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**XX.**

**TEXAS WORKFORCE COMMISSION**

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), 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 Agency services and activities.

# Chapter 841. WORKFORCE INVESTMENT ACT

## SUBCHAPTER A. GENERAL PROVISIONS

The rules are adopted under Texas Labor Code § 301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

### § 841.1. Goal

These rules provide the implementation of the Workforce Investment Act (WIA) as it relates to the duties of the Commission and the Local Workforce Development Boards (LWDBs). This implementation accommodates prior consistent state laws as permitted by WIA. This integration of new federal law and prior existing state law will continue to promote and support Texas' ongoing workforce development reform efforts. WIA compliments Texas' reform efforts, which stress:

- (1) limited and efficient state government;
- (2) local control;
- (3) personal responsibility; and
- (4) support for strong families.

*The provisions of this § 841.1 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579.*

### § 841.2. Definitions

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

- (1) **Administrative costs**--The necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of employment and training services, as further defined by the federal regulations and subject to the cost limitations set forth in WIA § 134(a)(3)(B) and the cost principles set forth in WIA § 184(a)(2)(B).
- (2) **Certificate**--For the purpose of establishing initial eligibility under § 841.38, a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses or program that is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length.
- (3) **Certified provider**--A training provider certified as eligible to receive training funds as authorized under WIA and state rules.
- (4) **Commission**--The Texas Workforce Commission as established in the Texas Labor Code, § 301.001 and designated by the Governor as the state administrative agency for WIA in Texas.
- (5) **Complainant**--Any participant or other personally interested or personally affected party alleging a non-criminal violation of the requirements of WIA.
- (6) **Completion**--Finishing a program or course of study and receiving a formal credential as currently recognized by the Commission, a designated partner agency or State regulatory board.

- (7) **Customized Training**--As defined in WIA § 101(8), training that is designed to meet the requirements of an employer, conducted with a commitment by the employer to employ an individual on successful completion of the training and for which the employer pays not less than 50 percent of the cost of the training.
- (8) **Hearing Officer**--An impartial party who shall preside at a hearing on a grievance.
- (9) **ITAs**--Individual Training Accounts.
- (10) **LWDA**--Local Workforce Development Area designated by the Governor as provided in Tex. Government Code § 2308.252.
- (11) **LWDB**--Local Workforce Development Board created pursuant to Tex. Government Code § 2308.253 and certified by the Governor pursuant to Tex. Government Code § 2308.261.
- (12) **On-the-Job Training**--As defined in WIA § 101(31), training by an employer that is provided to a paid participant while engaged in productive work in a job.
- (13) **One-Stop Partner**--An entity which makes services available to participants through a one-stop delivery system under the terms of a memorandum of agreement with a LWDB.
- (14) **Participant**--As defined in WIA § 101(34), an individual who has been determined to be eligible to participate in, and who is receiving services under, a program authorized by WIA.
- (15) **Performance Standards**--The minimum acceptable levels of performance based on established measures of performance as described in WIA § 122.
- (16) **Respondent**--The person, organization or agency against which a complaint has been filed for the alleged violation of the requirements of WIA.
- (17) **WIA**--Workforce Investment Act, P.L. 105-220, 29 U.S.C.A. § 1601 *et seq.*

*The provisions of this § 841.2 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579. Amendments to this section were adopted to be effective October 27, 1999, as published in the Texas Register, October 22, 1999, 24 TexReg 9311.*

## **SUBCHAPTER B. ONE-STOP DELIVERY SYSTEM**

### **§ 841.11. Requirement to Maintain a One-Stop Delivery System**

Each Board shall maintain a One-Stop Service Delivery Network consistent with WIA, state law, and Chapter 801 of this Title, relating to Local Workforce Development Boards. The One-Stop Service Delivery Network shall include at least one Certified Full Service Workforce Center as defined in § 801.23 of this Title, relating to Definitions, providing the core services listed in § 801.28 of this Title, relating to Services Available Through the One-Stop Service Delivery Network.

