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**IDAPA 09
TITLE 01
CHAPTER 60**

09.01.60 - COMPLAINT PROCEDURES UNDER THE WORKFORCE INVESTMENT ACT

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of 20 CFR Section 667.600, 29 CFR Part 37 and Section 72-1333(2), Idaho Code. (3-15-02)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.01.60, "Complaint Procedures Under the Workforce Investment Act." (3-15-02)

02. Scope. These rules govern the procedures for processing and adjudicating discrimination and program complaints by or against any program or activity funded or authorized under Title I of the federal Workforce Investment Act. (3-15-02)

a. Discrimination Complaints. The Workforce Investment Act prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and discrimination against beneficiaries on the basis of either citizenship or status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I financially assisted program or activity; and incorporates the provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs. A complaint alleging a violation of any of these provisions is a discrimination complaint which shall be processed and adjudicated according to the discrimination complaint procedures provided for in these rules. Further, no entity receiving financial assistance under WIA may discharge, intimidate, retaliate against, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing. These actions are also considered discrimination and are enforced under this rule's discrimination complaint procedures. (3-15-02)

b. Program Complaints. Nondiscriminatory, non-criminal complaints involving the proper application of the Workforce Investment Act and its regulations and policies are program complaints, which shall be processed and adjudicated according to the program complaint procedures provided for in these rules. (3-15-02)

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretations of these rules. (3-15-02)

003. ADMINISTRATIVE APPEALS.

Appeals shall be governed by the provisions of this chapter. (3-15-02)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (3-15-02)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Idaho Department of Labor is in Boise, Idaho. The office is located at, and its mailing address is, 317 W. Main Street, Boise, Idaho 83735. Office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The telephone number of the Department is (208) 332-3570 and the TTY number through Idaho Relay Service is 1-800-377-3529. (3-15-02)

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (3-15-02)

007. -- 009. (RESERVED).

010. DEFINITIONS.

Unless the context clearly requires otherwise, these terms shall have the following meanings when used in this chapter. (3-15-02)

01. Department. Idaho Department of Labor. (3-15-02)

02. Local Administrative Entity. The administrative entity that administers the workforce investment system within a designated local area. (3-15-02)

03. One-Stop Operator. One (1) or more entities designated or certified under the provisions of WIA to operate a One-Stop Center. (3-15-02)

04. Service Provider. Any operator or provider of aid, benefits, services, or training to any WIA Title I funded program or activity that receives financial assistance either from or through any WIA recipient, or for any participant through that participant's Individual Training Account; or any entity that is selected or certified as an eligible provider of training services to participants. (3-15-02)

05. WIA Recipient. Any entity to which financial assistance under WIA Title I is extended, either directly from the Department or through the Governor or another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. It includes, but is not limited to state-level agencies that administer or are financed in whole or in part with WIA Title I funds; the Department; state and local WIA boards; local WIA grant recipients; One-Stop operators; service providers, including eligible training providers; and on-the-job training employers. In addition, One-Stop partners are treated as WIA recipients, but only to the extent that they participate in the One-Stop delivery system. (3-15-02)

011. ABBREVIATIONS.

Unless the context clearly requires otherwise, these abbreviations shall have the following meanings when used in this chapter. (3-15-02)

01. ADR. Alternate Dispute Resolution. (3-15-02)

02. CRC. Civil Rights Center of the U.S. Department of Labor. (3-15-02)

03. EO. Equal Opportunity. (3-15-02)

04. WIA. Workforce Investment Act. (3-15-02)

012. DISCRIMINATION COMPLAINTS.

Complaints alleging discrimination shall be in writing and may be filed by the complainant or the complainant's designated representative with the Department, Local Administrative Entity, Service Provider, or One-Stop Operator. Written Complaints taken by the Department, Local Administrative Entity, Service Provider, or One-Stop Operator shall be promptly forwarded to the State EO Officer. Written complaints may also be filed directly with the Director, CRC, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210. (3-15-02)

01. Contents. A written complaint shall include: (3-15-02)

a. The complainant's name and address; (3-15-02)

b. The identity of the individual or entity that the complainant alleges is responsible for the discrimination; (3-15-02)

c. A description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint; and (3-15-02)

d. The complainant's signature or the signature of the complainant's authorized representative.

