

Chapter 841. WORKFORCE INVESTMENT ACT

Subchapter F. WIA NONDISCRIMINATION AND EQUAL OPPORTUNITY

40 TAC §§841.201 - 841.215

The Texas Workforce Commission (Commission) proposes new §§841.201-841.215, relating to the nondiscrimination and equal opportunity requirements of the Workforce Investment Act (WIA).

The term "Agency" when used in this rule means the state agency which operates an integrated workforce development system. The term "Commission" when used in this rule means the three member governance body composed of Governor-appointed members whose duties include but are not limited to adopting rules under Texas Labor Code §301.061 and §302.002.

Background and Purpose: As the state level entity designated to administer the WIA funds in Texas, the Agency has the responsibility to ensure that recipients of the WIA funds provided under a contract with the Agency comply with the nondiscrimination and equal opportunity requirements of WIA §188 (29 U.S.C.A. §2938), which prohibit discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for WIA beneficiaries only, citizenship or participation in a WIA Title I financially assisted program or activity. The purposes of the proposed rules are to describe the Agency's role in this process and to set forth the duties and responsibilities of WIA recipients.

It is also proposed that §839.11 be amended to reflect the use of Workforce Investment Act (WIA) nondiscrimination rules rather than the Job Training Partnership Act nondiscrimination rules in processing complaints of discrimination by participants in Welfare to Work activities. The amendments to §839.11 are contained in this issue of the *Texas Register* and is incorporated here by reference.

Concurrent with this filing, the Commission is proposing the repeal of Chapter 805, Subchapter H relating to the Job Training Partnership Act nondiscrimination and equal opportunity provisions to be published in this issue of the *Texas Register*.

New Subchapter F regarding WIA Nondiscrimination and Equal Opportunity is added. More specifically, the purposes of the rules are described as follows. Section 841.201 describes the scope and purpose of the rule. Section 841.202 lists definitions. The definition of "recipient" found in 29 CFR §37.4 includes state level agencies, which administer WIA Title I funds. For the purposes of these rules, which establish the duties and responsibilities of local workforce development boards (Boards) and other Agency contractors and WIA subrecipients, the term "recipient" will not include the Commission or Agency. Section 841.203 lists the assurances with which recipients must comply. Section 841.204 describes the requirement for the designation of the Equal Opportunity Officer. Section 841.205 describes the notice and communication requirements. Section 841.206 lists the requirements for data and information collection and maintenance. Section 841.207 describes the requirement for universal access to WIA Title I financially assisted activities. Section 841.208 describes the process for filing complaints of discrimination. Section 841.209 describes the notice of receipt of complaint which is issued by the Agency Equal Opportunity (EO) Officer. Section 841.210 lists the jurisdictional requirements for filing complaints of discrimination. Section 841.211 describes the notice of acceptance of complaints of discrimination. Section 841.212 describes the alternate dispute resolution process. Section 841.213 describes the procedures used by the Agency in processing accepted complaints of discrimination. Section 841.214 lists some of the possible corrective actions and remedies available, if there is a finding of discrimination. Section 841.215 provides that the Agency may impose sanctions, if there is a finding of a violation of the nondiscrimination and equal opportunity requirements.

The new rules are proposed to assure compliance with federal statutory requirements regarding nondiscrimination and equal opportunity in programs funded through WIA, to clarify changes resulting from the enactment of WIA, and to assist Boards with complying with requirements imposed by the federal funding source.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenues to the state or to local governments expected as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because the costs required to comply with the rules are costs directly required to comply with federal statute and regulations.

Barbara Cigainero, Director of Workforce Development, has determined that the public benefit anticipated as a result of the sections as proposed will be to assure compliance with federal statutory and regulatory requirements for nondiscrimination and equal opportunity, and to assist the Boards in meeting these requirements and preventing any interruption in access to federal funds.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed sections.

Comments on the proposed rules may be submitted to Pat Garland, Equal Opportunity Office, Texas Workforce Commission, 101 East 15th Street, Room 220, Austin, Texas, 78778; Fax Number (512) 463-2444; or E-mail to pat.garland@twc.state.tx.us.

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

§841.201.Scope and Purpose.

All recipients of Workforce Investment Act (WIA) funds received under a contract with the Agency are responsible for meeting the nondiscrimination and equal opportunity requirements included in WIA §188 (29 U.S.C.A. §2938), 29 CFR Part 37, the Texas Workforce Commission's Methods of Administration (MOA) and 40 TAC Chapter 841, Subchapter F. WIA recipients are prohibited from discriminating on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship or participation in a WIA Title I financially assisted activity.

