Monitoring for Equal Opportunity
Data Analysis – Part 2

Roger Ocampo
Chief, Office of Compliance and Policy
U.S. Department of Labor
Civil Rights Center
Recall: 29 CFR 38.5

No individual in the United States may, on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in any WIOA Title I–financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I–financially assisted program or activity.
(1) A statistical or other quantifiable analysis of records and data kept by the recipient under § 38.41, including analyses by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status;

(2) An investigation of any significant differences identified in paragraph (b)(1) of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination.
General Theories of Discrimination

- **Disparate Impact**
  - A facially neutral practice or policy that has an adverse impact on a protected group (based on race, sex, national origin, age, or disability) that lacks a substantial legitimate justification

- **Disparate Treatment**
  - Occurs when a person (or persons) is intentionally treated differently from others because of one or more of the protected factors
Pattern and Practice
(as opposed to individual)

Focus on effects of the actual implementation of policies and procedures on a group of people going through the system. Identifies each decision point and examines the impact upon various groups.
Common Statistical Tools

- 80% or 4/5th Rule
- Standard Deviation
- Fisher’s Exact
- Regression Analysis

*today will we focus on the 80% Rule and Standard Deviation*
Procedure having adverse impact constitutes discrimination unless justified.

Adverse impact and the “four-fifths rule.” A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact...
Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group.
The benchmark of “two or three standard deviations” was used in *Hazelwood School District v. United States*. Hazelwood was a pattern and practice suit alleging that a school district engaged in the discriminatory hiring of African American teachers. The Supreme Court compared the percentage of teachers in the district who were African Americans to the percentage in the relevant labor market. Noting that the disparity exceeded six standard deviations in one year and five standard deviations in the following year, the Court concluded that the statistical evidence reflected a “gross” disparity that was probative of a pattern and practice of discrimination.
Results are “statistically significant” if the probability the results occurred by chance is so small that chance can reasonably be ruled out as the cause. When the difference between actual and expected values is greater than 2 standard deviations, the probability the disparity occurred by chance is less than 5%. In discrimination cases, courts generally allow a valid statistical inference of discrimination to be drawn when there is a difference of two or more standard deviations.
Standard deviation is a statistic used to measure dispersion in a distribution; a measure of the typical distance between the average (mean) and any given value.
Place Holder –

- Results from Room Exercises
Key Points

• Monitoring is essential and required
• Compare Success Rate of Favored vs Unfavored Groups
• Use 80% and 2 Standard Deviation
• Looking for Patterns of Discrimination
  • Treatment
  • Impact
• Don’t forget to look for non-statistical signs
  • Observations
  • Complaints
  • News/blogs
• Always Compare Against Community
Roger’s Helpful Hints

- Define Success from the point of view of the client
- Initial Comparisons
  - Whites vs All Others
  - Any Group over 2% (in the population) vs All Others
  - Male vs Females
  - Individuals with Disabilities vs All Others
  - Each Age Group (as reported to ETA) vs all others
    - multiple reports
- Separate Analysis for:
  - Each Physical Location
  - Each Decision Maker
  - Each Avenue of Application
- Keep in Mind Traditional Discriminatory Practices
Process Mapping

Pass/Fail Point

Pass/Fail Point

Pass/Fail Point
Process Mapping – Employment

Hires
Promotions
Terminations
Process Mapping – Unemployment Insurance

- Getting a Check
- Keeping a Check
- Number of Weeks
- Amount of Check
- Appeals

Note: Look out for employers discriminating by challenging UI for some groups only
Process Mapping – Training Providers

- Applicants to Selection
- Successful Completion
- Drop Outs
- Community Comparison
Process Mapping – AJCs

• For each service provided
  • from the clients point of view
• Look for Non-Traditional Training and Jobs
  • Occupational Codes
• By LWIA and Each Physical Office Location