



# MOA Element 6

**DATA AND INFORMATION  
COLLECTION AND MAINTENANCE**

## **AGENDA**

- **Presentation:** Review of Learning Objectives
- **Presentation:** Key Data and Information Collection and Maintenance requirements under WIOA
- **Presentation:** Determining Adverse Impact and the 80% Rule
- **Presentation:** Documentation of Data and Information Collection and Maintenance
- **Presentation:** State's Implementation of Data and Information Collection and Maintenance requirements

## LEARNING OBJECTIVES

- The participant will be able to describe the federal requirements for the collection, maintenance, and retrieval of required data.
- The participant will be able to describe how the state guarantees that Data and Information Collection and Maintenance requirements will be met.
- The participant will be able to determine whether or not the system and formats in which records are kept follow procedures prescribed by the CRC Director.
- The participant will be able to identify documentation that is acceptable to demonstrate that Data and Information Collection and Maintenance regulations are being implemented.

## **KEY REQUIREMENTS FOR DATA AND INFORMATION COLLECTION AND MAINTENANCE**

**The implementing federal regulations, 29 CFR 38, list several key requirements for this element, including:**

1. Data must be collected and maintained in a system that allows for statistical/quantifiable analysis of the recipient's compliance with WIOA equal opportunity policy.
2. Regulatory and discretionary information must be provided to the Director of the Civil Rights Center upon request.
3. Data collected must be maintained in a confidential manner.

## **KEY REQUIREMENT #1: ENSURE A PROPERLY FUNCTIONING DATA COLLECTION SYSTEM**

Each recipient must have established a data collection and maintenance system that allows for a statistical/quantifiable analysis of the recipient's compliance with WIOA equal opportunity policy (29 CFR 38.37).

### **Why must data be collected?**

Each recipient must design and implement a data collection system that enables CRC, the state, and local EO Officers to:

- Monitor the recipient's equal opportunity performance
- Identify instances or areas of discrimination
- Identify individuals or groups who have been discriminated against

### **About whom must data be collected?**

The data collection system that is used may be designed by the recipient or by another entity. However, the system must, at a minimum, collect and maintain information on the quality and quantity of services provided to:

- Applicants
- Registrants
- Eligible applicants/registrants
- Participants
- Terminees
- Employees
- Applicants for employment

## What data must be collected?

For each person in the categories listed above, the system must record:

- Demographic information, including:
  - Race/ethnicity
  - Sex
  - Age
  - Disability status, where known

### **NOTE:**

There are two requirements regarding the collection of information about race/ethnicity:

- ✓ In the recipient's record collection system, information about race/ethnicity and disability should be kept separate from the individual record about each person to protect confidentiality.
- ✓ The record-keeping system must use the designations approved by the Office of Management and Budget to identify the race/ethnicity of applicants, participants, and terminees.

The information collected in a Complaint Log records all complaints filed alleging discrimination on the grounds of:

- Race
- Religion
- National origin
- Sex
- Color
- Age
- Disability
- Political affiliation or belief
- Citizenship
- WIOA participation

**NOTE:**

Each complaint recorded in the Complaint Log should include the following information:

- ✓ Name and address of complainant
- ✓ Ground or basis of complaint
- ✓ Description of the complaint
- ✓ Date the complaint was filed
- ✓ Disposition of complaint and date of issuance
- ✓ Any other pertinent information

**How long must data be maintained?**

The records of applicants, registrants, eligible applicants/registrants, participants, terminees, employee, applicants for employment, and other records that are required by the Director, must be maintained for not less than three (3) years from the close of the applicable program year.

The Complaint Log, and actions taken regarding the complaints, must be maintained for three (3) years from the date of the resolution of the complaint.

## **KEY REQUIREMENT #2: PROVIDE INFORMATION TO THE DIRECTOR OF CRC**

Recipients must collect the required data and provided them to the Director of the Civil Rights Center upon request (29 CFR 38.37).

### **Specific Information Required**

Specifically, recipients must:

- Notify the Director *promptly* if an administrative enforcement action or lawsuit is filed alleging that a grant applicant or a recipient discriminated on the grounds of race, color, religion, sex, national origin, disability, age, political affiliation or belief and, for **beneficiaries only**, citizenship or participation in WIOA Title I financially assisted program or activity.



### **Term to Know – Beneficiary**

Beneficiary means the individual or individuals intended by Congress to receive aid, benefits, services, or training from a recipient.