§841.202.Definitions.

The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Beneficiary--An individual or individuals intended by Congress to receive aid, benefits, services or training from a recipient.

(2) Complainant--An individual alleging a violation of WIA §188 (29 U.S.C.A. §2938) or 29 CFR Part 37.

(3) CRC--The Civil Rights Center of the U.S. Department of Labor.

(4) EO Officer--The Equal Opportunity Officer is the individual responsible for coordinating a recipient's responsibilities under the nondiscrimination and equal opportunity provisions of WIA §188 (29 U.S.C.A. §2938) and 29 CFR Part 37.

(5) MOA--The Methods of Administration developed by the Agency and described in 29 CFR Part 37.

(6) Recipient--A recipient is any entity to which financial assistance under WIA Title I is extended directly from the U.S. Department of Labor, through the Governor or through another recipient but excluding the ultimate beneficiaries of the WIA Title I funded services or activities. The term recipient includes but is not limited to Boards, workforce area grant recipients, one-stop operators (operators of Texas Workforce Centers including Certified Texas Workforce Centers and Certified Full Service Texas Workforce Centers as defined in §801.21 *et seq.* of this title), service providers, including eligible training providers, on-the-job and training employers. One-stop partners (Texas Workforce Center partners) are also considered recipients to the extent that they participate in the one-stop delivery system. When used in this subchapter, the term recipient does not include the Commission or Agency.

(7) Respondent--A respondent is an entity receiving WIA Title I funds directly or indirectly from the Agency and is the subject of a complaint alleging a violation of WIA §188 (29 U.S.C.A. §2938) or 29 CFR Part 37.

(8) Service provider--As defined in 29 CFR §37.4, any operator or provider of WIA aid, benefits, services, or training, when used in this subchapter, the term does not include one-stop operators.

(9) Small recipient--A small recipient is a recipient who serves a total of fewer than 15 beneficiaries during the entire grant year and employs fewer than 15 employees on any given day during the grant year.

§841.203.Assurances.

(a) Recipients shall comply with the assurances requirements of 29 CFR §§37.20-37.22. All applications for financial assistance under Title I of WIA shall include the assurances required by 29 CFR §37.20. Recipients shall ensure that all contracts, agreements, grants, cooperative agreements or other arrangements under which WIA Title I funds are available shall include or incorporate by reference the assurances contained in 29 CFR §37.20.

(b) Recipients shall include in any instrument effecting or recording a transfer of property acquired or improved under a WIA Title I program the covenant required by 29 CFR §37.22 assuring nondiscrimination and equal opportunity.

§841.204.EO Officers.

(a) Each recipient, except small recipients and service providers, shall designate a senior level employee to act as EO Officer and to report directly to the recipient's administrative officer. The recipient's executive director shall not be designated as the recipient's EO Officer.

(b) Each recipient's EO Officer shall:

(1) serve as the recipient's liaison with the Agency EO Officer; the Board EO Officer, if appropriate; and the CRC, if necessary;

(2) monitor and investigate the recipient's WIA Title I funded subrecipients to ensure that the recipient and its subrecipients are not violating nondiscrimination and equal opportunity provisions of WIA §188 (29 U.S.C.A. §2938), 29 CFR Part 37, and the state MOA;

(3) review the recipient's written policies to assure that those policies are nondiscriminatory;

(4) coordinate the recipient's compliance activities under WIA §188 (29 U.S.C.A. §2938) and 29 CFR Part 37;

(5) assist complainants in completing complaint forms;

(6) be responsible for accepting discrimination complaints, and forwarding such complaints to the Agency; and

(7) undergo, at the recipient's expense, nondiscrimination and equal opportunity training to maintain competency when such training is required by CRC or the Agency.

(c) Each recipient shall provide to the Agency EO Officer the name, position title, address, and telephone number of the individual appointed as the recipient's EO Officer, as well as the job description of the position detailing the EO Officer's responsibilities and the staff and resources available.

(d) Although small recipients are not required to designate EO Officers who have the full range of responsibilities, each small recipient must designate an individual who will be responsible for developing and publishing complaint procedures and processing complaints as required by 29 CFR §§37.76-37.79.

§841.205.Notice and Communication.

