

TEXAS WORKFORCE COMMISSION LETTER

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To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers
Adult Education and Literacy Grant Recipients



From: Courtney Arbour, Director, Workforce Development Division

Subject: **Storage and Use of Disability-Related and Medical Information—
Update**

PURPOSE:

To provide recipients of Workforce Innovation and Opportunity Act (WIOA) funds with an update on the requirements for the storage and use of disability-related and medical information.

RESCISSION:

WD Letter 17-07

BACKGROUND:

The US Department of Labor provides guidance to recipients, as defined by 29 CFR §38.4(zz), on implementing the nondiscrimination and equal opportunity provisions of WIOA §188.

To clarify the use of “recipient,” 29 CFR §38.4(zz) states:

Recipient means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to the Governor under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, for purposes of this part, one-stop partners, as defined in section 121(b) of WIOA, are treated as “recipients,” and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the one-stop delivery system. “Recipient” includes, but is not limited to:

- (1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
- (2) State Workforce Agencies;
- (3) State and Local Workforce Development Boards;
- (4) LWDA grant recipients;
- (5) One-stop operators;
- (6) Service providers, including eligible training providers;
- (7) On-the-Job Training (OJT) employers;
- (8) Job Corps contractors and center operators;
- (9) Job Corps national training contractors;
- (10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- (11) Placement agencies, including Job Corps contractors that perform these functions;
- (12) Other National Program recipients.

Specifically, 29 CFR §38.41(b)(1) sets forth recipient responsibilities for collecting and maintaining data and information, stating:

The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of WIOA and this part.

Furthermore, 29 CFR §38.41(b)(2) states:

Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee.

Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

The most notable update regarding the maintenance of medical or disability-related information, found in 29 CFR §38.41(b)(3), states:

Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in

hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

Additionally, 29 CFR §38.41(b)(3)(i) explains that an individual in one of the following categories may be informed about a customer's disability or medical condition and can obtain the information under the following circumstances:

- (A) Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.*
- (B) First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.*
- (C) Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws. See also §38.44.*

Lastly, 29 CFR §38.41(b)(3)(ii) states that:

Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

Information on the requirements for collecting and maintaining medical information or history in relation to preemployment inquiries can be found in 29 CFR §32.15(d).

Section 504 of the Rehabilitation Act of 1973 requires that individuals with disabilities be afforded equal opportunity to participate in and benefit from WIOA services, benefits, and activities.

The Data and Information Collection and Maintenance section of the [*State of Texas Nondiscrimination Plan*](#) provides Boards with requirements for the collection and maintenance of all records and data. (The plan is published on TWC's Intranet site; it is therefore available to recipients but not to the public.)

PROCEDURES:

No Local Flexibility (NLF): This rating indicates that recipients must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by "must" or "shall."

Local Flexibility (LF): This rating indicates that recipients have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by "may" or "recommend."

NLF: Recipients must:

- develop and implement written procedures on the storage and use of disability-related and medical information as required by WIOA §188, 29 CFR §38.41(b)(1)–(3) and §32.15(d), Section 504 of the Rehabilitation Act of 1973, and the State of Texas Nondiscrimination Plan;
- ensure that the procedures include guidelines for storing information in a manner that provides confidentiality; and
- ensure that the procedures include prohibitions on the use and disclosure of information, except as provided in 29 CFR §38.41(b)(3).

NLF: Recipients must ensure that appropriate staff members are apprised of and comply with the requirements in this WD Letter.

INQUIRIES:

Send inquiries regarding this WD Letter to wfpolicy.clarifications@twc.state.tx.us.

ATTACHMENT:

Attachment 1: Revisions to WD Letter 17-07 Shown in Track Changes

REFERENCES:

Rehabilitation Act of 1973, §504, as amended

United States Department of Labor, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act [29 CFR §38.4(zz)]

United States Department of Labor, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act [29 CFR §38.44]

United States Department of Labor, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act [29 CFR §38.41(b)(1)–(3)]

United States Department of Labor, Implementation of Section 504 of the Rehabilitation Act of 1973, as amended, Provisions on Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance [29 CFR §32.15(d)]

Workforce Innovation and Opportunity Act, §188

State of Texas Nondiscrimination Plan:

<http://intra.twc.state.tx.us/intranet/pi/docs/nondiscrimination-plan-twc.pdf>