

Chapter 841.WORKFORCE INVESTMENT ACT
Sections 841.201-841.215

The following rule(s) will be effective October 30, 2000.

Chapter 841. WORKFORCE INVESTMENT ACT

Subchapter F. WIA NONDISCRIMINATION AND EQUAL OPPORTUNITY

40 TAC §§841.201-841.215

The Texas Workforce Commission (Commission) adopts new §§841.201-841.215, relating to the nondiscrimination and equal opportunity requirements of the Workforce Investment Act (WIA), without changes to the proposed text as published in the July 21, 2000 issue of the *Texas Register* (25 TexReg 6968). The text of the rules will not be republished.

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 new rules describe the Agency's role in this process and set forth the duties and responsibilities of WIA recipients.

Concurrent with this adoption is the adoption of amendments to §839.11. The adoption of the amendment is also contained in this issue of the Texas Register. The purpose of the adoption of amendments to §839.11 is to reflect the use of WIA nondiscrimination rules rather than the Job Training Partnership Act (JTPA) nondiscrimination rules in processing complaints of discrimination by participants in Welfare-to-Work activities.

Concurrent with this adoption of the repeal of Chapter 805, Subchapter H relating to the JTPA nondiscrimination and equal opportunity provisions. The adoption of the repeal is also contained in this issue of the Texas Register. The purpose of the repeal

is to remove the rules that are no longer applicable to the process from the Texas Register.

New Subchapter F is added regarding WIA Nondiscrimination and Equal Opportunity. The subchapter contains the following provisions:

Section 841.201 describes the scope and purpose of the rule.

Section 841.202 sets forth 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 sets forth 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 sets forth 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 sets forth 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 sets forth 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 adopted 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.

The Commission received one comment on the rule from the North Central Texas Workforce Development Board (North Central). The commenter did not state whether the commenter agreed or disagreed with all provisions but stated disagreement with some provisions and made general comments and suggestions regarding other provisions within the rules. The comments and responses to the comments are set forth as follows.

Comment: Regarding §841.202, the commenter stated that the term "agency" was not defined in the rule.

Response: The Commission asserts that the term "agency" was explained in the preamble to the proposed rules and that "Agency" is used to refer to the actions of the Texas Workforce Commission as a state agency as distinguished from the actions of the three-member governance body of the Texas Workforce Commission, which is referred to as the "Commission." The Commission does not agree with adding the definition of agency in this subchapter as the term is generally understood using the plain meaning of the word.

Comment: Regarding §841.202(6), the commenter stated that the definition of "recipient" was too broad and duplicative to require that Boards monitor One Stop partners which are state agencies or recipients of other federal funding since these entities are monitored by other agencies for compliance with equal opportunity and nondiscrimination provisions.

Response: The Commission agrees that the definition of recipient is broad but asserts that the definition used in §841.202(6) is required by federal regulations at 29 C.F.R. §37.4, which includes all of the same categories of entities as are included in §841.202(6). The Commission also asserts that the monitoring requirements are set out in federal regulations at 20 C.F.R. §37.25, which require monitoring of all recipients. The federal regulation does not make any exceptions from this monitoring requirement for entities that are monitored by other state or federal agencies. The

Commission would encourage Boards to coordinate monitoring activities with other agencies to reduce any duplication efforts.

Comment : Regarding §841.205(d), the commenter disagreed with the requirement that Boards must assure that training regarding the nondiscrimination and equal opportunity requirements of WIA is provided to recipients and recipients' staff. The commenter stated that Boards do not have the resources to provide training to all recipients.

Response: The Commission would assert that §841.205(d) does not require that the Boards provide or fund all of the nondiscrimination and equal opportunity training from the Board's own budget. Specifically, the Boards can fulfill the requirements of §841.205(d) by requiring that all operators of Texas Workforce Centers and other workforce area recipients obtain the required training and by monitoring recipients to assure that the training is provided. The Commission would also clarify that providing nondiscrimination and equal opportunity training is a necessary administrative expense of operating a WIA funded program, which is funded through the funds allocated by the Commission. The Commission would recommend that Boards assist in limiting the cost of such training by working with all of the recipients in the workforce area to coordinate the provision of training so that the expense of training can be shared by all of the local recipients and so that economies of scale can be realized.

Comment: Regarding §841.205(d), the commenter questioned why there was a lack of definition and guidance regarding the training.

Response: The Commission responds by stating that the Commission's equal opportunity office is available to provide guidance to Boards; however, the Commission would encourage Boards to develop their own specific training requirements to best meet the needs of the workforce area's subrecipients.

Comment: Regarding §841.206(e), the commenter questioned whether it was appropriate to require proposed levels of service in a request for proposals (RFP) since an RFP might target specific populations to meet the needs of the workforce area.

Response: The Commission would clarify that §841.206(e) does not prevent an RFP from targeting a specific population as long as none of the RFP provisions violate the nondiscrimination and equal opportunity requirements of WIA by discriminating against one of the covered categories or activities listed in 20 CFR §§37.5-37.10.

Comment: Regarding §841.213 and §841.214, the commenter expressed disagreement with the reference to the appeal rights of a complainant to the U.S. Department of Labor Civil Rights Center (CRC) without a similar right of appeal by a respondent to an allegation of discrimination.

Response: The Commission would clarify that the U.S. Department of Labor set forth the requirements regarding what situations result in CRC accepting a complaint of a violation of the nondiscrimination and equal opportunity requirements of WIA. Furthermore, in 20 CFR 37.79, the Department of Labor states that a complainant may file a complaint with CRC within 30 days after the complainant receives a notice of final action from a recipient. Under current regulations, the Commission finds no provision in the federal regulations to provide review of a final decision for persons or entities other than a recipient.

Comment: Regarding §841.204(b)(2), the commenter stated that Boards do not have the expertise or resources to investigate and monitor all subrecipients and that the rules do not provide the Boards with enforcement power.

Response: The Commission requirement that Boards, as recipients, investigate and monitor their subrecipients to ensure compliance with the nondiscrimination and equal employment is required by WIA and Federal regulations. The Commission does not have the authority to exempt Boards from this responsibility. The master contract between the Agency and a Board requires that the Board include a provision in all subcontracts requiring compliance with WIA requirements. Thus, Boards have contractual means of assuring and enforcing that subrecipients comply with WIA requirements.

Comment: Regarding §841.204(b)(2), the commenter stated that the monitoring requirement conflicts with a risk-based approach to monitoring programs and services.

Response: The Commission asserts that the requirement for monitoring for compliance with the nondiscrimination and equal opportunity provisions of WIA is not in conflict with a risk-based approach because §841.204(b)(2) requirements reflect the emphasis placed by both the U.S. Department of Labor and the Commission on assuming that services are provided in a nondiscriminatory manner.

Based on the reasons stated in the responses to the comments, the Commission will make no changes to the text of the rules as proposed.

The new rules are adopted 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 adoption affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.