(a) Each recipient shall comply with the notice and communication requirements of 29 CFR §§37.29-37.36.

(b) The notice required by 29 CFR §37.30 shall be made available to each participant and made part of each participant's file. A copy of an acknowledgment of receipt of notice, in a format determined by the Agency EO Officer, signed by the participant must be maintained in each participant's file.

(c) For information and services accessed electronically, each recipient shall establish a procedure which assures that the notice requirements of 29 CFR Part 37 are met.

(d) Each Board shall ensure compliance with and dissemination of information regarding the requirements of 29 CFR Part 37 by assuring that training regarding the nondiscrimination and equal opportunity requirements of WIA is provided to the Board, the operator of the Texas Workforce Center, other workforce area recipients and recipients' staffs.

§841.206.Data and Information Collection and Maintenance.

(a) Each recipient shall collect such data and maintain such records, in accordance with the requirements of 29 CFR §§37.37-37.41 and the procedures prescribed by the Director of CRC, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA and 29 CFR Part 37.

(b) Each recipient shall permit access by the Agency or its designated agent during normal business hours to its premises and to its employees and participants for the purpose of conducting complaint investigations, compliance reviews, and monitoring activities, and for inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIA.

(c) Each recipient shall notify the Agency EO Officer within five business days of receipt of any complaint, administrative enforcement action, or lawsuit filed against the recipient alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for WIA beneficiaries only, citizenship or participation in a WIA Title I financially assisted program or activity. This notification shall include:

(1) the names of the parties to the complaint, action, or lawsuit;

(2) the forum in which each case was filed; and

(3) the relevant case numbers or, if applicable, other identifying information.

(d) A recipient who is also a subrecipient of a Board shall provide the Board with the same notice described in §841.206(c) of this subchapter.

(e) To enable the Agency to effectively monitor recipients' efforts to provide universal access to WIA Title I assisted programs as provided in 29 CFR §37.42, all recipient requests for proposals, proposals, and contracts shall contain information regarding the proposed levels of service to members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups.

§841.207. Universal Access.

As required in 29 CFR §37.42 recipients shall take appropriate steps to ensure that they are providing universal access to WIA Title I 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.

§841.208. Filing Complaints of Discrimination.

(a) Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or 29 CFR Part 37 may file a written complaint, either by him/herself or through a representative.

(b) A complainant may file a complaint with either:

(1) the Agency EO Officer at: The TWC Building, 101 East 15th Street, Room 220, Austin, Texas 78778; or
(2) the Director of the Civil Rights Center at: U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210, or the address listed in 29 CFR Part 37.

(c) Complaints shall be filed within 180 calendar days of the alleged violation unless such time limitation is waived by the Director of CRC for good cause shown.

(d) All complaints shall be submitted in writing. A complainant may file a complaint by:

(1) completing and submitting a CRC Complaint Information and Privacy Act Consent Form;

(2) completing and submitting a Texas Workforce Commission Discrimination Complaint form; or

(3) submitting a written document containing the information required by 29 CFR §37.73, which includes:

(A) the complainant's name and address, or other means of contacting the complainant;

(B) the identity of the respondent;

(C) a description of the complainant's allegations with sufficient detail to allow the Agency's EO Officer to determine whether the Agency has jurisdiction, whether the complaint was filed on time, and whether the complaint has apparent merit; and

(D) the complainant's signature or the signature of complainant's representative.

(e) Both the complainant and the respondent have the right to representation by an attorney or other individual of their choice. The Agency shall not be responsible for any costs incurred by either the complainant or the respondent in obtaining representation.

(f) For the purposes of this subchapter, filing with the Agency shall be deemed to have occurred on the date that written notice is actually received by the Agency.

§841.209. Notice of Receipt of Complaint of Discrimination.

The Agency's EO Officer shall issue a written acknowledgment of receipt by the Agency of a complaint alleging discrimination by a WIA recipient and shall include a notice of the complainant's right to representation in the complaint process.

§841.210. Jurisdiction of Complaints of Discrimination.

(a) The Agency EO Officer shall accept and investigate only those discrimination complaints alleging a violation of WIA §188 (29 U.S.C.A. §2938) or 29 CFR Part 37 by a respondent or the Agency.

(b) If a complaint filed with the Agency alleges discrimination by a recipient on a basis that is both prohibited by WIA §188 (29 U.S.C.A. §2938) and by a federal law enforced by a federal grant-making agency other than the U.S. Department of Labor, and the recipient is funded in whole or in part by that other federal agency, the Agency EO Officer shall refer the complaint to the other federal agency for processing under that other federal agency's procedures.