*The provisions of this § 841.11 adopted to be effective May 25, 2000, as published in the Texas Register, May 19, 2000, 25 TexReg 4595.*

## **SUBCHAPTER C. TRAINING PROVIDER CERTIFICATION**

### **§ 841.31. Scope and Coverage**

This subchapter establishes rules governing the state's eligible training provider certification system as required by WIA §122 and is applicable to providers of training services for adults and dislocated workers. At the discretion of the Board, the Eligible Training Provider Certification System (ETPS)

may be applied to the delivery of training services funded through the Commission including Choices, Food Stamp Employment and Training (FS E&T), Welfare to Work (WtW), Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

*The provisions of this §841.31 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

### **§ 841.32. Training Services**

- (a) As used in this subchapter, training services shall mean those services which are described in WIA §134(d)(4)(D) and are provided by an LWDB to eligible adults and dislocated workers. At the discretion of the Board, the eligible training provider certification system may be applied to the delivery of training services funded through the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.
- (b) Training services shall be directly linked with employment opportunities on the list of occupations in demand for the LWDA of the participant's residence or another area to which the participant is willing to relocate. In addition, each LWDB shall develop a process for considering requests from participants for training in occupations not on the demand list if sufficient and verifiable documentation is provided.
- (c) Training services shall be provided in such a manner as to maximize consumer choice in the selection of eligible providers.
- (d) Training services shall be provided through the use of individual training accounts except for those situations described in §841.35 of this title (relating to Training Services Which are Not Provided Through Individual Training Accounts).

*The provisions of this §841.32 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

### **§ 841.33. Determining Occupations in Demand**

- (a) Each LWDB shall annually establish a list of occupations in demand in the LWDA.
- (b) In establishing the list of occupations in demand, the LWDB shall consider:
  - (1) labor market information provided by the Commission;
  - (2) information provided by businesses and business organizations in the LWDA; and
  - (3) information provided by workers and worker organizations in the LWDA.

*The provisions of this § 841.33 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579.*

### **§ 841.34. Individual Training Accounts**

- (a) An ITA is an account established by a one-stop operator on behalf of an eligible adult or dislocated worker program participant and funded with WIA adult and dislocated worker funds. Participants may use ITAs for training services for skills in demand or allowed occupations as defined by the LWDB from training providers on the state-distributed list of approved eligible training providers.
- (b) At its discretion, a LWDB is authorized to approve a request for training for occupations not on the occupations in demand list, if sufficient and verifiable documentation is provided.

- (c) At the discretion of the Board, ITAs may be used as a payment mechanism for the delivery of training services funded through the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.

*The provisions of this §841.34 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

### **§ 841.35. Training Services Which are Not Provided Through Individual Training Accounts**

Training services may be provided pursuant to a contract for services instead of an ITA as provided in WIA § 134(d)(4)(G)(ii) in the following situations:

- (1) the services are on-the-job training provided by an employer or are customized training, as defined in § 841.2 of this title (relating to Definitions);
- (2) the LWDB determines there is an insufficient number of eligible providers of training services in the LWDA to accomplish the purposes of a system of ITAs; or
- (3) the LWDB determines that there is a training services program of demonstrated effectiveness offered in the LWDA by a community-based organization or other private organization which serves participant populations that face multiple barriers to employment, including one or more of the following categories:
  - (A) individuals with substantial language or cultural barriers;
  - (B) offenders;
  - (C) homeless individuals; or
  - (D) other such population defined by the LWDB.

*The provisions of this § 841.35 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579.*

### **§ 841.36. Priority of Access to Services**

- (a) The LWDBs shall determine whether WIA funds allocated to the LWDA for adult employment and training activities are insufficient to meet the anticipated request for services. The LWDBs' local plans shall reflect this determination and the basis for the determination.
- (b) If a determination is made that funds are insufficient, the LWDBs shall determine the priority of access to services for participants, in compliance with WIA requirements. Priority for intensive services and training services shall be given to recipients of public assistance and other low-income individuals in the LWDA. The LWDB shall develop instructions for one-stop operators in the LWDA regarding the provision of services related to such priorities.
- (c) If a determination is made that WIA funds are sufficient, the LWDBs shall provide services to any eligible participant.

*The provisions of this § 841.36 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579.*

### **§ 841.37. Coordination of Services**

- (a) Prior to enrolling a participant in an adult education or literacy activity provided in combination with other training services, the one-stop operator shall develop an individual employment plan with the participant. The plan shall identify the skill training for the occupation in demand that

will be pursued and the required skill competency level associated with the additional training service.

