

<b>U.S. DEPARTMENT OF LABOR</b> <b>Employment and Training Administration</b> <b>Washington, D. C. 20210</b>	<b>CLASSIFICATION</b>
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None	August 31, 1990

DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER 46-89

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: DONALD J. KULICK, Administrator for Regional Management

SUBJECT: Equal Opportunity (EO) Data Requirements for Unemployment Insurance (UI)

1. Purpose. 1. a) To clarify and emphasize to State Employment Security Agencies (SESAs) their responsibilities for complying with EO data collection and maintenance requirements for the UI program ; and b) to announce the procedures of the Department of Labor (DOL), Directorate of Civil Rights (DCR), for monitoring EO data, e.g. , race, ethnicity, age, sex, and handicap status, pertinent to all claims activities for UI claimants for the purpose of compliance review monitoring and/or complaint investigations .

2. Reference. 1. Title VI of the Civil Rights Act of 1964, as amended, 42 USC 2000d et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; the Age Discrimination Act of 1975, as amended, 42 USC 6101 et seq.; Section 167 of the Job Training Partnership Act of 1982, as amended, 29 USC 1577; and U.S. Department of Labor Regulations at 29 CFR Part 31, and 29 CFR Part 32.

3. Background. The authority for enforcing Title VI of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and Section 167 of the Job Training Partnership Act of 1982, as amended, has been delegated by the Secretary of Labor through the Office of the Assistant Secretary for Administration and Management (OASAM) solely to the DCR Within OASAM.

DOL regulations at 29 CFR 31.5, 29 CFR 32.44 and 29 CFR 32.50 specifically require recipients of DOL grant funds to collect, maintain and make available data as may be necessary to ascertain compliance with the requirements of the nondiscrimination statutes .

The regulatory requirements addressed by this directive are not new. However, we recognize that a transition period may be necessary for some SESAs to implement the appropriate modifications to their

data collection systems. Accordingly, a 6- month lead time is provided for all system modifications to be in place from the issuance of this directive.

Public reporting for this collection of information is estimated to average 88 hours per response. This burden is prorated over a 12-month period since it includes gathering and maintaining the data needed. In addition to reviewing instructions, searching existing data sources, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management and Productivity, Directorate of Information Resource Management. OASAM, U.S. Department of Labor, Washington. D.C. 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington. DC, 20503.

4. EO Data Collection and Maintenance Requirements. Data collection requirements have been approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act of 1980 under OMB approval No. 1225-0046. to expire March 31. 1992. SESAs are required to collect, maintain and provide upon request to the Directorate of Civil Rights the following claimant information for each local UI office according to OMB definition for race/ethnic identification (i.e . White (non-Hispanic) . Black (non-Hispanic) , Hispanic. American Indian and Alaskan Native, and Asian and Pacific Islander). Sex, age (14-21. 22-29. 30-54, 55 and over) and handicap status:

- a. Overall Single-Claimant Claims Processed - By OMB race/ethnic identification, sex, age and handicap status for the following:
  1. Total number of new initial claims
  2. Total number of additional initial claims
  3. Total number of initial claims (new and additional)
  
- b. Single-Claimant Monetary Determinations - By OMB race/ethnic identification, sex, age and handicap status for the following:
  1. Total number of monetary determinations made
  2. Total number of monetary determinations resulting in ineligibility
  
- c. Single-Claimant Nonmonetary Determinations - By OMB race/ethnic identification, sex, age and handicap status and by adjudicator for the following:
  - Total number of nonmonetary determinations made
  - Total number of nonmonetary determinations denying benefits
  1. Separation Issues - By OMB race/ethnic identification, sex, age and handicap status for the following:
    - i. Total number of separation from work determinations made because of:
      - Voluntary quits
      - Discharge for misconduct o
      - Other
  
    - i. Total number of separation from work determinations denying benefits because of:
      - Voluntary quits

- Discharge for misconduct
- Other

2. Nonseparation Issues - By OMB race/ethnic identification, sex, age and handicap status for the following:

- i. Total number of nonseparation determinations made by the following issues:
  - Able, available and actively seeking work
  - Disqualifying or deductible income
  - Refusal of suitable work
  - Reporting requirements
  - Other
- ii. Total number of nonseparation determinations denying benefits made 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 handicap status for the following:

1. Lower Authority

- i. Total number of lower authority appeals decisions made by the following:
  - Separation Issues: Voluntary Quits : Discharge for misconduct: and Others.
  - Nonseparation Issues: Able and available and actively seeking work: Disqualifying or deductible income: Refusal of suitable work: Reporting requirements: and Others.
- ii. Total number of appeals decisions in favor of claimants:
- iii. Total number of appeals decisions not in favor of claimants.