(c) If the Agency EO Officer determines that the Agency does not have jurisdiction over the complaint, the Agency EO Officer shall provide written notification to the complainant which includes:

(1) a statement of the reasons for the determination; and

(2) a notice that the complainant may file a complaint with CRC within 30 days of the receipt of the notification.

§841.211. Acceptance of Complaints of Discrimination.

(a) The Agency EO Officer shall issue to the complainant a statement of the issues raised in the complaint and a statement regarding each issue of whether the Agency will accept the issue for investigation or reject the issue with the reasons for any rejection.

(b) The statement of acceptance of issues raised in the complaint shall include a notice informing the complainant that the complainant may choose to participate in an alternative dispute resolution process rather than the customary process described in 29 CFR §37.76(b) and §841.213 of this subchapter.

§841.212. Alternative Dispute Resolution of Complaint of Discrimination.

(a) Each Board shall establish a written alternative dispute resolution (ADR) procedure. The Board EO Officer shall be responsible for implementing the ADR procedure in the case of a complaint within the workforce area.

(b) A complainant within the workforce area may choose to use the Board's ADR procedure rather than the complaint processing procedure described in 29 CFR §37.76(b) and §841.213 of this subchapter. If the complainant elects to use the Board's ADR procedure, the complainant shall file a notice with the Agency of this election within seven calendar days of the complainant's receipt of the Agency's statement of issues.

(c) The Agency EO Officer shall inform the Board of the complainant's election to use the Board ADR process. The Board EO Officer shall coordinate the scheduling of mediation with a qualified mediator at a location convenient to the complainant and respondent.

(d) The Board EO Officer shall file with the Agency a copy of the final agreement or the notice of failure to reach an agreement within 30 days of the Agency's receipt of the complainant's election to participate in an ADR process.

(e) If the parties do not reach an agreement under the ADR process, the Agency EO Officer shall process the complaint as described in 29 CFR §37.76(b) and §841.213 of this subchapter.

§841.213. Agency Processing of Accepted Complaints of Discrimination.

(a) If a complainant elects not to participate in the ADR process or if an agreement is not achieved through an ADR process, the Agency EO Officer shall investigate the circumstances underlying the complaint.

(b) The Agency EO Officer shall attempt to resolve the complaint. At any point in the investigation of a complaint, the complainant, respondent, or the Agency EO Officer may request that the parties attempt conciliation. The Agency EO Officer shall act to facilitate such conciliation efforts.

(c) Within 90 days of the date of receipt of the complaint, the Agency EO Officer shall issue a Notice of Final Action which shall include:

(1) for each issue raised, the Agency's decision on the issue and reasons for the decision, or a description of the way the parties resolved the issue; and

(2) notice that the complainant has the right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued, if the complainant is dissatisfied with the Agency's final action on the complaint.

(d) If the complainant is dissatisfied with the Agency EO Officer's decision in the Notice of Final Action, the complainant or the complainant's representative may file a complaint with the Director of CRC within 30 days of the date on which the complainant received the Notice of Final Action.

§841.214. Corrective Actions and Remedies.

(a) As part of the Notice of Final Action, the Agency may impose any corrective or remedial action which may be imposed by the Director of CRC under 29 CFR §37.94.

(b) In addition to the corrective actions and remedies described in 29 CFR §37.94, the Agency may require that the respondent complete one or more of the following:

(1) development of an appropriate equal opportunity policy;

(2) removal of any discriminatory information from the complainant's records; and

(3) delivery of equal opportunity training to all staff members.

(c) The respondent shall file a notice with the Agency within ten calendar days of receipt of the Notice of Final Action that it has accepted the Agency's resolution of the complaint and that it will complete the required corrective actions listed in the Notice.

(d) Monetary relief required by a Notice of Final Action may not be paid from federal funds.

§841.215. Sanctions.

If the Agency finds a recipient to be in violation of the nondiscrimination and equal opportunity provisions of the WIA, or such entity has not accepted an Agency suggested resolution or conciliation agreement, or has breached an established resolution or conciliation agreement, the Agency may impose sanctions pursuant to Chapter 800, Subchapter E of this title (relating to Sanctions).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 10, 2000.

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General Counsel

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For further information, please call: (512) 463-8812