- (b) LWDBs shall collaborate with adult education and literacy providers as well as other providers, whenever possible, to develop coordinated training activities.

*The provisions of this § 841.37 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579.*

### **§ 841.38. Initial Certification Process for Exempt Providers**

- (a) For purposes of this section, exempt providers are those providers exempt from having to submit performance data for their initial application as set forth in WIA §122.
- (b) Each LWDB shall develop local application requirements for initial certification for the following providers of training services when offering the programs described:
  - (1) a postsecondary educational institution that:
    - (A) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and
    - (B) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or
  - (2) an entity that carries out programs under the Act of August 16, 1937, commonly known as the "National Apprenticeship Act," 50 Stat. 664, chapter 663; (29 U.S.C. 50 *et seq.*).

*The provisions of this §841.38 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

### **§ 841.39. Initial Certification Process for Non-Exempt Providers**

- (a) Non-exempt providers are those not defined as exempt under §841.38.
- (b) The following entities shall be eligible to receive WIA funds if they complete the provider certification process and are determined eligible for participation by a LWDB in the LWDA in which the provider desires to provide training services and the Commission:
  - (1) public or private providers of a program of training services, including faith-based providers which are not:
    - (A) postsecondary educational institutions that are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. §1070 *et seq.*), and provide programs that lead to an associate degree, baccalaureate degree or certificate; or
    - (B) entities that carry out programs under the Act of August 16, 1937, also known as the "National Apprenticeship Act," 50 Stat. 664, chapter 663, (29 U.S.C. 50 *et seq.*);
  - (2) postsecondary educational institutions which seek to receive WIA funding for a program that does not lead to an associate degree, baccalaureate degree or certificate; and
  - (3) providers that carry out programs under the Act commonly known as the National Apprenticeship Act that seek to receive WIA funding for a program not covered by the National Apprenticeship Act.
- (c) All training provider applicants under this section shall provide the following information to the LWDB:
  - (1) the name, mailing address and physical address of the training facility;

- (2) the name of the program(s) of training services submitted for WIA funding;
  - (3) the total hours of instruction associated with each program of training services;
  - (4) the cost of each program of training services, including tuition, fees, books, and any required tools, uniforms, equipment, or supplies;
  - (5) a description of the skill set which will be acquired through each program of training services;
  - (6) a list of occupations determined by using a coding system specified by the Commission, in which these skill sets are of primary interest;
  - (7) if all of the occupations described in paragraph (6) of this subsection are not on the Occupations in Demand List provided by the LWDB, evidence from employers, in a format and meeting specification set by the LWDB, that demonstrates that the occupation is in demand;
  - (8) information on whether the students in the course are eligible for Title IV of the Higher Education Act funding (Pell grant);
  - (9) an outline of the course or program curriculum, including criteria for successful completion; and
  - (10) any additional information that is required by the LWDB in the LWDA in which the training provider is located.
- (d) Training provider applicants who provide training on the date of application through a program for which they are seeking certification shall include in their application the following verifiable performance information, or appropriate portion of verifiable performance information, for the program(s) of training services:
- (1) the program completion rates for all individuals participating in the applicable program;
  - (2) the percentage of all individuals participating in the applicable program who obtained unsubsidized employment;
  - (3) the wages at placement in employment of all individuals participating in the applicable program; and
  - (4) a description of the methodology that will be utilized to collect and verify performance information.
- (e) Each LWDB shall annually establish minimum requirements for initial eligibility. Such requirements shall include consideration of the information required by §841.44(a) of this title (relating to Determination of Subsequent Eligibility). The LWDB shall provide to each applicant the current levels of performance required by the Commission or levels of performance required by the LWDB if higher than those established by the Commission.
- (f) For purposes of confirming training provider initial eligibility application information, and as determined reasonable by LWDBs, on-site visits shall be made by LWDB staff or representatives to training provider program sites.

*The provisions of this §841.39 adopted to be effective April 10, 2002, as published in the Texas Register, April 5, 2002, 27 TexReg 2843.*



#### **§ 841.40. Application Submission**

- (a) Applications for initial eligibility determination shall be submitted to the LWDB in the LWDA in which the provider of training services desires to provide training. Applications will be accepted throughout the year.
- (b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.
- (c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.