- *In a timely manner*, provide the Director with the name of any other federal agency that, up to two (2) years before the WIOA application was filed, conducted an investigation of the applicant or recipient and found it to be in noncompliance with civil rights procedures.

### **Action By the CRC Director**

The CRC Director has the discretionary authority to require that the following be provided *in a timely manner*:

Any information and data necessary, from grant applicants and recipients, for the purpose of investigating complaints and conducting compliance reviews

Particularized (one-time) information or periodic reports from recipients that the Director considers necessary to determine compliance

- Information from grant applicants that would allow the Director to determine whether, if given WIOA financial assistance, the applicant would be able to comply with nondiscrimination and equal opportunity policy.

### **Required Access to Information**

For the purpose of conducting complaint investigations, compliance reviews, and monitoring activities associated with a state's implementation of the MOA, each grant applicant and recipient must permit the Director, or her designee, to have access to the source(s) of the regulatory and discretionary information that is requested.

- During normal business hours, the Director, or designee, must be given access to:
  - Operational premises
  - Employees and participants that are on the premises when a complaint investigation or compliance review is being conducted
- The Director may require information that is in the possession of another entity (agency, institution, or person). Should that entity refuse to furnish the information, the applicant or recipient must provide the following, in writing:
  - The name and address of the entity that has possession of the information
  - A description of the specific efforts made to obtain the information

**NOTE:**

Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance.



How do you know if the information that is requested is available in the recipient's data collection system?

### **KEY REQUIREMENT #3: MAINTAIN DATA IN A CONFIDENTIAL MANNER**

The implementing regulation 29 CFR 38.37 requires that data collected be maintained in a confidential manner.

- Each grant applicant and recipient is responsible for maintaining the confidentiality of the information that is collected.
- Records, particularly those containing medical information, should be stored in a manner that ensures their confidentiality.
- Only appropriate staff should have access to sensitive data and complaint documentation.
- The identity of any individual who furnishes information relating to an investigation, or who has filed a complaint, must be kept confidential to the greatest extent possible.
- If it is necessary to disclose the identity of a person who furnishes information relating to an investigation, or who has filed a complaint, that person must be protected from retaliation.
  - Sanctions and penalties may be imposed against any recipient that engages in any such retaliation or fails to take appropriate steps to prevent such activity.



### **Term to Know – Prohibition of Retaliation**

A recipient must not retaliate, intimidate, discharge, threaten, coerce or discriminate against any individual because the individual has:

- Filed a complaint alleging a violation of WLSA regulations
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA
- Furnished information to, or assisted or participated in any manner in, an investigation or review hearing.



When visiting a recipient's site, what might you observe that would indicate that record confidentiality is at risk?

## ADVERSE IMPACT AND THE 80% (OR 4/5THS) RULE

In the Introduction to Methods of Administration section in this manual, the theories or legal basis of discrimination law were discussed. This activity is based on identifying adverse impact:

While policies governing decision-making may be neutral, they may still be considered discriminatory if they have a discriminatory effect upon the employment, training, or other such opportunities of an identifiable group. This discrimination “theory,” called “disparate effect,” derives from a 1971 Supreme Court case, *Griggs v Duke Power*.

One way in which federal civil rights agencies can apply the disparate treatment theory is by following the procedures described in the *Uniform Guidelines for Employee Selection (Guidelines)*. The concepts and procedures contained in the Guidelines were originally designed for employment decisions. However, they are easily adapted to most of the types of decisions made by WIOA-funded recipients and analyzed by CRC. The initial step in the guidelines is the identification of instances of adverse impact.



### Term to Know – Adverse Impact

Adverse impact is defined in the Guidelines as a “substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex or ethnic group.”

While this substantial rate can be determined in a variety of ways, the Guidelines provide a rule of thumb as a practical means of determining adverse impact. This rule is called the 80% or 4/5ths rule.

If a race, sex, or ethnic group’s rate of selection is less than 80% of the **most favored group**, the group is experiencing adverse impact. (Keep in mind that at this point in the analysis, adverse impact does not mean discrimination.)

