

**Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual**

Policy Number: 5-13-00

Originating Office: Commerce's Regulatory Compliance

Subject: Record Maintenance and Retention

Issued: October 26, 2016

Revised: July 12, 2016

Program: Workforce Innovation and Opportunity Act (WIOA)

Purpose: To transmit state policy and guidance regarding the collection, use, storage, and confidentiality of documents related to all WIOA applicants/registrants, eligible applicants, participants, terminees, employees, and applicants for employment and program operations.

References: 29 CFR §§37.37, 95.53, and 97.42; United States Code 552 on Public Information; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Kansas Open Records Act.

Background: The Governor must ensure that all WIOA Title I-financially assisted program operators collect and maintain records in a manner consistent with the provisions of 29 CFR Part 37.37 and ensure that such programs are able to provide data and reports.

Action: Make this policy available to all WIOA Title I-financially assisted program operators and other interested parties.

Contact: ~~Contact:~~ Questions should be directed to Regulatory Compliance, (785) 368-6643; TTY:, e-mail: crc@kansascommerce.com

Attachment: None.

Record Maintenance and Retention

I. Overview

Program operators must collect data and information to verify that they are taking appropriate steps to provide universal access to federal employment and training financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and Ethnic groups, individuals with disabilities, and individuals in differing age groups.

II. Data and Information Maintenance

All federal financially assisted programs and activities must maintain data on applicants/registrants, eligible applicants, participants, terminees, employees, and applicants for employment for the purpose of measuring applicant flow and providing information on whether employment practices, services, and/or procedures have a disparate impact on any group based on race/ethnicity, sex, age, and disability status. This information must be maintained for a period of three (3) years in files separate from the application or other forms used by the program operator in order to maintain confidentiality. This information shall be retained beyond the minimum period if any litigation or claim is initiated or until the litigation or claim has been resolved and written notification is received from Kansas Department of Commerce (Commerce) regarding destruction.

III. Self-Declaration

The collection of information to determine whether the program operator has complied, or is complying, with the nondiscrimination and equal opportunity provisions of the Workforce Innovation Opportunity Act (WIOA) or other; is to be accomplished by self-declaration (i.e., the individual filling out the form in which his or her race, sex, etc. is in response to questions on the application form itself). Such disclosure is voluntary and an applicant should not be compelled to provide this information as a condition of participation in employment and training services unless such information is absolutely necessary to determine eligibility. If an individual refuses to declare information, the person receiving the application may record the information based on visual observation.

IV. Confidentiality

This information may be used only for reporting and recordkeeping, determining program eligibility where appropriate, and determining whether the program participant is being provided service in a nondiscriminatory manner. The identity of any individual who furnishes information relating to, or assisting in, an investigation or a compliance review, including the identity of any individual who files a complaint, must be kept confidential to the extent possible, consistent with a fair determination of the issues. If it is necessary to disclose an individual's identity they must be protected from retaliation.

V. Record Retention and Maintenance

The State of Kansas has established the following policies regarding retention of and custodial requirement, for records associated with the administration of employment and training programs:

1. Record Retention Policy

All digital and paper records, including but not limited to: financial, statistical, property and participant records and supporting documents, for a period of 3 years or until audit has been completed and resolved, subject to the qualifications set forth in Item 2, below.

2. Retention Periods

- a. For subrecipients, the retention period will begin on the date of submission of the annual or final expenditure report. In all cases, records shall be retained for a period of three (3) years or until an audit has been completed and resolved.
- b. If prior to the expiration of the three-year retention period, any litigation or audit is begun or a claim is instituted, the subrecipient shall retain the records beyond the three-year period until the litigation, audit findings or claim has been finally resolved.
- c. Participant files pulled for testing the mandated federal Data Reporting and Validation System (DRVS) shall be maintained for a period of three (3) years from the point of completion.