(3-15-02)

02. Complaint Log. All complaints shall be logged. The log shall include the name and address of the complainant, the basis for the complaint, a description of the complaint, the disposition and date of disposition of the complaint, and any other pertinent information. (3-15-02)

03. Confidential Information. Information that could lead to the identification of the person filing the complaint shall be kept confidential unless disclosure is required by law or is necessary for conducting an investigation or engaging in enforcement activities. (3-15-02)

04. Jurisdiction. In order to have jurisdiction to process and adjudicate a discrimination complaint the respondent against whom the complaint was filed must be a WIA recipient, the complaint must allege a basis for discrimination that is prohibited by WIA, and the complaint must be filed within one hundred eighty (180) days of the alleged discrimination. (3-15-02)

05. Notice of Lack of Jurisdiction. If a determination is made that there is no jurisdiction to process the complaint, a Notice of Lack of Jurisdiction must be sent to the complainant that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with CRC within thirty (30) days from receipt of the Notice of Lack of Jurisdiction. (3-15-02)

06. Joint Jurisdiction. Where the complaint alleges discrimination by a WIA recipient or service provider on a basis that is prohibited by both WIA and by a civil rights law independently enforced by that WIA recipient or service provider, the complaint must be referred to that WIA recipient or service provider for processing under their procedures. For example, WIA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIA recipient or service provider and they are also prohibited under their own regulations from discriminating on the basis of national origin, then the complaint shall be referred to that WIA recipient or service provider for processing according to their regulations. Notice of the referral must be sent to the complainant. (3-15-02)

07. Sole Jurisdiction. Where the complaint alleges discrimination by a WIA recipient or service provider on a basis that is prohibited by WIA and is not covered by a civil rights law independently enforced by that WIA recipient or service provider (e.g. religion, political affiliation or belief, citizenship or participation in WIA Title I), the complaint shall be processed by that WIA recipient or service provider under these procedures. (3-15-02)

08. Formal Resolution. The State EO Officer shall send written notice to the complainant stating that the complaint has been received. (3-15-02)

a. The notice must list the issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection. (3-15-02)

b. The notice must advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice. The Notice must also give the complainant the right to choose between an ADR process or a hearing. (3-15-02)

09. The ADR Process. If the party filing the complaint requests to use the ADR process for resolving the complaint, the State EO Officer shall request a mediator and monitor the processing of the complaint. (3-15-02)

a. The mediator shall schedule mediation by written notice, mailed to all interested parties at least seven (7) days prior to the first mediation session. The notice shall include the date, time, and place of the mediation. (3-15-02)

b. The mediation process must be concluded within forty-five (45) days from the date the complaint was filed. The complaint is considered resolved when all parties to the complaint enter into a written agreement resolving the issues raised in the complaint. (3-15-02)

c. The written agreement must give notice that if the terms of the agreement are breached, the non-breaching party may file a complaint with CRC within thirty (30) days of the date the non-breaching party learns of

the breach. (3-15-02)

d. If the parties do not reach an agreement, the State EO Officer shall forward the complaint to a hearing officer for a hearing. (3-15-02)

10. The Hearing Process. If the party filing the complaint requests a hearing to resolve the complaint, or if the ADR process fails to result in an agreement, the State EO Officer shall forward the complaint to the hearing officer and monitor the processing of the complaint. (3-15-02)

a. The hearing officer shall schedule a formal hearing by written notice, mailed to all interested parties at least seven (7) days prior to the hearing. The notice shall include the date, time, and place of the hearing. (3-15-02)

b. The hearing must be conducted within sixty (60) days from the date the complaint was filed. (3-15-02)

c. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or other designated representative, and may request that records and documents be produced. (3-15-02)

d. All testimony shall be taken under oath or affirmation. (3-15-02)

e. The hearing will be recorded. (3-15-02)

f. The hearing officer's recommended resolution shall include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based. (3-15-02)

g. The hearing officer's recommended resolution must be completed and sent to the State EO Officer within seventy-five (75) days from the date the discrimination complaint was filed. (3-15-02)

11. Notice of Final Action. The Department shall review the recommendation of the hearing officer and shall issue a Notice of Final Action within ninety (90) days from the date the discrimination complaint was filed. The Notice of Final Action shall contain the following: (3-15-02)

a. Department's decision on each issue and the reasons for the decision; (3-15-02)

b. A description of the way the parties resolved the issue; and (3-15-02)

c. Notice that the complainant has the right to file an appeal with CRC within thirty (30) days from the date the Notice of Final Action is issued if dissatisfied with the Department's final action on the complaint. (3-15-02)

013. PROGRAM COMPLAINTS AGAINST LOCAL WIA PROGRAMS AND POLICIES.

Participants, One-Stop partners, service providers, and other interested parties may file complaints alleging nondiscriminatory, non-criminal violations of the WIA agreements, policies or activities of a Local Administrative Entity or local service provider. Local program complaints shall be in writing and shall be filed with the local service provider or local administrative entity against whom the complaint is made within one hundred eighty (180) days from the date of the event or condition that is alleged to be a violation of WIA. A complaint may be amended prior to a scheduled hearing or withdrawn by the complainant at any time. Information about the identity of the person filing the complaint or to the identity of any person who furnishes information relating to, or assisting in, an investigation, shall be kept confidential from non-parties to the complaint process unless disclosure is required by law. No entity receiving financial assistance under WIA may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing. (3-15-02)