A four-step process determines adverse impact:

1. Calculate the rate of selection for each race/sex group, by dividing the number of persons selected from a group by the number of applicants – or candidates – from that group.
2. Determine which group is experiencing the most advantageous rate:
  - For positive personnel transactions, the highest rate is the most advantageous
  - For negative personnel transactions, the most favored group has the lowest rate.
3. Calculate the impact ratio by comparing the selection rate for each group with that of the most favored group. Multiply this result by 100 to express the result as a percentage.
  - For positive actions, place the most favored group's rate in the denominator position.
  - For negative actions, place the most favored group's rate in the numerator position.
$$\frac{\text{Numerator}}{\text{Denominator}}$$
4. Observe whether the resulting ratio for any group is less than 0.8 – regardless of whether it is a positive or negative transaction – this indicates adverse impact.
  - Using this technique, the ratio will always be 1 or less.
  - If you get a result higher than 1, you have not done your math correctly!

## Example I

This four-step process is easiest when comparing men and women since there are only two groups.

	# of Persons Applying For Job Training, By Sex	# of Selectees, By Sex
Men	300	100
Women	100	20

1. Calculate the rate of selection for each group.

$$\text{Men} \quad \frac{\#? \text{ selectees}}{\#? \text{ applicants}} = \frac{. ?}{. ?} = . ?$$

$$\text{Women} \quad \frac{\#? \text{ selectees}}{\#? \text{ applicants}} = \frac{. ?}{. ?} = . ?$$

2. Determine which group is experiencing the most advantageous rate.
3. Calculate the impact ratio by comparing the selection rates for the two groups.

Since this is a positive action, the most favored group's rate is in the denominator.

$$\frac{. ?}{. ?} = . ? \text{ (or ? \%)}$$

4. Observe whether the impact ratio is less than 0.8 (or 80%).

If so, adverse impact exists against the less favored group(s).

## Example 2

The race/ethnic group analysis can be more complicated since more than two groups may be involved.

	<b># of Incumbents in Training Program, By Race</b>	<b># of Involuntary Terminations, By Race</b>
*White	100	10
*Black	60	20
*Hispanic	20	10
*American Indian	10	2

\* Includes both men and women

Using the steps outlined previously, you would determine if adverse impact existed as follows:

I. Calculate the rate of selection for each group.

$$\text{White} \quad \frac{\#? \text{ terminations}}{\#? \text{ incumbents}} = .?$$

$$\text{Black} \quad \frac{\#? \text{ terminations}}{\#? \text{ incumbents}} = .?$$

$$\text{Hispanic} \quad \frac{\#? \text{ terminations}}{\#? \text{ incumbents}} = .?$$

$$\text{American Indian} \quad \frac{\#? \text{ terminations}}{\#? \text{ Incumbents}} = .?$$

- Determine which selection rate is the most advantageous.

Terminations are a negative personnel transaction, therefore, the most favored group has the lowest rate.

- Calculate the impact ratios by comparing the selection rate for each group with the lowest rate.

Since this is a negative action, the lowest selection rate is the numerator for each of the three calculations.

$$\text{Black impact ratio} \quad \frac{. ? \text{ (most favored rate)}}{. ? \text{ (Black rate)}} = . ? \text{ (or ? \%)}$$

$$\text{Hispanic impact ratio} \quad \frac{. ?}{. ?} = . ? \text{ (or ? \%)}$$

$$\text{American Indian impact ratio} \quad \frac{. ?}{. ?} = . ? \text{ (or ? \%)}$$

- Observe whether the impact ratios are less than 0.8 (or 80%) and determine if adverse impact exists against any of the less favored groups.

### **NOTE:**

Additional information regarding how to extract information from a data system and how to apply the appropriate statistical formulas for analysis is provided in the addendum.

## **SUPPORTING DOCUMENTATION: DATA COLLECTION AND MAINTENANCE**

Regulations implementing Section 188 of the Workforce Innovation & Opportunity Act require that the following documentation be available:

- Instructions to the recipient regarding information collection, access to records and maintenance of records
- Samples of policy issuances that discuss ensuring the confidentiality of demographic information regarding individuals
- Samples of reports regarding the above demographic information
- Copies of the procedures used to ensure the confidentiality of demographic information
- Samples of formats and instructions, in hard copy and electronic file forms, of the Complaint Log

## **STATE'S IMPLEMENTATION OF DATA AND INFORMATION COLLECTION AND MAINTENANCE REQUIREMENTS**

This part of the training has been reserved to discuss the state's approach to implementing the MOA's Data and Information Collection and Maintenance requirements. The state specialist will address the following:

- Policy communications and directives to LWWSA's that instruct recipients on how to comply with the 29 CFR 38.37, Data and Information Collection and Maintenance requirements.
- Procedures and systems that support the implementation of Data and Information Collection and Maintenance.
- Additional MOA requirements imposed by the state to implement Data and Information Collection and Maintenance requirements.