3. Destruction of Hard Copy Records

All requests for the destruction of any records relating to Employment and Training programs will be submitted for approval to:

Regulatory Compliance
Kansas Department of Commerce
1000 SW Jackson Street, Suite 100
Topeka, KS 66612-1354
crc@kansascommerce.com

Once permission for destruction has been granted, in order to assure confidentiality of program information, the destruction of those records will be conducted under the general supervision and attendance of the State and/or subrecipient by one of the following methods:

- Shredding
- Incineration &/or burial

VI. Disclosure

All records will be maintained and disclosed in accordance with the Kansas Open Records Act and the requirements of the Act shall apply to all grantees and subrecipients.

1. Inquiries from Private Business or Individuals

All applicant and participant records are to be safeguarded. Requests for applicant information will not be disclosed. Written requests for participant names, addresses and training site is public knowledge and may be revealed. However, Employment and Training programs shall require a person requesting records or information to provide written certification as to what information is specifically requested.

In addition, the Kansas Open Records Act authorizes an agency to charge and require advance payment of a fee for “providing access to or furnishing copies of public records.” Entities may elect to charge a reasonable fee for compensation of staff time and photocopying. Again, only participant names, addresses or training site may be disclosed. *Participant’s phone number and social security number, etc. may not be revealed.*

2. Inquiries from Public Agencies

Exchanges of information between public agencies providing service to program participants are allowed, if the information provided is required as a part of that agency’s assigned business.

3. Inquiries from Applicants or Participants

All information requested by the applicant/participant on their status should be made available upon request. Confidential information should be transmitted via mail or in person. Phone disclosure of information is discouraged and shall only be allowed when the caller can explicitly be identified through facts known only to the caller (birth date, last employer, etc.). It should be conveyed to the caller that any inconvenience in obtaining information is for the protection of his/her privacy.

References and Authorization. United States Code 552 on Public Information; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Kansas Open Records Act.

VII. Substitution of Microfilm

Entities may substitute microfilm copies in lieu of original records after audit of records have been completed and cleared of any litigation.

VIII. Special retention requirement

In the event of termination of a relationship with an employment and training service provider, the ~~LWIB~~ Local Workforce Development Area and/or their designated agent shall be responsible for the ongoing maintenance, retention and security of all records associated with the grant recipient and/or their administration.

IX. Enforceability and Legal Effect of Digital/Electronic Records

Electronic records shall not be denied legal effect, validity or enforceability related to this policy because such records are in electronic form. Entities will follow guidelines established by the State of Kansas (see: Managing Electronic Mail; Guidelines for Kansas Government Agencies http://www.kshs.org/government/records/electronic/email_guidelines_final.pdf). Procedures should be instituted onsite to safeguard and maintain these records in accordance with this policy.

In relocating computer equipment, efforts should be undertaken to determine the status of the information retained on the equipment, if it should be retained, archived or transmitted to the new user.

Please note all computer equipment being disposed of or transmitted to new owners should have the hard drives wiped clean of program information with a software utility which does not allow for recovery of deleted information.

Towards that end, to protect individual and organizational privacy; all local areas will have a policy towards handling obsolete computer and data storage devices. This policy shall establish a means to repurpose, retire or dispose units with sanitized drives. The most common techniques for properly sanitizing include:

- a. Physically destroying the drive, rendering it unusable;
- b. Degaussing the drive to randomize the magnetic domains, most likely rendering the drive unusable in the process;
- c. Overwriting the drive's data so that it cannot be recovered.

X. Access to Records

The subrecipient shall give the U.S Department of Labor, U.S. Comptroller General, and General Accounting Office, auditor/monitor of the State of Kansas, other state and federal auditing agencies, and Commerce's Regulatory Compliance unit, or any of their duly authorized representatives, access to and the right to examine, copy or mechanically reproduce, all reports, books, papers, documents, automated data systems and other records pertaining to contracts awarded through federal employment and training programs.

Commerce and other oversight entities in coordination with Commerce shall have the right to timely and reasonable access to the subrecipient's premises, personnel, monitoring and auditing records, evaluation records or interviews and discussions related to all records required to be retained for the purpose of accomplishing the goals of the contract.

The subrecipient shall implement and maintain an information security system for all records and supporting documentation, with particular attention to the reasonable safeguard of confidential data.