01. Initial Review. Written complaints shall be taken by the local service provider or local administrative entity from the complainant or the complainant's designated representative. All complaints shall be

logged. If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIA, the complaint shall be referred to the appropriate organization for resolution. Notice of the referral shall be sent to the complainant. If the complaint is retained, a complaint file should be established that contains: (3-15-02)

- a. All application and enrollment forms, if appropriate; (3-15-02)
- b. The written complaint and complaint form; (3-15-02)
- c. A chronological log of events; (3-15-02)
- d. All relevant correspondence; and (3-15-02)
- e. A record of any resolution attempted. (3-15-02)

02. Informal Resolution. An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within ten (10) days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file. (3-15-02)

03. Formal Resolution. When no informal resolution is possible, the local service provider shall forward the complaint and a copy of the file to the local administrative entity who will review the complaint file, conduct a further investigation if necessary, and issue a determination within twenty (20) days from the date the complaint was filed. If the determination is not contested as provided for in Subsection 013.04, the complaint will be considered resolved and the complaint file shall be closed and documented accordingly. (3-15-02)

04. Request for Hearing. Any party dissatisfied with a local administrative entity's determination may request a hearing within ten (10) days of the date of the determination. The request shall be in writing and must be timely filed with the local administrative entity. The local administrative entity shall forward the program complaint to a hearing officer for resolution. The local administrative entity will monitor the processing of the complaint. (3-15-02)

05. Hearing. The hearing officer shall schedule a formal hearing by written notice, mailed to all interested parties at least seven (7) days prior to the hearing. The notice shall include the date, time, and place of the hearing. The hearing must be conducted within forty-five (45) days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony shall be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution shall include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based. (3-15-02)

06. Final Decision. The local administrative entity shall review the recommendation of the hearing officer and shall issue a final decision within sixty (60) days from the date the complaint was filed. (3-15-02)

07. Request for Review. Any party dissatisfied with the local administrative entity's final decision, or any party who has not received a decision or a final resolution within sixty (60) days from the date the complaint was filed, may file a Request for Review. A request for review must be filed with the Department within ninety (90) days from the date the complaint was originally filed. (3-15-02)

014. PROGRAM COMPLAINTS AGAINST STATEWIDE WIA PROGRAMS AND POLICIES.

Participants, One-Stop partners, service providers and other interested parties may file complaints alleging nondiscriminatory, non-criminal violations of statewide WIA agreements, policies or activities. Statewide program complaints shall be in writing and shall be filed with the statewide service provider or the Department within one hundred eighty (180) days from the date of the event or condition that is alleged to be a violation of WIA. A complaint may be amended prior to a scheduled hearing or withdrawn at any time. Information about the identity of the person filing the complaint or to the identity of any person who furnishes information relating to, or assisting in, an investigation, shall be kept confidential from non-parties to the complaint process unless disclosure is required by law. No entity receiving financial assistance under the Act may discharge, intimidate, retaliate, threaten, coerce, or

discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing. (3-15-02)

01. Initial Review. Written complaints shall be taken from the complainant or the complainant's designated representative. All complaints shall be logged. If the complaint alleges a violation of local WIA programs, policies or agreements, the complaint shall be referred to the local administrative entity for processing under the complaint procedures for program complaints against local WIA programs. If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIA, the complaint shall be referred to the appropriate organization for resolution. Notice of the referral shall be sent to the complainant. If the complaint is retained, a complaint file should be established that contains: (3-15-02)

- a. All application and enrollment forms, if appropriate; (3-15-02)
- b. The written complaint and complaint form; (3-15-02)
- c. A chronological log of events; (3-15-02)
- d. All relevant correspondence; and (3-15-02)
- e. A record of any resolution attempted. (3-15-02)

02. Informal Resolution. An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within ten (10) days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file. (3-15-02)

03. Formal Resolution. When no informal resolution is possible, the statewide service provider shall forward the complaint and a copy of the file to the Department who shall review the complaint file, conduct a further investigation if necessary, and issue a determination within twenty (20) days from the date the complaint was filed. If the determination is not contested as provided for in Subsection 014.04, the complaint shall be considered resolved and the complaint file will be closed and documented accordingly. (3-15-02)

04. Request for Hearing. Any party dissatisfied with the Department's determination may request a hearing within ten (10) days of the date of the determination. The request shall be in writing and must be timely filed with the Department. The Department shall forward the program complaint to a hearing officer for resolution. The Department will monitor the processing of the complaint. (3-15-02)

05. Hearing. The hearing officer shall schedule a formal hearing by written notice, mailed to all interested parties at least seven (7) days prior to the hearing. The notice shall include the date, time, and place of the hearing. The hearing must be conducted within forty-five (45) days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony shall be taken under oath or affirmation. The hearing shall be recorded. The hearing officer's recommended resolution shall include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based. (3-15-02)

06. Final Decision. The Department shall review the recommendation of the hearing officer and shall issue a final decision within sixty (60) days from the date the complaint was filed. (3-15-02)

015. -- 999. (RESERVED).

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