*The provisions of this §841.40 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

#### **§ 841.41. Initial Eligibility Determination**

- (a) A LWDB shall provide a written notice of determination of acceptance or rejection of an initial application to an applying entity within ninety (90) calendar days of the receipt of the completed initial eligibility determination application.
- (b) LWDB policy shall determine the circumstances under which reconsideration of an application may be afforded to an entity whose initial application for provider certification was denied.

*The provisions of this §841.41 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

#### **§ 841.42. Exceptions to Provider Certification Requirements**

- (a) On-the-job or customized training providers are not subject to the training provider certification requirements. In order to be eligible to receive WIA funding, such training providers shall provide to one-stop operators the performance information as may be required by the Commission.
- (b) Providers of youth activities are not subject to the training provider certification system and are not eligible to provide training through the use of ITAs. Providers of youth activities are selected through a competitive procurement by LWDBs in consultation with providers of youth services and based on criteria contained in the state plan. Eligible providers of youth activities are subject to the Commission's standards for core indicators of performance established for youth programs in WIA.

*The provisions of this § 841.42 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579.*

#### **§ 841.43. Application for Subsequent Eligibility Determination**

- (a) All training services providers, including training providers who were determined to be eligible under §841.38 and §841.39 of this chapter, shall annually, from date of certification, establish continuing eligibility to receive funds from WIA to provide training services.
- (b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.
- (c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.

- (d) If an application for subsequent eligibility determination is denied and later approved on appeal, the Agency may adjust the certification period to ensure that the certification period is one year in length.
- (e) Each training services provider shall provide verifiable program-specific performance information as required, and in a format and on a schedule determined by the Commission.
- (f) The Commission and the LWDB may accept program-specific performance information consistent with the requirements for eligibility under Title IV of the Higher Education Act of 1965 from the provider for purposes of enabling the provider to fulfill the applicable requirements of this section if the information is substantially similar to the information otherwise required.

*The provisions of this §841.43 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

#### **§ 841.44. Determination of Subsequent Eligibility**

- (a) Each Board shall annually establish minimum requirements for subsequent eligibility. In determining subsequent eligibility, Boards shall consider the following:
  - (1) the specific economic, geographic, and demographic factors in the local areas in which providers seeking eligibility are located;
  - (2) the characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving such populations, where applicable;
  - (3) current and projected occupational demand within the local area;
  - (4) the performance of a provider of a program(s) of training services, including the extent to which the annual standards of performance established by the Board have been achieved;
  - (5) the program cost of training services;
  - (6) the involvement of employers in the establishment of skill requirements for the training program; and
  - (7) the feedback of employers who employ individuals who have recently completed WIA-funded training to verify that the training provided produced the expected skills.
- (b) No later than July 1, 2000, each Board shall ensure that training providers, in developing programs of training services and establishing performance criteria for successful course completion, use in descending order:
  - (1) skill standards recognized or conditionally recognized by the Texas Skill Standards Board;
  - (2) industry-endorsed skill standards; or
  - (3) skill requirements determined by employers.
- (c) Boards may require enhancements to programs or courses to meet local industry needs.
- (d) For programs of training services certified as initially eligible on or after July 1, 2000, a Board shall provide a written notice of determination of acceptance or rejection of a subsequent eligibility application to an applying entity within 30 calendar days of the receipt of the completed subsequent eligibility determination application.
- (e) Board policy shall determine the circumstances under which reconsideration may be afforded to an entity whose application for subsequent eligibility certification determination was denied.

*The provisions of this §841.44 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

#### **§ 841.45. Standards of Performance**

- (a) The Commission shall annually adopt performance standards for WIA-supported participants and for all individuals enrolled in the program of training services, as applicable.
- (b) Each LWDB shall adopt local performance standards after the Commission's annual publication of state performance standards. LWDB standards shall meet or exceed the standards adopted by the Commission.
- (c) Performance standards may be adjusted by the LWDB for local conditions.
- (d) Each LWDB shall notify the Commission upon adoption of local performance standards. Until such notification occurs, the LWDB's local performance standards shall be considered by the Commission to be consistent with state performance standards for the determination of initial or subsequent eligibility.

