case law, participation in any DLR or WIOA Title 1-financially assisted programs and/or activities, and/or for beneficiaries citizenship. The data and information collection and maintenance system for the state of South Dakota is utilized for reporting and record keeping; determining eligibility, when appropriate; and determining the extent of which a recipient is operating its DLR or WIOA Title i-financially assisted programs and/or activities in a nondiscriminatory manner in compliance with Section 188 of the WIOA. The responsibility for all data and information collection and maintenance is assumed by each recipient's EO Coordinator and monitored by the EO Officer. Service-delivery staff receives training in the proper collection and reporting of required information.

As required by 29 CFR 37, four pieces of demographic information are gathered in individual records for each registrant, eligible registrant, participant, exited participant, and registrants/participants for employment: sex, race/ethnicity, age, and disability status. This information is kept separate from the recipient's individual records. Data is

contained in a DLR Management Information System (MIS). The MIS is designed to permit the reviewer to correlate aggregate data to individual records. However, the MIS for data and information collection and maintenance is designed in such a way as to allow cross-referencing of data to individual records. The system is designed to allow the State EO Officer to conduct statistical/quantifiable data analyses. All individual records and MIS data are maintained for a period of not less than three years from the close of the applicable program year, accessible to authorized users only, and made available for review by the State EO Officer.

Complaints alleging discrimination on one or more of the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, pregnancy, childbirth, and related medical conditions in accordance with the Pregnancy Discrimination Act of 1978 and related case law, participation in any DLR or Title I-financially assisted programs and/or activities, and/or beneficiaries' citizenship; may be filed at the local recipient level, the state level, or with the CRC. Each written complaint filed at the local level is forwarded to the State EO Officer for processing.

All complaints filed at the local recipient level or the state level are processed according to complaint procedures outlined in Element 8 of this document and noted on the Complaint Log – Discrimination Complaints (see MOA Element 8 documentation). Program discrimination complaints are those filed under WIOA, ES or UI regulations that allege discrimination on the ground of race, color religion, sex, national origin, age, disability, political affiliation or belief, pregnancy, childbirth, and related medical conditions in accordance with the Pregnancy Discrimination Act of 1978 and related case law, participation in any DLR or WIOA Title I-financially assisted programs and/or activities, and/or beneficiaries' citizenship. The program discrimination complaint data entry form includes no less than the following information: the name and address of the complainant, the reason for the complaint, a description of the complaint, the date the complaint was filed, the disposition and date of the complaint, and other pertinent information.

All program discrimination complaint data and recipient records regarding complaints and actions taken regarding complaints are retained by the DLR for not less than three years from the date of resolution of the complaint. This information is available for review by the CRC upon request. All related electronic records are maintained in a confidential manner using the MIS. The system assigns passwords and entry codes for access to predetermined areas of the computer system and provides access to authorized users only. Data security and confidentiality of information are emphasized at all levels.

The State EO Officer will notify the Secretary of DLR and the CRC within five business days of receipt of any administrative enforcement action and/or lawsuit brought against the agency or any grantee that allege discrimination on one or more of the following bases: race, color, religion, sex, national origin, disability, age, political affiliation or belief, pregnancy, childbirth, and related medical conditions in accordance with the Pregnancy Discrimination Act of 1978 and related case law, participation in any DLR or WIOA Title I-financially assisted programs and/or activities, and/or beneficiaries' citizenship. This notification will include the names of the parties to the lawsuit; the forum where the case is filed; the relevant case numbers; and the name of any other federal agency that conducted a civil rights compliance review or complaint investigation, and found the recipient to be in noncompliance during the two years before the State EO Officer and/or the CRC began their examination.

Recipients will provide, in a timely manner, any information and data necessary to investigate complaints and conduct compliance reviews on a ground prohibited under the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR 37. If requested by the State EO Officer and/or the CRC, recipients will provide in a timely manner, the particularized information and/or submit the periodic reports considered necessary to determine compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA or 29 CFR Part 37. Each recipient will permit access by the State EO Officer and/or the CRC during normal business hours to its premises, employees, and participants, to the extent that such individuals are on the premises during the course of a complaint investigation, compliance review, or other EO monitoring activities.

Whenever any information that the State EO Officer and/or the CRC asks a recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the recipient will certify to the EO Officer and/or the CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification will include the name and address of the agency, institution, or person that has possession of the information, and the specific efforts the recipient made to obtain it. Considerations of privacy or confidentiality are not reasons for withholding information from the State EO Officer and/or the CRC.

The identity of any individual who furnishes information relating to, or assisting in, an investigation or compliance review, including the identity of any individual who files a complaint, will be kept confidential to the extent possible. An individual whose identity is necessary to disclose will be protected from retaliation.

The State EO Officer provide recipients with information, training, and technical assistance for an understanding of disparate impact. Even where a recipient is not motivated by discriminatory intent, nondiscrimination and equal opportunity laws prohibit a recipient from using a facially neutral practice/policy that has an unjustified adverse impact on members of a protected group resulting in discrimination.

State EO Officer and EO Coordinators utilize demographic information (sex, race/ethnicity, age, and disability status where know) to conduct statistical/quantifiable data analyses. During compliance reviews, analysis of statistical data for services to distinct customer groups is reviewed to ensure that no discrimination is occurring. Programs are analyzed to indicate potentially discriminatory allocation of services.

If statistical studies of disparate impact analysis reveal significant disparities between or among groups, the individuals who comprise the applicable date subset may be readily identified and their records further reviewed as appropriate.

Through disparate impact analysis, all significant statistical inconsistencies identified in the programs, activities, or employment provided by a recipient are investigated using all available documentation and a determination is rendered as to whether or not they appear to be caused by discrimination.

Documentation

See attachments.