2. Higher Authority

- i. Total number of higher authority appeals decisions made:
- ii. Total number of appeals decisions in favor of claimants:
- iii. Total number of appeals decisions not in favor of claimants.

5. Equal Opportunity Responsibilities in each SESA. SESAs are reminded that consistent with the requirements set forth in 29 CFR 31.6(b) and 32.7, that each SESA must establish or identify an organizational unit to effectively coordinate and ensure implementation of its equal opportunity responsibilities, including data collection and the development and implementation of a system for periodically monitoring the compliance status of local offices.

6. Equal Opportunity Compliance Review Process. To implement its responsibilities, the DCR conducts on-site compliance reviews of selected recipients of Federal financial assistance from the Department. The State will be notified by letter from DCR at least forty-five days in advance that a specific local office

has been selected by DCR for such a compliance review along with the State central office. The notification letter will request the submission of the EO data specified in paragraph 4 for the latest 12-month period.

7. Action Required. SESA administrators are to:

- a. establish systems for collecting and maintaining EO data on all claims activities:
- b. identify or establish an organizational unit to coordinate and ensure effective implementation of its EO responsibilities, including:
  - i. the periodic monitoring. of local offices
  - ii. complying with requests by DCR for specific data on local office claims activities in conjunction with the equal opportunity compliance review process.
- c. Collect and maintain data on a regular basis as required by this directive.

8. Inquiries. Inquiries concerning this directive should be directed to the appropriate ETA Regional Office. Inquiries concerning equal opportunity data and compliance review requirements should be directed to Ms. Danetta Fofanah, DCR, Chief, Division of Technical Assistance and Compliance Monitoring. 8-523-7026.

9. Attachment. 29 CFR 31.5. 31.6(b); 29 CFR 32.7, 32.44. 32.49 and 32.50.

Sec. 31.5 Compliance information.

(a) Cooperation and assistance. The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the Secretary timely, complete and accurate compliance reports at such

[[Page 310]]

times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) Access to sources of information. Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17956, July 5, 1973]

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Sec. 31.6 Assurances required.

(a) General. (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every contract, subcontact, agreement or arrangement to carry out such program except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility, and every contract, subcontract, agreement or arrangement to provide such a facility shall as a condition to its approval and the extension of any

Federal financial assistance pursuant to the application, contract, subcontract, agreement or arrangement contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in this program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the

[[Page 311]]

transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purpose for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he deems appropriate, to subordinate such rights of reversion to the sum of such mortgage or other encumbrance.

(b) Continuing State programs. Every application by a State or a State agency to carry out a program involving continuing federal financial assistance to which this part applies shall as a condition to

its approval and the extension of any Federal financial assistance pursuant to the application

(1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and

(2) Provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

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Sec. 32.7 Designation of responsible employee.

A recipient, other than a small recipient shall designate at least one person to coordinate its efforts to comply with this part.

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Subpart D--Procedures

Sec. 32.44 Compliance information.

(a) Cooperation and assistance. The Assistant Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

[[Page 327]]

(b) Compliance reports. Each recipient shall keep such records and submit to the Assistant Secretary timely, complete and accurate compliance reports at such times, and in such form and containing such information as the Assistant Secretary may determine to be necessary to enable him to ascertain whether the recipient had complied or is complying with this part. For example, recipients should have available for the Department data showing the extent to which known handicapped individuals are beneficiaries and participants in federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) Access to sources of information. Each recipient shall permit access by the Assistant Secretary during normal business hours to such of its books, records, accounts, and other sources of information and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from access to or copying of records or information, or from evaluating or seeking to enforce compliance with this part.

(d) Posters and information. The recipient will post in prominent locations (bulletin boards, time clock areas, etc.) posters designed and furnished by DOL outlining and summarizing the nondiscrimination requirements of section 504. The recipient also will make readily available information on section 504 requirements with respect to compliance procedures, the rights of beneficiaries and employees through handbooks, pamphlets and other materials furnished by DOL.

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Sec. 32.49 Recordkeeping.

(a) Each recipient shall maintain for a period of not less than three years records regarding complaints and actions taken thereunder, and such employment or other records as required by the Assistant Secretary or by this part and shall furnish such information in the form required by the Assistant Secretary or as the Assistant Secretary deems necessary for the administration of the Act and regulations in this part.

(b) Failure to maintain and furnish complete and accurate records as required under this section is a ground for the imposition of appropriate sanctions.

Sec. 32.50 Access to records.

Each recipient shall permit access and copying during normal business hours to its places of business, books, records and accounts pertinent to compliance with the Act, and all rules and regulations promulgated pursuant thereto for the purposes of investigation.

Sec. 32.51 Rulings and interpretations.

Ruling under or interpretations of the Act and the regulations contained in this part 32 shall be made by the Assistant Secretary.