*The provisions of this §841.45 adopted to be effective April 10, 2002, as published in the Texas Register, April 5, 2002, 27 TexReg 2843.*

#### **§ 841.46. Verifiable Program-Specific Performance Information**

- (a) Performance information submitted for a training services program, as a part of the subsequent eligibility determination process, shall be verifiable.
- (b) Participating training providers shall provide to the Commission the participant and employer information determined by the Commission to be necessary to utilize unemployment insurance wage records and employer-based, follow-up surveys to obtain performance information. The training providers shall submit the information in a form and format determined by the Commission.
- (c) Subject to approval by the Commission, alternate procedures may be used to collect and verify supplemental performance information in addition to those described in subsection (b) of this section. Approval or use of an alternate procedure shall not release the training provider from the obligation to provide the information required by subsection (b) of this section. Submission of supplemental performance data obtained through use of an alternate procedure must be in accordance with formats determined by the Commission.
- (d) An independent audit of any alternate methodology used shall be conducted on an annual basis by a certified public accountant for programs of training services in which 100 or more WIA-supported students are served within a twelve-month period. Programs that serve less than 100 WIA-supported students within a twelve-month period shall provide for an independent audit of the performance data collection methodology every two years. A copy of the report shall be made available to the LWDB and to the Commission within 30-days of the completion of the report.
- (e) The Commission may conduct performance verification throughout the year and may require training providers to submit additional information to resolve performance reporting anomalies or irregularities.
- (f) Providers of training services shall retain participant program records for a period of three years from the date the participant completes the program.

*The provisions of this §841.46 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

## **§ 841.47. Eligible Training Provider Lists**

- (a) At least annually, the LWDB shall publish in a newspaper of general circulation in the LWDA an invitation to training providers to submit an application.
- (b) Each LWDB shall develop an eligible training provider list that includes the list of providers determined to be eligible to receive training funds as authorized under WIA and state rules.
- (c) The Commission shall publish the program, performance, and cost information of each program receiving eligibility certification.
- (d) The Commission may remove a provider from the list of eligible providers or restrict WIA funding eligibility if the Commission determines that:
  - (1) the provider does not meet the performance levels established by the Commission, or
  - (2) the training provider has committed fraud or has violated applicable state or federal law, including prohibitions against discrimination and requirements related to the Americans with Disabilities Act.
- (e) If the Commission, after consultation with an LWDB, determines that a provider, or an individual providing information on behalf of the provider, has intentionally supplied inaccurate program performance information, the Commission shall terminate the eligibility of the provider to receive funds for training services for a period of not less than two years.
- (f) The Commission shall provide written notice of the removal of a provider from the list of eligible providers to both the LWDB and the training provider. The notice will include a description of the appeal process.

*The provisions of this §841.47 adopted to be effective November 12, 2001, as published in the Texas Register, November 9, 2001, 26 TexReg 9223.*

## **SUBCHAPTER D. LOCAL AREA GRIEVANCE PROCEDURE - REPEALED**

## **SUBCHAPTER E. STATE LEVEL HEARING**

### **§ 841.94. Appeal of Denial of LWDA Certification**

All appeals of denial of LWDA certification shall be referred to the Texas Council on Workforce and Economic Competitiveness.

*The provisions of this § 841.94 adopted to be effective June 22, 1999, as published in the Texas Register, June 18, 1999, 24 TexReg 4579.*

## **SUBCHAPTER F. WIA NONDISCRIMINATION AND EQUAL OPPORTUNITY**

### **§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.

*The provisions of this § 841.201 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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.

*The provisions of this § 841.202 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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.

*The provisions of this § 841.203 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

#### **§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.

*The provisions of this § 841.204 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

#### **§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.

*The provisions of this § 841.205 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

#### **§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.

*The provisions of this § 841.206 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

#### **§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.

*The provisions of this § 841.207 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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 E. 15th Street, Room 220, Austin, Texas 78778; or
  - (2) the Director of the Civil Rights Center at: U.S. Department of Labor, 200 Constitution Ave. 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.

*The provisions of this § 841.208 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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.

*The provisions of this § 841.209 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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.

*The provisions of this § 841.210 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

#### **§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.

*The provisions of this § 841.211 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

#### **§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.

*The provisions of this § 841.212 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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.

*The provisions of this § 841.213 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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.

*The provisions of this § 841.214 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10764.*

### **§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).

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